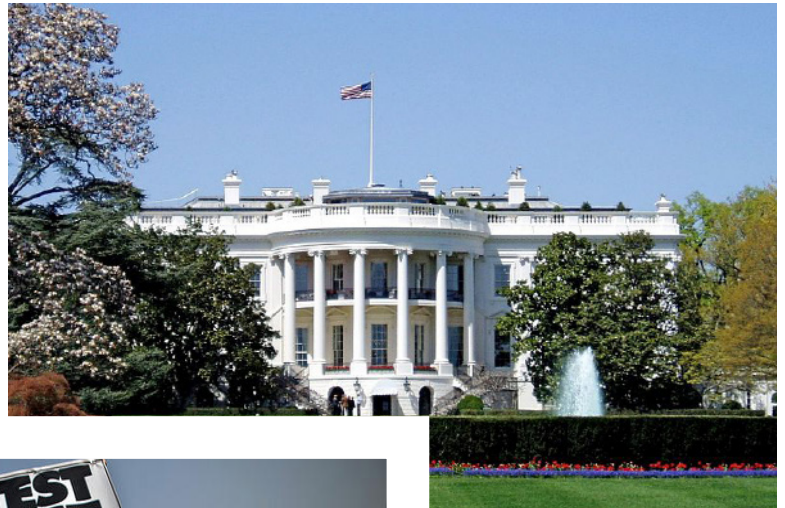


TASK FORCE 2014



END GAME

Rethinking the Global War on Terror

Cover Photo Credits

Left to Right: *(Top Row)* MQ-9 Reaper Drone, Accessed from General Atomics; White House South Façade, creator: Mike Wade, Accessed from Wikipedia; *(Bottom Row)* US Army Soldiers on Patrol, Accessed from AP; Drone Protests in Islamabad, creator: Muhammed Muheisen, Accessed from AP; US Navy SEALs, Accessed from US Navy Photo/Alamy

End Game: Rethinking the War on Terror

*Henry M. Jackson School of International Studies
University of Washington*

Winter 2014 Task Force

Task Force Advisor
The Honorable Adam Smith

Task Force Evaluator:
Dr. James N. Miller

Co-Editors in Chief:
Rutger Ceballos
Simon Walker

Contributing Writers:
Jacob Beeders
Magdalena Cooper
Benjamin Heckert
Camian Keeble
Karen Maniraho
Bevin McLeod
Adriana Meharry
Yelizaveta Minkina
Jwanah Qudsi
Zachary Reschovsky
Gregory Sidlinger
Chonlawit Sirikupt
Fabian Valencia
Claire Wickstrom

Acknowledgements

The authors would like to thank the Honorable Adam Smith for his invaluable guidance, expertise, and patience during the course of our research. Without him, this project would not have been possible.

We would also like to thank Professor Wolfram Latsch for his many thoughtful insights and recommendations, which undoubtedly contributed to a better paper. The support we received from Librarian Emily Keller and Program Coordinator Lauren Dobrovolny was also crucial to our successful completion of this paper, and we thank them too.

End Game: Rethinking the War on Terror

Table of Contents

Executive Summary

Section I: A Flawed Strategy - Legal Issues, the AUMF, and the Rise of Drone Warfare

Introduction.....	1
Part I: Problems with the Legal Justification for the AUMF.....	2
Part II: How the AUMF is Used in its Current Form.....	19
Part III: Drones – The Problematic Use of Unmanned Aerial Vehicles under the AUMF.....	31

Section II: Fixing the AUMF – Reform, Oversight, and Regulating Lethal Force

Introduction.....	46
Part I: Rethinking the AUMF – Placing New Limits on the Use of Lethal Force.....	48
Part II: Improving Transparency and Oversight in the War on Terror.....	55
Part III: Reforming the Targeted Killings Programs – Moving Lethal Strikes from the CIA to the DOD.....	68

Section III: Alternative Strategies for Combating Global Terrorism

Introduction.....	74
Part I: Combating an Ideology – How Al Qaeda Recruits.....	77
Part II: Transitioning to a Law Enforcement Approach – Demilitarizing the War on Terror.....	93

Section IV: The 3D Strategies for Long-Term Security – Defense Partnerships, Diplomacy, and Development

Introduction.....	108
Part I: Building Security Capacity of Partner Nations.....	109
Part II: Diplomacy – Reclaiming Credibility Abroad.....	134
Part III: Addressing the Structural Roots of Violent Extremism.....	148

Executive Summary

By Rutger Ceballos & Simon Walker

The United States is currently engaged in one the longest and costliest wars in its history. In the thirteen years since the devastating attacks on 9/11, the United States has waged war against al Qaeda and ideology of global violent jihad. The U.S. military has sought to confront and destroy terrorist organizations wherever they may exist. This open-ended strategy has led to the implementation of a wide range of controversial military programs, most prominent of which are lethal drone strikes. Although the U.S. military has eliminated thousands of suspected terrorists, including most of the original al Qaeda leadership, this militarized and aggressive strategy has radicalized an entire generation of young Muslims and exacerbated the problem. If the United States continues to respond to terrorist threats with unregulated and legally questionable lethal military force, violent extremist ideologies like al Qaeda's will only continue to rapidly metastasize. What is needed is a paradigm shift in the way the United States fights terrorism — both at home and abroad. The end of the current conflict will look like the adoption of a completely different counterterrorism strategy.

This paper explores ways in which the United States can rethink the Global War on Terror and what an alternative counterterrorism strategy may look like. It is divided into four general sections. The first explains how the current United States strategy, as framed by the 2001 Authorization for the Use of Military Force (AUMF), is both legally and structurally problematic. The second section lays out a series of short-term recommendations on how the United States can move away from the current AUMF and toward a more transparent and legal framework. The third and fourth sections present a series of both short and long term recommendations intended to dramatically shift U.S. counterterrorism policy away from a permanent war footing and toward a sustainable, multifaceted strategy that targets the structural roots of terrorist ideologies. In order to accomplish these goals, the United States must consider the following recommendations:

- 1) Sunset the current AUMF at the end of 2016.** The 2001 Authorization for the Use of Military Force is far too broad and legally questionable. The lack of specificity has allowed the Executive branch to carry out increasingly controversial operations and expand the

scope of the War on Terror. Additionally, the goal of the original AUMF has largely been accomplished—with the death of Osama bin Laden and the decimation of al Qaeda’s core network over the past decade, most of the people responsible for 9/11 have already been dealt with. The new generation of terrorist networks are more splintered and decentralized than ever before, necessitating an entirely different use of force than is currently authorized.

2) Establish consistent, transparent and regulated procedures for the use of lethal force.

Currently, many of the rules guiding how and when the United States uses lethal force against suspected terrorist targets are governed by informal practices carried out in secret. In order to provide a sustainable and internationally legal framework for the use of lethal force the United States should work to establish greater transparency and oversight in its military and intelligence operations. To this end, the United States must codify an official and publically available “playbook” governing the use of lethal force. Furthermore, the release of a public press statement detailing why a target was eliminated must follow every incident in which lethal force was used. These steps will dramatically increase the legal and moral credibility surrounding the use of lethal force by the United States.

3) Move the drone program from the CIA to the exclusive purview of the DoD.

The Department of Defense is the only government agency fully authorized to carry out legal uses of lethal force. In the years after 9/11, the United States carried out a rapid militarization of its entire intelligence structure—transforming the CIA from primarily an intelligence-gathering agency into a paramilitary force capable of carrying out lethal actions. This is a troubling and unprecedented shift in American foreign policy. This paper advocates that the CIA demilitarize and transfer the armed drone program to the Department of Defense. Operating under the UCMJ and subject to extensive Congressional review, the Department of Defense is capable of handling all of the lethal operations currently undertaken by the United States.

4) Shift from a military counterterrorism strategy to a criminal justice model.

By using military force as the primary method of combating terrorist networks, the United States has

risked creating new enemies as it is eliminating current ones. Excessive reliance on military force often alienates potential allies and compromises relationships with local populations. Additionally, a military approach to combating terrorism is unsustainable over the long run, as it is both legally problematic and placing the United States in a permanent state of war. For these reasons, the United States must switch to a criminal justice model that relies on law enforcement, local partnerships and interagency cooperation in order to minimize the use of lethal force.

- 5) **Build Partner Security Capacity (BPSC) in allied states.** The United States is currently taking the lead in fighting extremist and militant groups in the Middle East. By building the capacity of allied nations the United States will be able to simultaneously reduce its military footprint in the Middle East while maintaining pressure on extremist groups.

- 6) **Refocus diplomatic and messaging efforts.** Al Qaeda and other extremist ideologies rely on inconsistency and often hypocritical U.S. rhetoric to drive recruitment and fan anti-U.S. sentiment. The United States must take steps to improve its diplomatic messaging toward the Muslim world. Clarity and consistency must be at the core of all diplomatic efforts in the Middle East. The United States must consistently push for greater market liberalization and democratization while at the same time refraining from untenable declarations. Furthermore, continuing to work toward a resolution of the Israeli-Palestinian conflict will help deprive al Qaeda of one of its strongest rhetorical tools.

- 7) **Centralize development aid under a single cabinet-level agency.** A robust and well-funded development program is critical when addressing the structural roots of extremism. In order to achieve this development aid must be centralized under USAID, which must in turn be elevated to a cabinet-level position. Implementing both top-down and bottom-up development programs will help deprive extremist groups of the large recruitment pools of young, poor men they require to sustain themselves.

SECTION I

A Flawed Strategy—Legal Issues, the AUMF, and the Rise of Drone Warfare

A New Kind of War

On Nov. 4, 2002 a Hellfire missile fired from an unmanned aerial vehicle killed Abu Ali al-Harithi and five other al Qaeda militants, including a U.S. citizen, in the tribal regions of Yemen.¹ The era of drone warfare had begun. Since then hundreds of terrorists and insurgents have been killed by drone strikes. In the last five years alone, President Obama has carried out more than 390 drone strikes and killed an estimated 2,400 people in Yemen, Pakistan, Afghanistan and Somalia.² Some argue that armed drones have proven to be the most effective tool in the Global War on Terror, enabling the United States to target and kill hundreds of top al Qaeda and Taliban leaders with minimal loss of civilian life. On the other hand, critics have charged that drones have killed and maimed hundreds of innocent civilians and fueled anti-American hatred in the Muslim world. Further complicating the issue is the lack of a clear legal and policy framework surrounding the use of lethal force in the fight against al Qaeda and terrorist networks. Drone strikes are just the newest tactic in the long war on global terror. The question now is not just when and how should drone strikes be used but how can the United States rethink its strategy in the Global War on Terror in a way that defeats al Qaeda without destroying its reputation in the process.

The following paper proposes a series of policy recommendations that address the need to reform key aspects of current drone policy while also providing a clear path to alternative strategies for prosecuting what has become a fight against violent Islamic extremism. The policy recommendations presented in the subsequent sections are best understood within the context of the current debate over drone strikes and the use of military force by the United States. Ultimately, the debate over the benefits and drawbacks of military strikes is just one part of the larger ‘grand strategy’ of the War on Terror. Our paper offers a set of policy recommendations that will allow the United States to restrict and reduce its use of military force while simultaneously establishing a long term, multifaceted strategy to combat al Qaeda and other violent extremists.

¹ Bowden, Mark. "The Killing Machines." The Atlantic. August 14, 2013. Accessed March 2014.

² Serle, Jack. "More than 2,400 Dead as Obama's Drone Campaign Marks Five Years | The Bureau of Investigative Journalism." The Bureau of Investigative Journalism. January 23, 2014.

Part I: Problems with the Legal Justification for the AUMF

By Bevin McLeod

This section addresses the legality of the AUMF in its current form, and evaluates two distinctly different perspectives around the issue—the first, which is consistently used by the Obama administration, is that the AUMF is both legal domestically under the Commander in Chief clause of the Constitution, and also legal internationally under the Customary Law and International Humanitarian Law right to self-defense.³ However, many legal scholars counter that under domestic law there is no legal consensus as to the legality of the AUMF in its current form, and our use of military force is illegal under international law.⁴ Below, the language and interpretations/revisions of the AUMF are examined as well as the language and interpretations of international law, followed by an analysis of each. This section concludes by arguing that at an international level our current military actions against al Qaeda and “affiliated forces” are not legal and do not conform to International Humanitarian Law, Human Rights Law, or Customary Law standards of war, and domestically, the AUMF in its current form is of questionable legality and is no longer relevant to the continued hostilities the United States is engaged in. In order to follow a better legal framework for our current armed action, this section sets down two recommendations on how both the Executive and Congress could work together in order to meet both domestic and international law standards.

Domestic Law and the 2001 AUMF

As history makes clear, terrorism is nothing new to the human race. The United States has been dealing with terrorist threats and attacks since long before 9/11, and has judiciously treated those threats and actions as criminal cases where perpetrators were tried and sentenced in a court of law. However, consistent fatwas from Osama bin Laden, as well as attacks against U.S. ships, embassies, and U.S. personnel throughout the 1990’s, finally prompted President Clinton to enter in to military engagements with al

³ Bradley, Curtis A.; Goldsmith, Jack L. “Congressional Authorization and the War on Terrorism,” 118 Harv. L. Rev. 2047 (2004-2005).

⁴ Barnes, Beau D. “Reauthorizing the War on Terror: The Legal and Policy Implications of the AUMF's Coming Obsolescence,” 211 Mil. L. Rev. 57 (2012).

Qaeda in 1998-99.⁵ The events that unfolded on 9/11 acted as a catalyst to the final push into continuous armed hostilities between the United States, al Qaeda and forces associated with or deemed to be harboring the terrorist network. On Sept. 14, 2001, Congress issued its Authorization for the Use of Military Force (AUMF).⁶ Below is a closer look at the language Congress incorporated into the AUMF, followed by a section on both revisions and interpretations.

Language

Whereas, on September 11, 2001, acts of treacherous violence were committed against the United States and its citizens; and

Whereas, such acts render it both necessary and appropriate that the United States exercise its rights to self-defense and to protect United States citizens both at home and abroad; and

Whereas, in light of the threat to the national security and foreign policy of the United States posed by these grave acts of violence; and

Whereas, such acts continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States; and

Whereas, the President has authority under the Constitution to take action to deter and prevent acts of international terrorism against the United States:

(a) 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.

⁵ Nat'l Comm'n on Terrorist Attacks Upon the U.S., The 9/11 Commission Report 108-43 (2004), available at http://www.9-11commission.gov/report/911Report_Ch4.htm.

⁶ “S.J.Res. 23--107th Congress: Authorization for Use of Military Force.” [www.GovTrack.us](http://www.govtrack.us). 2001. January 26, 2014 <http://www.govtrack.us/congress/bills/107/sjres23>.

(b) WAR POWERS RESOLUTION REQUIREMENTS.—

(1) SPECIFIC STATUTORY AUTHORIZATION.—

Consistent with section 8(a)(1) of the War Powers Resolution, the Congress declares that this section is intended to constitute specific statutory authorization within the meaning of section 5(b) of the War Powers Resolution.⁷

The language in the AUMF contradicts itself in that it is broad and specific. For example, the fact that “the President is authorized to use all necessary and appropriate force” seems vague as to how “necessary and appropriate” are determined. Moreover, one is left to interpret the meaning of force: Does that include the use of torture, hellfire missiles, tactical teams, and nuclear weapons? It is not clear whether Congress has a say in how force is defined, or whether that is solely determined by the President. This leaves a door open wide for interpretation, and therefore action, wielded by one individual who, it is certainly arguable, is wielding that power in illegal ways such as targeted killings, night raids, and drone strikes in sovereign airspace.⁸ More ambiguity is illustrated in the phrase, “Whereas, such acts continue to pose an *unusual* and *extraordinary* threat to the national security and foreign policy of the United States.” Again, who determines what is unusual and/or extraordinary is not made clear. It is precisely because of this vague language that the Executive branch has maintained military action against al Qaeda and other terrorist groups worldwide, while continuously adding new legal interpretations and broader legal language to defend its actions internationally and domestically.

Yet another ambiguity in the language of the text is, “Whereas, the President has authority under the Constitution *to take action to deter and prevent* acts of terrorism against the United States.”⁹ In this case many would argue¹⁰ that under the Constitution the President in fact has the duty to follow any statute and/or law enacted by Congress, as

⁷ “S.J.Res. 23--107th Congress: Authorization for Use of Military Force.” www.GovTrack.us. 2001. January 26, 2014 <http://www.govtrack.us/congress/bills/107/sjres23>.

⁸ Cronogue, Graham, “A New AUMF: Defining Combatants in the War on Terror;” 22 Duke J. Comp. & Int'l L. 377 (2011-2012).

⁹ “S.J.Res. 23--107th Congress: Authorization for Use of Military Force.” www.GovTrack.us. 2001. January 26, 2014 <http://www.govtrack.us/congress/bills/107/sjres23>.

¹⁰ Bradley, Curtis A.; Goldsmith, Jack L. “Congressional Authorization and the War on Terrorism;” 118 Harv. L. Rev. 2047 (2004-2005).

per his Article II responsibilities.¹¹ However, it is crucial to ask about a timeline and reflect on the Cold War and the ideology of Communism as an enemy. If the President is indeed authorized to “take action” to “deter and prevent” any future acts of terror, then the U.S. will find itself, once again, in an endless battle against an ideology that thrives on violence. As pointed out previously, terrorism is not a new development in human history, and as long as the Executive continues to fight from a preemptive stance rather than a defensive stance, the hostilities will maintain themselves as new terrorists are born out of spite or anger toward our military actions abroad.¹² Also, permanently incorporating broad language within the AUMF leaves the door wide open for Congress to continue to cede its power to authorize force to the Executive branch. This allows traditionally criminal activity to further be treated as warfare, and under domestic legal precedent could be on par with rewriting the Constitution.

The section with specific language is where the *purpose* and the *individuals* of the AUMF are defined: “...those nations, organizations, or persons he [the President] determines planned, authorized... [t]he terrorist attacks that occurred on September 11, 2001.”¹³ Firstly, in these words Congress distinctly defined a nexus requirement, and made it clear that those being targeted must be tied to the attacks on Sept. 11, 2001¹⁴ for the purpose of acting in self-defense against an attack on U.S. soil. It was President Bush who first took liberties with the wording and stated that, “Our war on terror begins with al Qaeda, but it does not end there. It will not end until every terrorist group of global reach has been found, stopped and defeated.”¹⁵ Though this language is not present in the AUMF, after thirteen years of fighting and billions spent on offensive military tactics, one must ask if that is really what the Executive Office is hoping to achieve. Based on the nexus requirement within the current AUMF however, any military response and/or pursuit of a person or group not responsible for the attacks on 9/11, is illegal both

¹¹ Constitution of the United States.

¹² Pape, A. Robert, *It's the Occupation, Stupid*.

http://www.foreignpolicy.com/articles/2010/10/18/it_s_the_occupation_stupid.

¹³ “S.J.Res. 23--107th Congress: Authorization for Use of Military Force.” [www.GovTrack.us](http://www.govtrack.us). 2001. January 26, 2014 <http://www.govtrack.us/congress/bills/107/sjres23>.

¹⁴ Cronogue, Graham, “A New AUMF: Defining Combatants in the War on Terror;” 22 *Duke J. Comp. & Int'l L.* 377 (2011-2012).

¹⁵ President George W. Bush, Address to a Joint Session of Congress and the American People

(Sept. 20, 2001), <http://www.whitehouse.gov/news/releases/2001o9/2001o92o-8.html>

domestically and internationally.¹⁶ One could point to the clause defined above and argue that the President is authorized through the AUMF and Congress to deter and/or prevent any future attacks, but this paper argues that the nexus requirement clearly establishes purpose and people, and that any future terrorist activity should be treated as a crime for which there is sufficient criminal code both domestically and internationally.

Secondly, even though the nexus requirement clearly establishes a *general* answer to *who* can be targeted, examining the text more closely raises more legal questions.¹⁷ The short answer is “...those nations, organizations, or persons” that the *President* determines “...authorized, committed, or aided... or harbored such organizations or persons” that committed the attacks on 9/11. However, after thirteen years of continuous military response, those people—including Osama bin Laden—who were part of, or helped orchestrate 9/11, are either in prison or deceased. This means that the nexus requirement in the AUMF has been fulfilled, and anyone being targeted at this point is not related to the attacks on 9/11 and therefore does not fall under the AUMF.¹⁸ It is also important to point out that the United States is no longer in a state of emergency and therefore the power vested in the Executive to unilaterally determine the guilt of someone thousands of miles away, including American citizens, is not only unnecessary but also legally and politically dangerous.¹⁹ Justice Robert H. Jackson stated that executive claims to power “must be scrutinized with caution, for what is at stake is the equilibrium established by our constitutional system”.²⁰ Based on the current use of the AUMF, and the persistent reliance of the Executive on the Commander in Chief clause of the Constitution for our continued use of military force abroad,²¹ it is clear that the legal precedent being set must both be challenged and altered.

¹⁶ Geraghty, Thomas, “The Criminal-Enemy Distinction: Prosecuting a Limited War against Terrorism following the September 11, 2001 Terrorist Attacks,” 33 *McGeorge L. Rev.* 551 (2001-2002).

¹⁷ Cronogue, Graham, “A New AUMF: Defining Combatants in the War on Terror,” 22 *Duke J. Comp. & Int'l L.* 377 (2011-2012).

¹⁸ Geraghty, Thomas, “The Criminal-Enemy Distinction: Prosecuting a Limited War against Terrorism following the September 11, 2001 Terrorist Attacks,” 33 *McGeorge L. Rev.* 551 (2001-2002).

¹⁹ Cronogue, Graham, “A New AUMF: Defining Combatants in the War on Terror,” 22 *Duke J. Comp. & Int'l L.* 377 (2011-2012).

²⁰ Pohlman, Harold L. *Terrorism and the Constitution: The Post-9/11 Cases*. Rowman & Littlefield, 2008.

²¹ Constitution of the United States

Revisions and Interpretations

The AUMF clearly acknowledges the War Powers Resolution (WPR), yet does not explicitly say that the President is obligated to adhere to the requirements set forth in the WPR.²² These would require that the President report to Congress on the state of hostilities at least every six months.²³ In order to understand the significance of the WPR, one must remember that it was drafted and signed into legislation as a response to President Nixon's secret bombing of Cambodia during the Vietnam War.²⁴ It is widely recognized among legal scholars that the Gulf of Tonkin Resolution was the broadest AUMF in U.S. history,²⁵ and that the WPR was passed because of a need to rein in Executive power and what seemed like a never-ending armed conflict. In terms of broad scope and language, some scholars contend that the 2001 AUMF is equal in language and scope to Congress's declaration of war against Germany, or the Gulf of Tonkin Resolution.²⁶ However, both of those examples had clear geographical parameters, specific guidelines on who was to be targeted, and a specific end goal. Since the current AUMF is arguably broader in all three of these categories, it is clear that when passing S.J. Res. 23 (the 2001 AUMF) to include specific paragraphs of the WPR, Congress intended to find an end-date to hostilities and keep the Executive Office in check. Therefore, it is within the spirit of not only the WPR, but the AUMF itself to address the need for a sunset date, define more clearly who the United States may target and when, and rely first on diplomatic efforts and traditional law enforcement methods in order to bring an end to the current hostilities. The next section looks closely at the language used in the NDAA of 2012 and how it relates to the AUMF and the continued use of military force.

²² "S.J.Res. 23--107th Congress: Authorization for Use of Military Force." [www.GovTrack.us](http://www.govtrack.us). 2001. January 26, 2014 <http://www.govtrack.us/congress/bills/107/sjres23>.

²³ War Powers Resolution

²⁴ Bradley, Curtis A.; Goldsmith, Jack L. "Congressional Authorization and the War on Terrorism;" 118 *Harv. L. Rev.* 2047 (2004-2005).

²⁵ Joint Resolution of Aug. so, 1964, Pub. L. No. 88-408, § 1, 78 Stat. 384, 384.

²⁶ Bradley, Curtis A.; Goldsmith, Jack L. "Congressional Authorization and the War on Terrorism;" 118 *Harv. L. Rev.* 2047 (2004-2005).

National Defense Authorization Act 2012

In 2012 Congress reauthorized allocation of funds toward the use of military force in connection with ongoing hostilities between the U.S., al Qaeda, and “associated forces.” Congress defined more closely some of the broader issues within the AUMF while simultaneously offering the Executive more leeway:

Congress affirms that

- (1) the United States is engaged in an armed conflict with al-Qaeda, the Taliban, and associated forces and that those entities continue to pose a threat to the United States and its citizens, both domestically and abroad;
- (2) the President has the authority to use all necessary and appropriate force during the current armed conflict with al-Qaeda, the Taliban, and associated forces pursuant to the Authorization for Use of Military Force (Public Law 107–40; 50 U.S.C. 1541 note);
- (3) the current armed conflict includes nations, organization, and persons who—
 - (A) are part of, or are substantially supporting, al-Qaeda, the Taliban, or associated forces that are engaged in hostilities against the United States or its coalition partners; or
 - (B) have engaged in hostilities or have directly supported hostilities in aid of a nation, organization, or person described in subparagraph (A); and
- (4) the President’s authority pursuant to the Authorization for Use of Military Force (Public Law 107–40; 50 U.S.C. 1541 note) includes the authority to detain belligerents, including persons described in paragraph (3), until the termination of hostilities.²⁷

In this text Congress more distinctively clarifies who the U.S. is engaged in hostilities with, whereas in the original AUMF it states “those nations, organization, or persons” responsible for the attacks on 9/11. This, coupled with section 3A, allows the President to not only pursue those responsible for 9/11, but anyone he deems guilty of

²⁷ H.R. Res. 1540, 112th Cong. § 1034 (2011), available at <https://www.govtrack.us/congress/bills/112/hr1540/text>

“substantially supporting, al Qaeda, the Taliban, or associated forces,” and who he believes are “engaged in hostilities against the United States or its coalition partners.”²⁸ He is then given the authority to detain these people “until the termination of hostilities.” Here again is a hint toward an end to hostilities as mentioned in the original AUMF when referencing the WPR, yet it also includes a broad authorization to detain whomever the Executive decides is a threat and for an indeterminate amount of time. The U.S. has already targeted and killed U.S. citizens under this broad authorization,²⁹ which is unconstitutional³⁰ as per the Fifth and Fourteenth Amendments of the Constitution.³¹ The fact that the Executive has been allowed to stretch its authority so far as to strip U.S. citizens of their constitutional rights is alarming and must be challenged.

Another piece of this legislation to hold under careful scrutiny is section 3B. In some cases this could be an example of ex post facto law (after the fact), which is unconstitutional as per Article I, section 9 of the U.S. Constitution.³² What this section implies is that even if someone is no longer acting hostile or committing hostile acts, the President still has the authority to “use all necessary and appropriate force” to detain and/or kill that person. What this section fails to define is what constitutes a hostile act, and whether international or domestic law has codified those acts as illegal. Again, with the use of undefined language and broad generalization, the Congress and the Executive are laying down dangerous legal precedent along with paving the way for an endless military endeavor.³³

There are several questions to the legality of the current AUMF at a domestic level, even with the amendments Congress has codified. It is essential that the United States move to sunset the AUMF so that the U.S. can move forward on a more legal

²⁸ Barnes, Beau D. “Reauthorizing the War on Terror: The Legal and Policy Implications of the AUMF's Coming Obsolescence;” 211 Mil. L. Rev. 57 (2012).

²⁹ Miller, Greg. "Under Obama, an emerging global apparatus for drone killing." *The Washington Post* 28 (2011).

³⁰ Foreman, Melanie J. “When Targeted Killing Is Not Permissible: An Evaluation of Targeted Killing under the Laws of War and Morality;” 15 U. Pa. J. Const. L. 922 (2012-2013).

³¹ Constitution of the United States

³² Constitution of the United States

³³ Cronogue, Graham, “A New AUMF: Defining Combatants in the War on Terror;” 22 Duke J. Comp. & Int'l L. 377 (2011-2012).

standing domestically. It is important at many levels that the U.S. refrain from the use of military force unless absolutely necessary, and instead rely on diplomacy and law enforcement models to combat the extremist ideologies proliferated by groups like al Qaeda. The next section focuses on the U.S.'s use of military force against al Qaeda and "associated forces" from an international law perspective.

International Law

When it comes to international law and the conduct of war, unarmed conflict, and armed conflict, there are three leading categories: Customary International Law, International Humanitarian Law (IHL or LOAC), and Human Rights Law. This paper will not discuss the intricacies of each, but rather will focus on how the U.S.'s use of military force abroad is affected by any, or all, of these bodies of international law. For clarity, it is important to note that Customary International Law is the oldest form of international law and has been shaped over centuries by various persons, nations, institutions, and events. Both IHL and Human Rights Law are tied to the Charter of the United Nations. IHL is codified through the Lieber Code, the Geneva Conventions and its Additional Protocols, and Human Rights Law is codified through the Universal Declaration of Human Rights as well as other treaties and statutes.³⁴ Moving forward, it is important to understand and remember that the United States is a party to, and has ratified all of the above-mentioned charters, statutes, conventions, and protocols.

U.N. Charter

- Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations.³⁵
- All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.³⁶

³⁴ Solis, Gary D. *The law of armed conflict: international humanitarian law in war*. Cambridge University Press, 2010, Ch. 1

³⁵ U.N. CHARTER art. 51.

³⁶ U.N. CHARTER art. 2, para. 4

At international levels as well as domestic levels it is universally accepted (customary law) that individuals and nations have a right to self-defense. As illustrated above, it is codified within the Charter of the United Nations. Therefore, it cannot be disputed that following the events on 9/11 it was within the legal right, both internationally and domestically, for the U.S. to pursue those responsible with lethal force. However, thirteen years after the events on 9/11 the U.S. is still pursuing a military policy internationally as if it were 2001.

It is also codified within the U.N. Charter that nations must work toward peace and security, and must not threaten the peace through unnecessary force or posturing.³⁷ Our continued use of targeted strikes in countries like Yemen and Somalia are in clear violation of that mandate, as well as our disregard for the national sovereignty of Pakistan. Specific to this situation, it must be pointed out that “[t]here are limitations on a state’s right to self-defense against terrorist attacks. [T]hose limitations are immediacy, necessity, and most significant, proportionality.”³⁸ If the U.S. wishes to lead the way legally, ethically, and politically, it is imperative that we adhere to the following IHL standards of imminence, necessity, proportionality and distinction.

Imminence

As defined by Daniel Webster while litigating the Caroline Case: “instant, overwhelming, and leaving no choice of means, and no moment for deliberation.”³⁹ Though the U.S. has developed its own version of imminence, this definition holds for international law expectations. One could even argue that based on the above definition, domestic terrorism is more of an imminent threat than from anything abroad. It would make sense then, for the United States to lessen its military force abroad and focus more on efforts domestically in order to act in defense rather than offense.

³⁷ U.N. CHARTER

³⁸ Solis, Gary D. *The law of armed conflict: international humanitarian law in war*. Cambridge University Press, 2010, pg. 163

³⁹ Webster, Daniel. *The Caroline Case*. Available at http://avalon.law.yale.edu/19th_century/br-1842d.asp#web1

Necessity

“In international law, ‘necessity’ is usually applicable when action is necessary for the security or safety of the state – a form of self-preservation.”⁴⁰

It has not been made clear that since 9/11 the safety of the State has been in jeopardy, or that acts of terrorism are capable of causing the kind of damage to an entire country that is implied by this definition. Barring a nuclear, chemical, or biological weapon, the threat posed by groups like al Qaeda does not seem to meet these criteria.

Proportionality

“Proportionality limits defensive force to that required to repel the attack.”⁴¹

In other words, a defensive military response to an imminent threat must be just enough to repel the attack. Again, it is arguable that the current military force being employed by the U.S. is not proportionate to the threat, and that the casualties caused by that military response far outnumber those potentially threatened by terrorist activity.

Distinction

In order to ensure respect for and protection of the civilian population and civilian objects, the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives.⁴²

Not only is this recognized under Customary International Law, but it is also codified in the Geneva Conventions to which the U.S. is a party. With the current use of military force against *suspected* terrorists, it appears that the U.S. government is ignoring this mandate and instead applying its own interpretations.

Based on these criteria, the use of military force currently being employed by the United States is out of line with both statutory and Customary International Law. It is also necessary however, to evaluate the differences between the distinctions of type of conflict and what that means for conduct of hostilities.

⁴⁰ Solis, Gary D. *The law of armed conflict: international humanitarian law in war*. Cambridge University Press, 2010, pg. 259

⁴¹ Ibid. pg. 164.

⁴² Additional Protocol I, *Geneva Conventions*. Art. 48. 1977

Non-international Armed Conflict vs. Non-international Unarmed Conflict

In determining which category the conflict between the U.S. and al Qaeda falls into, one must examine the properties aligned with each category of conflict. For instance, in a non-international armed conflict (in other words a civil war or military coup), the armed conflict must be continuous and ongoing, and must be at a scale that warrants such a categorization.⁴³ A non-international unarmed conflict however, denotes sporadic fighting and therefore does not ascribe to the same laws of war as a non-international armed conflict. Specifically, the International Committee of the Red Cross (ICRC) lists for a non-international armed conflict:

- (1) That the party in revolt... possesses an organized military force, an authority responsible for its acts, acting within a determinate territory and have the means of respecting and ensuring respect for the Conventions.
- (2) That the legal government is obliged to have recourse to the regular military forces against insurgents organized as military and in possession of a part of the natural territory.
- (3) (a) That the *de jure* Government has recognized the insurgents as belligerents...
- (d) That the dispute has been admitted to the agency of the Security Council or the General Assembly of the United Nations as being a threat to international peace...
- (4) (a) That the insurgents have an organization purporting to have the characteristics of a State.
- (b) That the insurgent civil authority exercises de facto authority over persons within a determinate territory...⁴⁴

Arguably, the current hostilities between the U.S., al Qaeda, and “affiliated forces” do not conform to any of these standards. There is no specific geographic location or defined battlefield, there is no insurgent leader on behalf of al Qaeda and “affiliated

⁴³ Solis, Gary D. *The law of armed conflict: international humanitarian law in war*. Cambridge University Press, 2010, pg. 103, 130, 142, 173-7, 301

⁴⁴ Ibid. pg. 103

forces” who has the means of respecting the Conventions, and there is no organized military on behalf of al Qaeda and “affiliated forces.” One must then assume that the U.S., al Qaeda, and “affiliated forces” are in fact engaged in a non-international unarmed conflict – sporadic fighting. If this is the case, then *suspected* terrorists are no longer legal or unlawful combatants,⁴⁵ but rather potential criminals likely ready to engage in criminal acts. If this is the case, then the U.S. is engaging its military and CIA operatives in internationally illegal acts such as targeted killings and signature strikes. It must be pointed out that if al Qaeda members as well as “associated forces” are not classified as enemy combatants, then they are civilians and are protected under Human Rights Law.⁴⁶ Below is a legal analysis of the drone program.

CIA Drone Program

Through the implementation of its drone program, the U.S. continues to set dangerous domestic and international legal precedent.⁴⁷ As one legal scholar illustrates:

The creation of international norms is an iterative process, one to which the United States makes significant contributions. Because of this outsized influence, the United States should not claim international legal rights that it is not prepared to see proliferate around the globe. Scholars have observed that the Obama Administration's ‘expansive and open-ended interpretation of the right to self-defence threatens to destroy the prohibition on the use of armed force.’ Indeed, ‘[i]f other states were to claim the broad-based authority that the United States does, to kill people anywhere, anytime, the result would be chaos.’⁴⁸

⁴⁵ Ibid. pg. 55, 187-91, 212, 240, 243

⁴⁶ Additional Protocol I, *Geneva Conventions*

⁴⁷ Cronogue, Graham, “NOTE: A NEW AUMF: DEFINING COMBATANTS IN THE WAR ON TERROR;” 22 *Duke J. Comp. & Int'l L.* 377. Date Accessed: 2014/01/27. www.lexisnexis.com/hottopic/inacademic.

⁴⁸ Barnes, Beau D. “Reauthorizing the War on Terror: The Legal and Policy Implications of the AUMF's Coming Obsolescence;” 211 *Mil. L. Rev.* 57 (2012).

Some, of course, would argue that the U.S. is not just killing anyone anywhere anytime.⁴⁹ However the perception on an international level, especially in light of current practices, is that the U.S. government is in fact authorizing the killing of innocents around the globe.⁵⁰ Ultimately the U.S. must ask itself whether the political, moral, and legal precedent it is currently setting on the international stage is in fact detrimental to foreign policy efforts, and ultimately is putting the U.S. and its allies in harms way due to its continued military endeavors abroad.

This debate is also based on whether the U.S. is engaged in a non-international armed conflict. If members of al Qaeda and “associated forces” can be classified as enemy combatants then it is legal within IHL and LOAC to target them and their bases.⁵¹ However, since the conflict does not meet the internationally recognized standards of a non-international armed conflict,⁵² it is the position of this section that the targeted killings of civilians by the CIA – also technically civilians – is illegal under international law.⁵³ As was defined above, in order to be legally targeted, one must be recognized as an enemy combatant.⁵⁴ If a person, or persons, cannot be defined as such, lethal force cannot and should not be used⁵⁵ unless in self-defense. Of course the Obama Administration has issued its own definition of enemy combatants as, “[a]n individual who was part of or supporting Taliban or al Qaeda forces, or associated forces that are engaged in hostilities against the United States or its coalition partners.”⁵⁶ Using this definition along with the

⁴⁹ Kleidman, Jamie L. “Constitutionality of the Predator Drone Program,” 4 Vienna Online J. on Int’l Const. L. 383 (2010).

⁵⁰ Al Jazeera and wire services, *White House defends drone program against ‘war crime’ claim*. Available at <http://america.aljazeera.com/articles/2013/10/22/white-house-defendsdroneprogramagainstawarcrimeclaim.html>.

⁵¹ Solis, Gary D. *The law of armed conflict: international humanitarian law in war*. Cambridge University Press, 2010. pg. 290-5, 519-56

⁵² *Ibid.* pg. 103

⁵³ Foreman, Melanie J. “When Targeted Killing Is Not Permissible: An Evaluation of Targeted Killing under the Laws of War and Morality;” 15 U. Pa. J. Const. L. 922 (2012-2013).

⁵⁴ Solis, Gary D. *The law of armed conflict: international humanitarian law in war*. Cambridge University Press, 2010. pg. 187-91, 212, 240, 243

⁵⁵ Foreman, Melanie J. “When Targeted Killing Is Not Permissible: An Evaluation of Targeted Killing under the Laws of War and Morality;” 15 U. Pa. J. Const. L. 922 (2012-2013).

⁵⁶ Barnes, Beau D. “Reauthorizing the War on Terror: The Legal and Policy Implications of the AUMF’s Coming Obsolescence;” 211 Mil. L. Rev. 57 (2012).

argument that the U.S. has the right to *preemptively* strike in self-defense, the Executive has continued its support for the CIA's drone program.⁵⁷

Looking at targeted killings and signature strikes from a domestic perspective, one must remember the nexus requirements embedded in the AUMF: those responsible for the attacks on Sept. 11, 2001.⁵⁸ Also, it is crucial to reflect on the assassination ban signed into law by President Ronald Reagan in Executive Order 12333:

2.11 *Prohibition on Assassination.* No person employed by or acting on behalf of the United States Government shall engage in, or conspire to engage in, assassination.

2.12 *Indirect Participation.* No agency of the Intelligence Community shall participate in or request any person to undertake activities forbidden by this Order.⁵⁹

In an essay published in the *Harvard International Law Journal*, David Abramowitz stresses the significance of the assassination ban and concedes that many in Congress expressed concern after passing S.J. Res. 23.⁶⁰ In response to this concern Abramowitz writes:

...[i]t has long been the view of the executive branch that targeting the enemy's command and control structures, including those of insurgent groups, is permissible under the laws of war and does not constitute 'assassination.' Thus, regardless of whether S.J. Res. 23 had been enacted or not, the executive branch would take the view that the President could carry out targeted attacks on those responsible for the attacks of September 11, 2001, without violating this ban.⁶¹

⁵⁷ Taft, William H. IV, "International Law and the Use of Force," 36 *Geo. J. Int'l L.* 662 (2004-2005).

⁵⁸ "S.J. Res. 23--107th Congress: Authorization for Use of Military Force." [www.GovTrack.us](http://www.govtrack.us). 2001. January 26, 2014 <http://www.govtrack.us/congress/bills/107/sjres23>.

⁵⁹ 87 Stat. 555

⁶⁰ Abramowitz, David, "The President, the Congress, and Use of Force: Legal and Political Considerations in Authorizing Use of Force against International Terrorism," 43 *Harv. Int'l L.J.* 71 (2002).

⁶¹ Abramowitz, David, "The President, the Congress, and Use of Force: Legal and Political Considerations in Authorizing Use of Force against International Terrorism," 43 *Harv. Int'l L.J.* 71 (2002).

It is easy to understand this perspective in the few years following 9/11, however it is increasingly hard to argue thirteen years later, and it is the position of this section that the CIA's drone program is in direct violation of executive order 12333. It is true that under both Customary International Law and IHL targeting enemy command and control structures is permissible,⁶² yet the current drone program targets specific people who have been determined by the Executive to be a threat to the United States and are not, as defined previously, enemy combatants. This then constitutes civilians participating in combat,⁶³ which is illegal under Additional Protocol I of the Geneva Conventions.⁶⁴ "Thus, not only does the United States decide to violate the laws of war by engaging the CIA, a branch that lacks uniforms or distinguishing insignia, in hostilities, but it also violates the laws of war by not allowing its distinct military branches to carry out these same hostilities."⁶⁵ Both Congress and the Executive need to acknowledge that the Executive's current misuse of the CIA⁶⁶ and interpretations of the broad language under the AUMF not only undermines domestic and international laws,⁶⁷ but it potentially sets the U.S. up for future claims of capital international crimes such as crimes against humanity or war crimes, for which there are no statutes of limitations.⁶⁸

Conclusion

Both Congress and the Executive have enacted policies not in conjunction with international law.⁶⁹ Especially now, the blatant disregard on an international level for the U.N. Charter and for legal due process, has meant that the international community is

⁶² Solis, Gary D. *The law of armed conflict: international humanitarian law in war*. Cambridge University Press, 2010. Pg. 534-6, 549-52

⁶³ Foreman, Melanie J. "When Targeted Killing Is Not Permissible: An Evaluation of Targeted Killing under the Laws of War and Morality;" 15 U. Pa. J. Const. L. 922 (2012-2013).

⁶⁴ Additional Protocol I, *Geneva Conventions*. Art. 43, 51.

⁶⁵ Foreman, Melanie J. "When Targeted Killing Is Not Permissible: An Evaluation of Targeted Killing under the Laws of War and Morality;" 15 U. Pa. J. Const. L. 922 (2012-2013).

⁶⁶ Kleidman, Jamie L. "Constitutionality of the Predator Drone Program," 4 Vienna Online J. on Int'l Const. L. 383 (2010).

⁶⁷ Barnes, Beau D. "Reauthorizing the War on Terror: The Legal and Policy Implications of the AUMF's Coming Obsolescence;" 211 Mil. L. Rev. 57 (2012).

⁶⁸ 1968 U.N. Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, *UN Juridical Y.B.* (1968), 160-1.

⁶⁹ Bradley, Curtis A.; Goldsmith, Jack L. "Congressional Authorization and the War on Terrorism;" 118 Harv. L. Rev. 2047 (2004-2005).

withdrawing political and social support.⁷⁰ Reflecting on the entirety of this section and scope of law it draws from, one must recognize the legally sensitive footing the U.S. is on while fighting potential criminal acts with military force under the umbrella of the 2001 AUMF. Simply put, since all who are responsible for 9/11 are either behind bars or deceased, it is becoming increasingly clear that the U.S. is fighting an offensive battle rather than a defensive battle.⁷¹ As was made clear in previous sub-sections, this is not sanctioned or codified under international law and is of questionable legality domestically. Based on this analysis, it is the recommendation of this section that the Congress set a date to sunset the AUMF while simultaneously amending the WPR to include specific time parameters for an undeclared war. As one scholar puts it, “Overly malleable concepts are not the proper basis for the consistent use of military force in a democracy.”⁷² The U.S. must alter the way in which it combats extremist ideologies, for we cannot kill our way to victory.

⁷⁰ Cronogue, Graham, “A New AUMF: Defining Combatants in the War on Terror;” 22 *Duke J. Comp. & Int'l L.* 377 (2011-2012).

⁷¹ Cronogue, Graham, “NOTE: A NEW AUMF: DEFINING COMBATANTS IN THE WAR ON TERROR;” 22 *Duke J. Comp. & Int'l L.* 377. Date Accessed: 2014/01/27. www.lexisnexis.com/hottopics/lnacademic.

⁷² Barnes, Beau D. “Reauthorizing the War on Terror: The Legal and Policy Implications of the AUMF's Coming Obsolescence;” 211 *Mil. L. Rev.* 57 (2012).

Part II: How the AUMF is used in its Current Form

By Magdalena Cooper

In addition to concerns about the legality of the use of force under the AUMF there are also concerns about the unclear and excessive exercise of executive power granted and used under the AUMF. This section explains how the Executive Branch uses the 2001 Authorization for the Use of Military Force (AUMF), the process behind the decision to use lethal force, and the extent of our knowledge about the process. As a result it is clear that these policies need to be far more transparent and limited than they currently are. First, it is important to know that there are no declassified official documents stating how the U.S. decides where to use force or who to target. The government has admitted to performing, technically classified,⁷³ strikes on individuals, but it has never publically admitted to carrying out “signature strikes” on groups based on their behavior.⁷⁴ According to a U.N. report, targeted killings refers to the use of lethal force that is “intentionally and deliberately used, with a degree of pre-meditation, against an individual or individuals specifically identified in advance by the perpetrator,” which distinguishes them from law enforcement operations where the goal of the operation is not to kill.⁷⁵ The extent of the public’s knowledge on who is targeted and how that decision is made is based on news reports on past strikes and what the government publically admits about its practices. Lack of public knowledge on targeted killings significantly undermines the credibility of the Executive’s decisions and calls into question the extent to which the President is using the power granted by the AUMF.

When looking at the way the executive branch puts the 2001 Authorization for the Use of Military Force into practice it is important to highlight two key phrases in the

⁷³ John O. Brennan, “The Efficacy and Ethics of U.S. Counterterrorism Strategy.” *Wilson Center*. (2012). <http://www.wilsoncenter.org/event/the-efficacy-and-ethics-us-counterterrorism-strategy>; Eric H. Holder, “Attorney General Eric Holder Speaks at Northwestern University School of Law.” *The United States Department of Justice*. (2012) <http://www.justice.gov/iso/opa/ag/speeches/2012/ag-speech-1203051.html>; Harold Hongju Koh, “The Obama Administration and International Law.” *The U.S. Department of State*. (2010). <http://www.state.gov/s/l/releases/remarks/139119.htm>

⁷⁴ Micah Zenko, “Targeted Killings and Signature Strikes.” *Council on Foreign Relations*, (2012). <http://blogs.cfr.org/zenko/2012/07/16/targeted-killings-and-signature-strikes/>

⁷⁵ N. Human Rights Council, 14th Session. “Agenda Item 3 Report of the Special Rapporteur on extrajudicial, summary or arbitrary execution, Philip Alson.” 2010.

AUMF. The first is that “the President is authorized to use all necessary and appropriate force.”⁷⁶ The second phrase is “... against those nations, organizations or persons he determines planned, authorized, committed or aided the terrorist attacks that occurred on September 11, 2001...”⁷⁷ As previously discussed, the vagueness of these two sources allows for a broad interpretation on what necessary and appropriate force consists of and who is a legitimate target. Similarly, who makes these decisions is unclear. The National Defense Authorization Act (NDAA) passed in 2011 further broadens the scope of which the United States considers a legitimate target. The NDAA interprets legitimate targets as being “a person who was part of or substantially supported al Qaeda, the Taliban, or associated forces that are engaged in hostilities against the United States or its coalition partners...”⁷⁸ How the United States interprets “associated forces” is not officially known, but can be generally deduced based on executive practice and speeches.

Similarly, the exact chain of command involved in the use of force under the AUMF is not publically known. However, based on newspaper articles, interviews with officials, and speeches there is a basic understanding of the process. The military’s process is more transparent than that of the CIA, but “the agency’s is believed to mirror the Pentagon’s in most respects.”⁷⁹ In the last few years the Obama administration has been working on a “disposition matrix” which is used by officials and is updated with the names of “terrorism suspects arrayed against an accounting of the resources being marshaled to track them down.”⁸⁰ According to the *Washington Post* there are four levels in the chain of command.⁸¹ The first level is comprised of JSOC, CIA, DoD and NSA. These agencies create a list with the names of terrorist operatives and build a roster of

⁷⁶ Richard F. Grimmett, “Authorization for the Use of Military Force in Response to the 9/11 Attacks (P.L. 107-40): Legislative History,” *Congressional Research Service*. (2007): 5.

⁷⁷ Grimmett, 5.

⁷⁸ U.S. Senate. 112th Congress, 1st Session. H.R. 1540, *An Act to Authorize Appropriations for the Fiscal Year 2012 for Military Activities of the Department of Defense*.

⁷⁹ “Bureaucratic Assassination- How do U.S. Targeted Killings Work?” *Understanding Empire* (2013). <http://understandingempire.wordpress.com/2013/10/03/bureaucratic-assassination-how-do-u-s-targeted-killings-work/>

⁸⁰ Greg Miller, “Plan For Hunting Terrorists Signals U.S. Intends to Keep Adding Names to Kill Lists.” *Washington Post*. (2012). http://www.washingtonpost.com/world/national-security/plan-for-hunting-terrorists-signals-us-intends-to-keep-adding-names-to-kill-lists/2012/10/23/4789b2ae-18b3-11e2-a55c-39408f8e6a4b_story.html

⁸¹ Miller, “Plan for Hunting.”

terrorist organizations and associates.⁸² This roster is submitted to the NCTC, or National Counterterrorism Center, who then “generates lists of names based on specific White House criteria.”⁸³ There it is reviewed every three months. The review process involves “analysts from other organizations, including the CIA, the State Department and JSOC.”⁸⁴ They then take a vote on whether or not a person should be included in a kill list.⁸⁵ This is “colloquially referred to as ‘Terror Tuesdays.’”⁸⁶ The names are then sent to the Deputies Committee of National Security Council for review.⁸⁷ This committee serves as the “senior sub-Cabinet interagency forum for the consideration of policy issues affecting national security” and is made up of high-level officials such as the Deputy Secretary of State, the Deputy Attorney General and the Deputy Director of Central Intelligence.⁸⁸ The Council then selects specific individuals to be sent to the President for approval.⁸⁹ During this process legal advisors also have the opportunity to give their legal opinions on the matter.⁹⁰ Finally, President Obama signs off on the individuals to be targeted.⁹¹ It is important to note that inside Pakistan decisions on when to fire are often made by the Director of the CIA.⁹² The same chain of command and process is believed, but not known, to apply to signature strikes.⁹³

The use of force both within and outside of active combat zones takes the form of targeted strikes against individuals deemed to be a threat to the United States, or groups based on their behavior.⁹⁴ The United States is currently known to be conducting targeted strikes in Afghanistan, an active combat zone as well as outside of combat zones in Pakistan, Somalia, and Yemen.⁹⁵ Targeted strikes are carried out by both the Department

⁸² Ibid.

⁸³ Ibid.

⁸⁴ Ibid.

⁸⁵ Ibid.

⁸⁶ “Bureaucratic Assassination.”

⁸⁷ Miller. “Plan for Hunting.”

⁸⁸ The White House, 2001.

⁸⁹ Miller “Plan for Hunting.”

⁹⁰ “Bureaucratic Assassination”

⁹¹ Miller “Plan for Hunting.” Becker “secret Kill list”

⁹² Ibid.

⁹³ Ibid.

⁹⁴ David E. Sanger and Eric Schmitt, “Pakistan Shift Could Curtail Drone Strikes.” *The New York Times*. (2008); John O. Brennan, “The Efficacy and Ethics of U.S. Counterterrorism Strategy.” *Wilson Center*. (2012).

⁹⁵ Bob Barry and Bill Roggio, “Charting the data for U.S. air strikes in Yemen, 2002-2014” *The Long War Journal*.(2014); “Letter from the President – Regarding the War Powers Resolution.” *The White*

of Defense working in conjunction with the CIA in Yemen, and in Pakistan under the sole jurisdiction of the CIA.⁹⁶ There are two types of targeted strikes. The first are kill/capture missions which are usually run through the Joint Special Operations Command (JSOC) of the Department of Defense involving the use of U.S. special operations forces.⁹⁷ The second are drone strikes. These are “targeted attacks launched from unmanned aerial vehicles” and are operated by both the CIA and the Department of Defense with both taking orders directly from the White House.⁹⁸ The Joint Special Operations Command, or JSOC, primarily runs targeted strikes.⁹⁹

JSOC is part of the U.S. Special Operations Command overseeing the special-operations forces of the “Army, Air Force, Marines and Navy.”¹⁰⁰ JSOC has a very close relationship with the executive branch as presidents can task it directly and it is “designated as the official executive agent for counterterrorism worldwide.”¹⁰¹ Congress only provides a small amount of oversight for JSOC and its missions are classified and compartmentalized.¹⁰²

Who Is Targeted and How Does the U.S. Decide?

As previously stated, the actual decision process behind who is targeted has not been publically released, however, based on speeches, press releases and other unofficial reports it is possible to come up with a general list of requirements for someone to be considered for targeting. The chain of command, to the extent that we know it, has been mentioned in the previous section. When deciding whether or not to target an individual officials analyze their “current and past role in plots threatening U.S. Persons [and] relevant intelligence information the individual could provide” as well as the potential impact that targeting this person would have on U.S. foreign relations and intelligence

House. (2013); U.N. Human Rights Council, 14th Session. “Agenda Item 3 Report of the Special Rapporteur on extrajudicial, summary or arbitrary execution, Philip Alston.” 2010.

⁹⁶ Jonathan Masters, “Targeted Killings.” *Council on Foreign Relations*. (2013). .”
<http://www.cfr.org/counterterrorism/targeted-killings/p9627>

⁹⁷ Masters, “Targeted Killings.”

⁹⁸ *Ibid*.

⁹⁹ Marc Ambinder, “Then Came Geronimo.” *National Journal*. (2011).

¹⁰⁰ Ambinder, “Then Came Geronimo.”

¹⁰¹ *Ibid*.

¹⁰² Ambinder, “Then Came Geronimo.”; Jeremy Scahill, “JSOC: The Black ops Force That Took Down Bin Laden.” *The Nation*. (2011).

gathering.¹⁰³ Furthermore, according to most sources, all strikes also must conform to the international principles of necessity, proportionality, humanity and distinction.¹⁰⁴ The principle of necessity is “the requirement that the target have definite military value.”¹⁰⁵ The principle of proportionality states that the “anticipated collateral damage of an action cannot be excessive in relation to the anticipated military advantage.”¹⁰⁶ Similarly, the principle of humanity “requires us to use weapons that will not inflict unnecessary suffering.”¹⁰⁷ Last, the principle of distinction means that “only military objectives may be intentionally targeted and that civilians are protected from being intentionally targeted.”¹⁰⁸ After these considerations and before someone is actually put on the target list there are a series of conditions to consider.

The first aspect to take into account is where the suspected terrorist is located. If they are in the United States then they will be arrested and put in the civilian criminal justice system.¹⁰⁹ If the individual is outside of the U.S. then the rest of the list applies. The next consideration is whether or not the individual plans to return to the United States. This means that they must have “concrete, specific plans the government knows about.”¹¹⁰ It is not simply enough to think they might eventually return since waiting for a suspect to return and then allowing them to actually return, in order to arrest them, is risky.¹¹¹ Next, the U.S. must look at whether or not the country the suspected individual is in can handle the problem. This means that the country is willing to arrest or target the individual, that their government can actually execute the arrest, and that they will not “grossly mistreat the suspect in a fashion that might prejudice his ability to get a fair

¹⁰³ “Fact Sheet: U.S. Policy Standards and Procedures for the Use of Force in Counterterrorism Operations Outside the United States and Areas of Active Hostilities.” *The White House*. (2013). <http://www.whitehouse.gov/the-press-office/2013/05/23/fact-sheet-us-policy-standards-and-procedures-use-force-counterterrorism>

¹⁰⁴ Brennan, “Efficacy and Ethics.”

¹⁰⁵ Ibid.

¹⁰⁶ Ibid.

¹⁰⁷ Ibid.

¹⁰⁸ Ibid.

¹⁰⁹ Daniel Byman and Benjamin Wittes, “How Obama Decides Your Fate If He Thinks You’re a Terrorist.” *The Atlantic*. (2013).

¹¹⁰ Byman, “How Obama Decides.”

¹¹¹ Ibid.

trial.”¹¹² If the answers are all yes then the U.S. will likely allow the country to deal with the individuals themselves. If not then the U.S. must further consider the issue.¹¹³

If the country is able and willing to deal with the suspect then the United States must take into account whether or not they are willing to transfer them. If they are, then the suspect will again wind up in the U.S. court system without the U.S. having to involve itself beyond providing intelligence.¹¹⁴ However, the U.S. also must make sure that the individual was not treated in a way that incriminating statements made while abroad were involuntary as this would lead to a host of new problems.¹¹⁵ If the country holding the suspect is unwilling to transfer them to U.S. jurisdiction then their reasons must also be taken into account. Often the country prefers to try the individual on their own as they may “be breaking local laws and could pose a real threat to the [country] in question.”¹¹⁶ This may also be an easier option for the U.S. as they do not have to do any of the work, and the “potentially dangerous individual [is] off the street for a decade, while a trial in the U.S. might result in a more lenient sentence.”¹¹⁷ Once the U.S. has considered these possibilities they may move on to considering how large of a threat the individual poses.

The U.S. must then decide the imminence of a threat of violent attack that the individual poses. Imminent, in this context, is not used in the same way that we normally use it. Instead of using the word imminent to mean the individual poses an immediate threat, the U.S. uses it to mean that there is “an unfolding chain of events that, left uninterrupted, will produce dead Americans.”¹¹⁸ This broader definition allows the U.S. latitude when deciding who poses a real threat as the United States is not required to “have clear evidence that a specific attack on U.S. persons and interests will take place in the immediate future.”¹¹⁹ Legally, the targets must either be directly linked to the attacks

¹¹² Ibid.

¹¹³ Ibid.

¹¹⁴ Ibid.

¹¹⁵ Ibid.

¹¹⁶ Ibid.

¹¹⁷ Ibid.

¹¹⁸ Ibid.

¹¹⁹ U.S. Department of Justice, *Lawfulness of a Lethal Operation Directed Against a U.S. Citizen who is a Senior Operational Leader of Al-Qa’ida or An Associated Force*, 1-16.

of 9/11 as laid out by the AUMF¹²⁰ or they must be part of al Qaeda, the Taliban or associated forces as determined by the National Defense Authorization Act.¹²¹ Individuals who are a part of these armed groups are considered belligerents under international law and are thus lawful targets and an imminent threat.¹²² The characteristics of associated forces as laid out by Jeh Johnson are “an organized, armed group that has entered the fight alongside al Qaeda and is a co-belligerent with al Qaeda in hostilities against the United States or its coalition partners.”¹²³ Another consideration in the evaluation of imminence of a threat is the window of opportunity. Officials must look at “the relevant window of opportunity to act” and what the harm that “missing the window would cause to civilians.”¹²⁴ They must also account for the “likelihood of heading off future disastrous attacks against the United States” that this window would provide.¹²⁵

It is also important to note that the United States makes a “sharp distinction between propagandists” and people that “planned or were potentially directly involved in operations.”¹²⁶ Propagandists, while they do promote an organization and actively work to draw money and recruits to the organization, are not actively planning and attempting to kill people.¹²⁷ Thus, they pose a threat, but are not as important as those involved in operations.

Next, the U.S. must consider national sovereignty. This has been discussed in some detail above. Once the individual is decided to be an imminent threat the United States must take into account whether or not the country in which they are located is able and willing to deal with the individual. The requirements for this are the same as

¹²⁰ Grimmett “Authorization.”

¹²¹ U.S. Senate, *An Act to Authorize Appropriations*.

¹²² Harold Hongju Koh, “The Obama Administration and International Law.” *U.S. Department of State*. (2010). <http://www.state.gov/s/l/releases/remarks/139119.htm>

¹²³ Jeh Charles Johnson, “Jeh Johnson Speech at the Oxford Union.” *Lawfare*. (2012).

<http://www.lawfareblog.com/2012/11/jeh-johnson-speech-at-the-oxford-union/#.UurI0WRdV41>

¹²⁴ Eric H. Holder, “Attorney General Eric Holder Speaks at Northwestern University School of Law.” *The United States Department of Justice*. (2013). <http://www.justice.gov/iso/opa/ag/speeches/2012/ag-speech-1203051.html>

¹²⁵ Holder “Attorney General.”

¹²⁶ Byman “How Obama Decides.”

¹²⁷ Ibid.

discussed above. If the country is unable or unwilling to deal effectively with the threat then the United States may deal with them themselves.¹²⁸

After assessing national sovereignty, the U.S. must look at the feasibility of capture. The United States has said that they always prefer to capture an individual because, in part, of the intelligence that can be gained from that individual.¹²⁹ The extent to which they put this into practice is debatable. The U.S. must then consider whether or not “capture can be accomplished in the window of time available to prevent an attack” and without unnecessary “risk to civilians or to U.S. personnel.”¹³⁰ If these requirements are not met then capture is not feasible and the U.S. may take lethal action.

Thus, what we know about the criteria the U.S. uses to identify an individual for targeting is as follows, 1) the U.S. must consider where the individual is located, 2) if they pose an imminent threat, 3) if the country they are in is unable or unwilling to deal with the individual effectively, and 4) whether or not it is possible to capture the individual. Before lethal action is taken the U.S. must also be near certain that “the terrorist target is present,” that “non-combatants will not be injured or killed,” that capture is not feasible at the time of the operation,” and that “no other reasonable alternatives exist to effectively address the threat to U.S. persons.”¹³¹ If all of these criteria are met then the U.S. may use lethal force on a non-U.S. citizen. For citizens of the United States further considerations must be taken into account.

The United States also claims that it has the authority to target its own citizens. Simply being a citizen of the U.S. does not provide them immediate immunity to being targeted.¹³² The Supreme Court has similarly ruled that, “the military may constitutionally use force against a U.S. citizen who is part of enemy forces.”¹³³ However, the U.S. must “take into account all relevant constitutional considerations” as

¹²⁸ Brennan “Efficacy and Ethics.”; Koh “International Law

¹²⁹ Brennan “Efficacy and Ethics.”

¹³⁰ Holder “Attorney General”

¹³¹ “Fact Sheet: U.S. Policy Standards and Procedures for the Use of Force in Counterterrorism Operations Outside the United States and Areas of Active Hostilities.” *The White House*. (2013).
<http://www.whitehouse.gov/the-press-office/2013/05/23/fact-sheet-us-policy-standards-and-procedures-use-force-counterterrorism>

¹³² Holder “Attorney General”; U.S. Department of Justice 2.

¹³³ U.S. Department of Justice 9

well as the requirements discussed above before targeting its own citizen.¹³⁴ The two main constitutional considerations are the 5th Amendment Due Process Clause and the 4th Amendment.¹³⁵ The Due Process Clause requires that a citizen be given due process of law before they are deprived of their life¹³⁶ whereas the 4th Amendment protects people against “unreasonable searches and seizures.”¹³⁷

When considering the due process that the U.S. is required to give a citizen before targeting them they must weigh the interests of both parties involved and take into account the realities of the situation. On the one hand there is the individual’s “interest in avoiding erroneous deprivation of his life,” which is a weighty interest.¹³⁸ On the other hand the government has an interest in “waging war, protecting its citizens and removing the threat posed by members of enemy forces.”¹³⁹ While depriving someone of their life is significant, the “realities of combat render certain uses of force necessary and appropriate” which includes the use of force on U.S. citizens, “who have joined enemy forces in the armed conflict against the United States and whose activities pose an imminent threat of violent attack” as discussed above.¹⁴⁰ Thus, the Supreme Court has clearly ruled that “the Due Process Clause does not impose one-size-fits-all requirements” but instead allows for specific circumstances and considerations.¹⁴¹ In the situation that the individual poses an imminent threat to the U.S., capture is not feasible and the operations follow the law of war principles then the “weight of the government’s interests in protecting its citizens from an imminent attack are such that the constitution would not require the government to provide further process” before using lethal force on a U.S. citizen.¹⁴²

In the same vein, an operation against a U.S. citizen who poses an imminent threat would not violate the 4th Amendment. According to the Supreme Court, if the government’s interests in the situation outweigh the citizen’s then the intrusion is

¹³⁴ Holder “Attorney General” U.S. Department of Justice

¹³⁵ Ibid.

¹³⁶ Ibid.

¹³⁷ “Bill of Rights.” *National Archives and Records Administration*.

http://www.archives.gov/exhibits/charters/bill_of_rights_transcript.html

¹³⁸ U.S. Department of Justice 6.

¹³⁹ Ibid, 6.

¹⁴⁰ Ibid, 6.

¹⁴¹ Holder “Attorney General”

¹⁴² Holder “Attorney General”; U.S. Department of Justice 6.

justified.¹⁴³ The reasonableness of the use of lethal force is also situation dependent.¹⁴⁴ If the situation met the same requirements as discussed above then the government's interests would outweigh and justify "any Fourth Amendment interests."¹⁴⁵ Thus, the government is justified in targeting a U.S. citizen without impeding on the right to due process or the 4th Amendment as long as the situation meets the requirements that the citizen poses an imminent threat to the U.S., that capture is not feasible, and that the operation complies with Law of War principles. However, since the government's decisions are not public there is no way of proving that their decision, when targeting a U.S. citizen, conforms to all of the legal requirements.

Signature Strikes

The United State's use of lethal force under the AUMF has also taken the form of signature strikes. Signature strikes are strikes carried out on a group whose "activities as viewed from the sky appear to fit a pattern that has been deemed suspicious."¹⁴⁶ These strikes do not require that there be specific information about each individual and their role in planning attacks on the U.S.¹⁴⁷ Currently even less is known about signature strikes than other forms of targeted strikes carried out by the United States. U.S. officials focus their rhetoric around strikes carried out on specific people and have yet to acknowledge signature strikes on record.¹⁴⁸ The first public reference to signature strikes appeared in a 2008 article in the *New York Times*, which detailed the shift toward a broader definition of targets.¹⁴⁹ The Obama administration has continued signature strikes started under the Bush administration and signature strikes appear to be a "core element of the CIA's drone program in Pakistan."¹⁵⁰ It appears that the CIA has killed many of the targets on the kill list without actually knowing they were there.¹⁵¹ In 2012 JSOC and

¹⁴³ U.S. Department of Justice 9.

¹⁴⁴ Ibid, 6.

¹⁴⁵ Ibid, 9.

¹⁴⁶ "Will I Be Next? Us Drone Strikes in Pakistan." *Amnesty International*. (2013) 1-62 www.amnesty.org

¹⁴⁷ "Will I be Next?" 28; David E Sanger and Eric Schmitt, "Pakistan Shift Could Curtail Drone Strikes." *The New York Times*. (2008). http://www.nytimes.com/2008/02/22/washington/22policy.html?_r=0

¹⁴⁸ Zenko "Targeted Killings."

¹⁴⁹ Sanger "Pakistan Shift" Zenko "Targeted Killings."

¹⁵⁰ Greg Miller, "CIA Seeks New Authority to Expand Yemen Drone Campaign." *Washington Post*. (2012). http://www.washingtonpost.com/world/national-security/cia-seeks-new-authority-to-expand-yemen-drone-campaign/2012/04/18/gIQAsaumRT_story.html ; Zenko Targeted Killings

¹⁵¹ Miller "CIA Seeks New Authority."

the CIA were both granted broad authority to conduct strikes in Yemen against individuals who “may be involved in plotting attacks against the United States, but whose identities might not be completely known.”¹⁵² While the policy “does not permit strikes against groups of low level fighters or weapons depots” or “so-called ‘signature strikes’” it does give authority to the CIA and JSOC that is precariously close to signature strikes.¹⁵³ It is hard to define whether or not a strike is a signature strike as the guidelines that the U.S. follows on these strikes is extremely unclear and the government has not released any information on them.

It is also unclear how much evidence is needed to justify a signature strike. It appears that the decision process for signature strikes is similar, but abbreviated, to that of strikes on specific individuals.¹⁵⁴ What we know is that groups may be targeted if they “bear the characteristics of Qaeda or Taliban leaders on the run.”¹⁵⁵ Similarly targets can be picked “solely on intelligence indicating patterns of suspicious behavior such as imagery showing militants gathering at known al Qaeda compounds or unloading explosives.”¹⁵⁶ Finally, military aged males in a strike zone are counted as combatants “unless there is specific intelligence posthumously proving them innocent.”¹⁵⁷ The Term military aged male, while not a military doctrine, is used often in counterinsurgency operations to “describe individuals who are deemed guilty not based on evidence, but rather on their demography.”¹⁵⁸ Thus, signature strikes incorporate a broad definition of

¹⁵² Eric Schmitt, “U.S. to Step Up Drone Strikes Inside Yemen.” *The New York Times*. (2012). <http://www.nytimes.com/2012/04/26/world/middleeast/us-to-step-up-drone-strikes-inside-yemen.html> ; Micah Zenko, “Escalating America’s Third War in Yemen.” *Council on Foreign Relations*. (2012). <http://blogs.cfr.org/zenko/2012/05/14/escalating-americas-third-war-in-yemen/>

¹⁵³ Schmitt “Step Up Drone Strikes.”; Zenko “America’s Third War.”

¹⁵⁴ Miller “Plan For Hunting.”

¹⁵⁵ Sanger “Pakistan Shift.”

¹⁵⁶ Miller “CIA Seeks New Authority.”

¹⁵⁷ Zenko “Targeted Killings.”

¹⁵⁸ Ibid.

who is a legitimate target and make it even harder to distinguish between a civilian and a person actually posing an imminent threat to the United States.

Conclusion

The extent of our knowledge on the use of the AUMF is currently based on public speeches, news reports, and precedent, none of which are a legal basis for understanding the process behind the decision to use lethal force. This places the government's claims about the legality of their use of force under the AUMF on shaky ground and forces citizens to rely simply on the government's word. Furthermore, the lack of clarity in the decision-making process raises questions and leads to controversy about the over extent of Executive power under the Authorization for the Use of Military Force.

Part III: Drones – The Problematic Use of Unmanned Aerial Vehicles under AUMF*By Zachary Reshovsky & Gregory Sidlinger*

Over the course of the War on Terror a number of capabilities have been employed in the effort to combat al Qaeda and its affiliated forces. Prominent among these has been unmanned aerial vehicles (UAVs), commonly referred to as drones.¹⁵⁹ As U.S. drone strikes have increased, they have become one of the most controversial and visual symbols of U.S. military aggression in the eyes of critics the world over.¹⁶⁰ Although drones remain viscerally emblematic of the perceived negatives of U.S. foreign policy, they are, in practice, simply another tool in the U.S. military's arsenal.

In spite of the fact that drones have eliminated a large number of insurgents and terrorists,¹⁶¹ some aspects of their usage such as signature strikes, claims of indiscriminate killing, and a consistent lack of transparency by the United States remain highly problematic.¹⁶² These outstanding controversies have made it extremely difficult for the United States to win what has become a de facto battle of ideologies.¹⁶³ Every time that an errant strike is carried out, resulting in unintended civilian deaths, the U.S. is contradicting its message of U.S. beneficence while providing al Qaeda and other violent Islamic extremists groups visceral material to use as propaganda for recruiting young men and women from local populations.¹⁶⁴ Simply put, in regards to current U.S. drone

¹⁵⁹ Der Spiegel Online Staff. "Killer App: Drones Are Lynchpin of Obama's War on Terror." *Der Spiegel* March 12, 2010, sec. International. <http://www.spiegel.de/international/world/killer-app-drones-are-lynchpin-of-obama-s-war-on-terror-a-682612.html> (accessed March 1, 2014).

¹⁶⁰ Machon, Matthew J. "... Targeted Killing as an Element of U.S. Foreign Policy in the War On Terror." Ft. Belvoir: Defense Technical Information Center, 2006. 56.; Sharma, Dinesh. "Great Disappointments in the Arab World During Obama's First Term." *In The global Obama: crossroads of leadership in the 21st century*. New York: Routledge, 2014. 209.

¹⁶¹ Callam, Andrew. *International Affairs Review Volume XIX XIX*, no. 1, Winter (2010); Anderson, Kenneth. "Predators over Pakistan." *Law at American University* 15, no. 24 (2010): N/A.

¹⁶² Strawser, Bradley Jay. *Killing by remote control: the ethics of an unmanned military* 2013. 168. Print.; Erra, Robert. *In Proceedings of the 11th European Conference on Information Warfare and Security: the Institute Ecole Superieure en Informatique Electronique et Automatique, Laval, France, 5-6 July 2012. European Conference, 2010. 317.*

¹⁶³ Hughes, Geraint. *In The military's role in counterterrorism examples and implications for liberal democracies*. Carlisle, PA: Strategic Studies Institute, U.S. Army War College, 2011. 121.

¹⁶⁴ Mothana, Ibrahim. "How Drones Help Al Qaeda." *New York Times*, June 13, 2012, sec. The Opinion Pages.; Kelley, Michael. "Obama's Drone War In Yemen May Be Al Qaeda's Best Recruitment Tool Ever Read more: <http://www.businessinsider.com/obamas-covert-drone-war-in-yemen-prompting-more-terror-2012-5#ixzz2um6jbo8C>." *Business Insider*, May 30, 2012.

policy, the negatives significantly outweigh the positives. Our actions have been counterproductive, and U.S. policymakers must rethink this aspect of our nation's security policy in order to mitigate problems relating to the use of drones in the War on Terror.

Overall, this section will contend that U.S. drone policy in its current form is counterproductive to finding an eventual end to the War on Terror. First, we will provide a brief analysis of the utility of continuing to rely on drones in future conflicts. Here, we will discuss changes in policy that can improve the outcomes of using drones. Second, we will argue that the use of drones, in spite of their tactical advantages on the battlefield, is not only controversial and lacking in transparency, but also has broad negative ramifications such as decreasing U.S. credibility abroad and providing an effective recruiting tool for anti-American extremist groups like al Qaeda. Third, we will provide analysis of the costs and benefits individually, and will show that despite the many positive attributes that drones bring to battlefield, the negatives that they bring far outweigh any perceived benefit that is gained through their use. Fourth, we will describe the human impacts of drones on the targeted populations, with an emphasis on the many negative ramifications of strikes—specifically in terms of civilian casualties and increased psychological distress for the local inhabitants. Finally, we will concisely discuss potential policy and procedural changes to remedy the negative ramifications of contemporary U.S. drone strike policy, which will be further outlined in subsequent sections.

How the U.S. Should Use Drones Effectively

While unmanned aerial vehicles provide a highly useful tool in regards to both military and surveillance capabilities, the tactical and strategic drawbacks described in this section should influence policies to constrain their use. Given their negative long-term strategic ramifications,¹⁶⁵ future UAV strikes should include substantive and

<http://www.businessinsider.com/obamas-covert-drone-war-in-yemen-prompting-more-terror-2012-5> (accessed March 1, 2014).

¹⁶⁵ Williams, Brian Glyn. *Afghanistan declassified: a guide to America's longest war*. University of Pennsylvania Press: Philadelphia, 2012.; Aslam, Wali. In *The United States and great power responsibility in international society: drones, rendition and invasion*. New York: Routledge, 2013. 109.

effective mechanisms for oversight and transparency.¹⁶⁶ Further, warranted drone usage should be selective in regards to targeting, with only uniquely high-value individuals who possess a genuinely imminent threat—as defined by international law as instant, overwhelming, and leaving no choice of means, and no moment for deliberation—selected for strikes.¹⁶⁷ While these mechanisms may take time to develop and implement,¹⁶⁸ they will essentially ensure the use of drones will become a less controversial issue within the international community.¹⁶⁹

Moreover, concerning broader geostrategic implications, the U.S., while continuing the program, should attempt to enshrine well-established practices, procedures, doctrines, and safeguards into policy that can set precedents and shape international norms.¹⁷⁰ Much as chemical and nuclear weapons have in the past required the establishment of new norms—both formal and informal—in the international community to ensure stability, prudence, and non-usage,¹⁷¹ so to must be the case with newly developed non-human military assets.¹⁷² Given that the United States is a leader in establishing and maintaining international normative values and policies,¹⁷³ it must, through its conduct in the field of drone warfare, help guide the establishment of the aforementioned international norms concerning the use of this type of military

¹⁶⁶ Crawford, Neta. In *Accountability for killing: moral responsibility for collateral damage in America's post-9/11 wars*. New York: Oxford University Press, 2013. 409.; Melzer, Nils. In *Targeted killing in international law*. Oxford: Oxford University Press, 2008.

¹⁶⁷ Webster, Daniel. *The Caroline Case*. Available at http://avalon.law.yale.edu/19th_century/br-1842d.asp#web1

¹⁶⁸ Behringer, Ronald M. In *The human security agenda: how middle power leadership defied U.S. hegemony*. New York: Continuum, 2012. 19.; McCormick, James M. *American foreign policy and process*. 4th ed. Belmont, CA: Thomson/Wadsworth, 2005.

¹⁶⁹ Crawford, Neta. In *Accountability for killing: moral responsibility for collateral damage in America's post-9/11 wars*. New York: Oxford University Press, 2013. 409.

¹⁷⁰ Zenko, Micah. "The Next Drone Wars." *Foreign Affairs* 93, no. 2 (2014): 68-79.

¹⁷¹ Henckaerts, Jean-Marie, Louise Doswald-Beck, and Carolin Alvermann. *Customary International Humanitarian Law*. Cambridge: Cambridge University Press, 2005.; Stephan, Paul B., and B. M. Klimentko. *International Law and International Security: Military and Political Dimensions : a U.S.-Soviet Dialogue*. Armonk, N.Y.: M.E. Sharpe, 1991; Delupis, Ingrid. "Prohibited Methods of Warfare." In *The law of war*. 2. ed. Cambridge [u.a.: Cambridge Univ. Press, 2000. 309.

¹⁷² Machon, Matthew J. "Targeted Killing as an Element of U.S. Foreign Policy in the War on Terror." *School of Advanced Military Studies United States Army Command and General Staff College*. (2005):

¹⁷³ Brzezinski, Zbigniew. "The Choice." In *The choice: global domination or global leadership*. New York: Basic Books, 2004. 16.

capability.¹⁷⁴

Finally, UAVs, on an operational level, should be treated as an asset rather than as a stand-alone platform of engagement.¹⁷⁵ Human intelligence is still the greatest asset of any armed force.¹⁷⁶ Using drones with the support of ground forces as handlers can ensure good eyes on intelligence and control when and where it would be feasible so as to avoid collateral damage, and in some cases, capture enemy personnel instead of eliminating them.¹⁷⁷

What Drones Bring to the Battlefield

UAVs have enabled various individuals and organizations, from intelligence agencies to military commanders on the ground, to better shape mission information and ensure the execution of missions with clearer objectives and greater precision. Currently, the most prominent use of drones as a force multiplier has been for reconnaissance. Because UAVs can loiter over an objective for long periods of time, their ability to develop timely situational knowledge for military personnel on the ground has been one of its most valued attributes.¹⁷⁸ Additionally, the advantage for military personnel of possessing better access to information in areas of challenging terrain and urban settings has prompted a massive proliferation of various drone systems, from 50 in 2002 to approx. 7,500 at this time,¹⁷⁹ making them a widely used component within the military.¹⁸⁰ While the majority of drones that make up the U.S. arsenal are used for Intelligence, Surveillance and Reconnaissance (ISR), a number of drones have been

¹⁷⁴ Shanahan, Timothy. *In Philosophy 9/11: thinking about the war on terrorism*. Chicago: Open Court, 2005. p. 125-6.

¹⁷⁵ Indo-Asian News Service. "Human Intelligence Aids Drone Attacks in Pakistan." December 30, 2010.

¹⁷⁶ Ramana, Siddhartha. "The Role of Human Intelligence in Counter-Terrorism." *Institute of Peace and Conflict Studies* (2010): <http://www.ipcs.org/article/india/the-role-of-human-intelligence-in-counter-terrorism-3280.html>.; Dressler, Jeff. "Surge in Afghanistan: A Response to George Will, *RealClearWorld - The Compass Blog*." http://www.realclearworld.com/blog/2009/09/surge_in_afghanistan_a_respons.html#more (accessed March 1, 2014). <http://www.realclearworld.com/blog/2009/09/surge_in_afghanistan_a_respons.html#more>.

¹⁷⁷ Evangelista, Matthew. *In Law, Ethics & The War on Terror*. N/A: N/A, 2008. 56-7.

¹⁷⁸ Schmitt, Michael N. *Yearbook of international humanitarian law*. Hague: T.M.C. Asser Press, 2011. 324.

¹⁷⁹ Dowd, A. W. (2013). Drone wars: Risks and warnings. *Parameters*, 42-43(4-1), 7-16. Retrieved from <http://search.proquest.com/docview/1438605350?accountid=14784>

¹⁸⁰ Kegley, Charles W., and Gregory A. Raymond. "Chapter 8." In *The global future: a brief introduction to world politics*. Australia: Thomson/Wadsworth, 2005. 206.

augmented with weapons so as to carry out various strike roles.¹⁸¹ These drones such as the MQ-1 Predator and MQ-9 Reaper, have been used extensively in carrying out strikes around the world and like their manned aerial counterparts have the capability to kill and disable, while supporting fighters on the ground to destroy, harry, hinder, deny access, observe, and track enemy combatants.¹⁸²

With the MQ-1 and MQ-9 models, a varied array of adaptable weapons configurations can be arranged so as to provide effective supporting fire to troops on the ground.¹⁸³ The drone's capability to pinpoint targets on the ground in a close support role makes it not only a critical vehicle for surveillance, but also one that may also be brought in as a mainstay for offensive ground support on the battlefield.¹⁸⁴ Armed drones have become prominent in their use because of their operational versatility.¹⁸⁵ While other weapons platforms that kill from a distance like the advanced Tomahawk missile systems are dependent on intelligence verification from separate sources, drones, in concert with their operators, can simultaneously develop intelligence of the objective and carry out a strike from a single platform.¹⁸⁶

Drones have also given commanders another means to engage the enemy without putting troops into harm's way, an aspect that has established a sense of security among U.S. soldiers and in turn bolstered the use of this weapons system.¹⁸⁷ Since mitigating risk and loss of personnel have become a major underlying challenge—if not one of the hallmark issues of the current global War on Terror—waning support for the long, ongoing conflict has made undue potential exposure of U.S. and coalition personnel to harm a point of significant contention.¹⁸⁸

While drones do not cover, as of yet, the multitude of roles that their manned

¹⁸¹ Benjamin, Medea. "Gen. T. Michael Moseley Statement." In *Drone warfare: Killing by Remote Control*. Updated ed. London: Verso, 2013. ..

¹⁸² Hazelton, J. L. (2013). Drones: What are they good for? *Parameters*, 42-43(4-1), 29-33. Retrieved from <http://search.proquest.com/docview/1438605048?accountid=14784>

¹⁸³ Beard, Jack. "Law and War in the Virtual Era." *The American Journal of International Law* 103, no. 3 (2009): 414.

¹⁸⁴ Singer, P. W. "Robots at War: The New Battlefield." *The Wilson Quarterly* 33, no. 1 (2009): 33

¹⁸⁵ Anderson, K. (2013). The case for drones. *Commentary*, 135(6), 14-23. Retrieved from <http://search.proquest.com/docview/1429655749?accountid=14784>

¹⁸⁶ Anderson, K. (2013). The case for drones. *Commentary*, 135(6)

¹⁸⁷ Hazelton, J. L. (2013). Drones: What are they good for? *Parameters*, 42-43(4-1), 29-33. Retrieved

¹⁸⁸ Dowd, A. W. (2013). Drone wars: Risks and warnings. *Parameters*, 42-43(4-1), 7-16. Retrieved from <http://search.proquest.com/docview/1438605350?accountid=14784>

counterparts do, the roles that they have been able to fill have been extremely cost effective. Since 2005, drones have accounted for a 1200% increase in combat air patrols over Afghanistan,¹⁸⁹ and have done so at a fraction of the price of traditional methods. At \$4.3 million a unit for the MQ-1,¹⁹⁰ drones come in significantly cheaper than their contemporary manned aircraft like the F-22 Raptor at a cost of approx. \$130 million a unit.¹⁹¹ Because of the DoD's recent financial cuts,¹⁹² using drones in support roles may be a viable option for the future. Given that the current budget for the drone programs is projected at \$24 billion dollars over the next 5 years and that they now make up approximately 30% of the overall aircraft employed by the Pentagon,¹⁹³ the incentives for UAV use are many and have spurred numerous companies, both within the U.S. and across the globe, to accommodate the ever-increasing demand for them.¹⁹⁴

The Long-Term Implications of Drone Warfare

Although the positive attributes of drones are significant, they have been greatly overshadowed by the negative implications that their usage produces. As addressed later in this report, much of al Qaeda's ability to maintain legitimacy in the eyes of many Muslims is derived from misguided U.S. foreign policy, especially policy dictating the terms of the use of drones. It is therefore imperative to address the most prominent shortcomings and controversies of this weapons system so that the United States may establish a better overall drone policy.

Whether from across the globe or across the nearest border, the ability for a country to simply carry out a strike through the lens of a camera using thermal images is

¹⁸⁹ "Flight of the Drones; Unmanned Aerial Warfare." 2011. *The Economist*, Oct 08, 30-32.

<http://search.proquest.com/docview/896861098?accountid=14784>.

¹⁹⁰ Department of Defense Fiscal Year (FY) 2011 President's Budget Submission".

<http://www.saffm.hq.af.mil>. February 2010. pp. 4–118. Retrieved 20 May 2012; McDonnell, T. M. (2012). Sow what you reap? Using predator and reaper drones to carry out assassinations or targeted killings of suspected Islamic terrorists. *The George Washington International Law Review*, 44(2), 243-316. Retrieved from <http://search.proquest.com/docview/1347802197?accountid=147>

¹⁹¹ Smith, R. Jeffery. "High-Priced F-22 Fighter Has Major Shortcomings." *Washington Post*, July 10, 2009

¹⁹² Panetta, Leon. "Statement on Defense Strategic Guidance." *Speech, Press Briefing Room, The Pentagon, Washington, DC from The Department of Defense, Washington D.C., January 5, 2012.*

¹⁹³ Department of Defense. "Unmanned Systems Integrated Roadmap FY 2013-38." *Department of Defense Publications* . (2012): 2.; Dowd, A. W. (2013). Drone wars: Risks and warnings. *Parameters*

¹⁹⁴ Biass, Eric H. 2004. "No Droning About!." *Armada International* 28, no. 4: 46-48. Military & Government Collection, EBSCOhost (accessed January 20, 2014).

¹⁹⁴ Ibid.

not only unsettling, but also calls into question certain international precedential and jurisdictional applications.¹⁹⁵ One of the most prominent concerns raised by critics in the public debate has been the assertion that drones make killing “too easy” by lowering the threshold to use force.¹⁹⁶

While the drone’s ability to carry out reconnaissance and strike missions without any risk to military personnel is one of its advantageous qualities, it is simultaneously one of its weakest links.¹⁹⁷ The possibility for fratricide as well as unintended collateral damage is a constant with the implementation of any weapons system in a conflict.¹⁹⁸ While proportionality assessments for actions taken with any weapon system may not be conducted with adequate diligence,¹⁹⁹ the issue may be even more prominent with drones precisely because of the disconnection of risk for the operators themselves,²⁰⁰ seated in many cases thousands of miles from the actual targets.²⁰¹ The concern of how well an operator controlling a drone by remote could address similar problems as proficiently as a 1st person view from the ground was examined in a study by the Naval Surface Warfare Center in 2008.²⁰² Amongst the greatest concerns were erroneous target discrimination and weapons release.²⁰³

Generally, the use of arms in war is widely understood as expectable assuming that the weapons systems are used within the Laws of War, employed consciously, and

¹⁹⁵ Wilmshurst, Elizabeth. "Chapter 7.1: The War Against Al-Qaeda Rules on Other Significant Problems with International Law: Drones." In *International law and the classification of conflicts*. Oxford, U.K.: Oxford University Press ;, 2012. 447.

¹⁹⁶ Dowd, A. W. (2013). Drone wars: Risks and warnings. *Parameters*, 42-43(4-1), 7-16. Retrieved from <http://search.proquest.com/docview/1438605350?accountid=14784>; Wittes, Benjamin. *Legislating the war on terror an agenda for reform*. Washington, D.C.: Brookings Institution Press, 2009.

¹⁹⁷ Schmitt, Michael N. In *Yearbook of international humanitarian law*. Hague: T.M.C. Asser Press ;, 2011. 324.

¹⁹⁸ Saxena, V K.. "Collateral- A Huge Negative Issue." In *The Amazing Growth and Journey of UAV's and Ballistic Missile Defence Capabilities Where the Technology is Leading to?*. New Delhi: Vij Books India Private Limited, 2013. Print

¹⁹⁹ Whetham, D. (2013). Killer drones: The moral ups and downs. *RUSI Journal*, 158(3), 22-32. doi:<http://dx.doi.org/10.1080/03071847.2013.807582>

²⁰⁰ Olson, Gary L.. "Whither Empathy." In *Empathy imperiled capitalism, culture, and the brain*. New York, NY: Springer, 2013. 75.

²⁰¹ Enemark, Christian. "Drones Operators and the Warrior Ethos." In *Armed Drones and the Ethics of war: Military Virtue in a post-Heroic age. .: .*, 2013. 87.

²⁰² Thomas P. English et al., Naval Surface Warfare Ctr., *The Safety of Unmanned Systems: The Development of Safety Precepts for Unmanned Systems (UMS)* 3-4 (June 1, 2009) (paper presented at 13th International Command and Control Research and Technology Symposia, Seattle, Wash.)

²⁰³ Ibid.

that targets are well defined.²⁰⁴ Thus far, drones are considered within the parameters that other technologies such as guided missiles and bombs are regarded; in that they are semi-autonomous and can adjust their trajectory in flight, having a much higher accuracy rate than something like dumb bombs.²⁰⁵ The perception of many, especially those who reside within the areas that drones have been used, is that they kill too easily and more often than not, do so indiscriminately.²⁰⁶ Combined with the preconception that drones can identify individuals on the ground from one another, when an errant strike is carried out that results in the loss of non-combatants, it makes the targeting of said non-combatants look outright intentional.²⁰⁷

Additionally, the ease at which drones can be used across borders as well as over other sovereign countries' airspaces leaves broad possibilities for the expansion of hostilities between state and non-state actors beyond the original objectives of those actors.²⁰⁸ Without an international consensus concerning the implementation and use of drones, the simplicity with which a country might use the device to spy on another nation, rashly interdict against a minor border incursion, or even employ the device to provoke hostilities of another country is a growing threat. The international community must address the various potentially volatile scenarios in which drones could be exploited in an effort to mitigate the risk of this new technology from potentially escalating and already fragile situations.²⁰⁹

Further contention regarding drones concerns their ability to operate with minimal

²⁰⁴ Kahl, Colin. "In the Crossfire or the Crosshairs? Norms, Civilian Casualties, and U.S. Conduct in Iraq." *International Security* 32, no. 1 (2007): 7-46.

https://muse.jhu.edu/journals/international_security/v032/32.1kahl.html (accessed March 1, 2014).

²⁰⁵ Johnson, A. M., & Axinn, S. (2013). THE MORALITY OF AUTONOMOUS ROBOTS. *Journal of Military Ethics*, 12(2), 129-141. doi:<http://dx.doi.org/10.1080/15027570.2013.818399>

²⁰⁶ Dowd, A. W. (2013). Drone wars: Risks and warnings. *Parameters*, 42-43(4-1), 7-16. Retrieved from <http://search.proquest.com/docview/1438605350?accountid=14784>

²⁰⁷ Deptula, David. "Retired Lt. Gen. Deptula: Drones Best Weapons We've Got For Accuracy, Control, Oversight; Critics Don't Get It." *Breaking Defense*. <http://breakingdefense.com/tag/collateral-damage/> (accessed March 1, 2014).

²⁰⁸ Shah, Niaz A.. "Chapter 5: Fighting the Taliban." In *Islamic law and the law of armed conflict the conflict in Pakistan*. Abingdon, Oxon [UK: Routledge, 2011. 93.; Shane, Scott. "Moral Case for Drones." *New York Times (New York City)*, July 14, 2012, sec. News Analysis. http://www.nytimes.com/2012/07/15/sunday-review/the-moral-case-for-drones.html?_r=0 (accessed March 1, 2014).

²⁰⁹ Singer, Peter. "Robots at War: The New Battlefield'." *Wilson Quarterly* . (2009). *Wilson Quarterly Website* (accessed March 1, 2014).

operational constraints in areas that they have been deployed.²¹⁰ In all cases to date, U.S. and coalition forces have enjoyed complete air dominance of airspace with little threat to the drones from the ground.²¹¹ This has given drones operating in the areas of Afghanistan, Pakistan, and Yemen among others places, an unhindered ability to execute their tasks. However, while we continue to amass more UAVs, continually integrating them in various roles it would be wise to realize that these systems have not been combat tested against a conventional force with adequate anti air capabilities. It is possible that, in the event of a future conflict against conventional forces, many of the drone's currently advantageous qualities may be effectively eliminated. An over emphasis on the production of drone weapons systems while negating the development of traditional battle-tested ones could result in U.S. forces being caught unprepared for future conflicts.

Furthermore, given the United States' heavy utilization of drones in the last decade, many countries across the globe have followed suite and have integrated drones within their own arsenals be they domestic or military. As to date, there are more than seventy countries that operate drones in various roles and capacities within their respective armed forces.²¹² The United States, Israel, the UK, Italy and China are currently the only nations using operationally armed drones in their arsenals.²¹³ However, with the growing roles in which drones are being utilized for, one can all but guarantee that this small club of armed drone users will be only temporary.²¹⁴

Moreover, with the absence of meaningful language in regards to the regulation of drones in world forums this number may increase exponentially. This is especially concerning given that nations like Iran have already employed UAVs and have expressed the desire and capability to further augment armed drones into their military

²¹⁰ Finkelstein, Claire Oakes, and Andrew Altman. "Making the Use of Force Too Easy?." In *Targeted killings: law and morality in an asymmetrical world*. Oxford: Oxford University Press, 2012. 375.

²¹¹ Eland, Ivan. *Putting "defense" Back Into U.S. Defense Policy: Rethinking U.S. Security in a Post-Cold War World*. Westport, CT: Greenwood Publishing, 2001.

²¹² Global Research Staff, "Mapping Drone Proliferation in 76 Countries." *Global research (2012)*

²¹³ Roberts, Kristin. "When the Whole World Has Drones." *National Journal*, March 21, 2013. <http://www.nationaljournal.com/magazine/when-the-whole-world-has-drones-20130321> (accessed January 10, 2013).

²¹³ Alston, Philip. "Unmanned Aircraft Systems (Drones) and Law." *Special Rapporteur on Extrajudicial Executions*. (2011): 91.

²¹⁴ *Ibid.*; Global Research Staff, "Mapping Drone Proliferation in 76 Countries." *Global research (2012)*

inventories.²¹⁵ While it is unlikely that other countries would employ drones to fulfill the specific roles that the U.S. currently uses them for, it is a possibility that those countries may develop relatively cheap UAV programs to augment regional offensive capabilities.²¹⁶

Novel weapons that dramatically change the dimensions of warfare often escape the bounds of international law, sometimes for many years.²¹⁷ For example, it took over thirty years after World War II before the international community reaffirmed the principle that all combatants—including air forces—must discriminate between legitimate military targets and civilians.²¹⁸ While laws—both international and domestic—regarding the limits and uses of UAVs are still to be written,²¹⁹ it is imperative that the issues of drone perception the world over are addressed so that the system does not fall into a highly contentious category similar to chemical weapons or landmines that may forever change its possible use as an exceptional force multiplier.²²⁰

Given these problems, better control factors must be implemented so as to ensure that targeted strikes are exactly that—targeted. Specifically, more advanced matrixes to assess risk factors of collateral damage should be utilized in governing the rules of engagement if drones carrying out strikes in the absence of sufficient ground personnel to more accurately assess the presence of innocent civilians.²²¹

Ultimately, although the positive attributes of drones have served a tactically advantageous role in the ongoing War on Terror, the overall negative repercussions of the contemporary drone program—primarily stemming from the current UAV operating framework—markedly outweighs the short-term advantages gained from employing this

²¹⁵ Daragahi, B. (2010, Aug 23). Iran Adds Bomber to Conventional Arsenal. South Florida Sun - Sentinel. Retrieved from <http://search.proquest.com/docview/746514314?accountid=14784>

²¹⁶ Dannreuther, Roland. *International security: the contemporary agenda*. Cambridge, UK: Polity, 2007.

²¹⁷ Bryden, Alan. *International Law, Politics and Inhumane Weapons: The Effectiveness of Global Landmine Regimes*. New York: Routledge, 2013.

²¹⁸ McDonnell, T. M. (2012). Sow what you reap? Using predator and reaper drones to carry out assassinations or targeted killings of suspected Islamic terrorists. *The George Washington International Law Review*, 44(2), 243-316. Retrieved from <http://search.proquest.com/docview/1347802197?accountid=14784>

²¹⁹ Bowcott, Owen. "Drone strikes by U.S. may violate international law, says UN." *The Guardian* (London), October 18, 2014.

²²⁰ Springer, Paul J.. *Military robots and drones: a reference handbook*. Santa Barbara, Calif.: ABC-CLIO, 2013.

²²¹ Cobain, Ian. "Obama's secret kill list – the disposition matrix." *The Guardian* (London), July 14, 2013.

capability.²²² Overall, while the use of drones has certain distinct drawbacks, it nonetheless provides a unique military capability that has become a permanent fixture within the defense establishment.²²³ As such, it is essential that the United States reevaluate certain more controversial aspects of the drone program such as the parameters in which UAVs are employed and their overall engagement criteria.²²⁴

Human Implications: Non-Combatant Casualties and Civilian Psychological Perspectives

Beyond the operational aspects of the program, crucial to the future of drone warfare in the context of U.S. anti-terrorism operations is the impact of drones on targeted populations. While drones reduce both the risk of casualties to U.S. soldiers and the financial cost of strikes, both of these benefits are effectively rendered irrelevant if local populations are further radicalized against the U.S. due to the use of drones.²²⁵

A large amount of analytical and anecdotal evidence on this topic indicates both the extent to which UAVs negatively affect the populous in areas where drone strikes occur as well as their potential to turn individuals within the local population against the United States. Prominently, residents in targeted areas live in fear of becoming innocent victims of an errant drone strike.²²⁶ Declan Walsh, Pakistan Bureau Chief for the New York Times, elucidates this situation, explaining that, “the constant presence of circling drones—and accompanying tension over when, or whom, they will strike—is a crushing psychological burden for many residents.”²²⁷ This psychological burden, in turn, has impacted the daily lives of many civilians in the area. In just one example of this, Walsh describes how, “[s]ales of sleeping tablets, antidepressants and medicine to treat anxiety

²²² Birkenthal, Sara. "U.S. Drone Strikes in Pakistan: A Strategic Analysis." *Keck Center for International and Strategic Studies*. (2011): 25.

²²³ Yenne, Bill. *Attack of the Drones: A History of Unmanned Aerial Combat*. St. Paul: Zenith Press, 2004.

²²⁴ Thomas, Ward. "The New Age of Assassination." *SAIS Review* 25, no. 1 (2005): 27-39.

²²⁵ Khan, Akbar N. "U.S. Policy of Targeted Killing by Drones in Pakistan." *IPRI Journal XI, no. 1* 20. <http://www.ipripak.org/journal/winter2011/Article2.pdf>.; Williams, Brian G. "The CIA's Covert Predator Drone War in Pakistan, 2004–2010: The History of an Assassination Campaign." *Studies in Conflict & Terrorism* 33, no. 10 (2010): 21. Accessed February, 2014. <http://www.tandfonline.com/doi/full/10.1080/1057610X.2010.508483#Uw6Dcl6RIeM>.

²²⁶ Amnesty International. *"Will I Be Next?": U.S. Drone Strikes in Pakistan*, 12. London : Amnesty International Publications, 2013.

²²⁷ Walsh, Declan, and Ihsanullah Mehsud. "Civilian Deaths in Drone Strikes Cited in Report." *The New York Times* (New York City), October 22, 2013. Accessed February, 2014. http://http://www.nytimes.com/2013/10/22/world/asia/civilian-deaths-in-drone-strikes-cited-in-report.html?_r=0.

[from potential drone strikes] have soared.”²²⁸ Along the same lines, one Western aid worker described the impact of drones as producing, “a continuous tension, a feeling of continuous uneasiness,”²²⁹ stating that, when residing in the Federally Administered Tribal Area (FATA), “You wake up with a start to every noise” as a result of possible strikes.²³⁰

In illuminating first-hand testimony concerning impact of drones on civilians, Hisham Abrar, an interlocutor for a drone-centered report crafted by international law experts at New York University and Stanford, explains the situation in FATA as follows:

When the weather is clear, three or four [drones] can be seen . . . They are in the air 24 [hours a day], seven [days a week], but not when it’s raining. Every time they are in the air, they can be heard. And because of the noise, we’re psychologically disturbed—women, men, and children. . . . When there were no drones, everything was alright. [There was] business, there was no psychological stress and the people did what they could do for a living.²³¹

Abrar continues, aptly noting the multi-layered impact drones have had on individuals within the region:

[The drone strikes have caused many problems:] [f]irst, it’s psychological. Diseases that people have—psychological, mental illnesses. And that’s a huge issue. Secondly, a lot of men have been killed, so they’re the wage earners for the house, and now the kids and the families don’t have a source of income because of that.” Hisham explains that others in the community help sometimes, but notes that, “[i]n Waziristan, there are poor people, and [victims] usually rely on . . . daily wage earning. That’s only sufficient for themselves, so it’s hard to help others. But whenever they can, they do.”²³²

While there is disagreement as to the exact number of civilian casualties caused

²²⁸ Ibid (Walsh, Declan, and Ihsanullah Mehsud. "Civilian Deaths in Drone Strikes Cited in Report." *The New York Times* (New York City), October 22, 2013. Accessed February, 2014.) http://http://www.nytimes.com/2013/10/22/world/asia/civilian-deaths-in-drone-strikes-cited-in-report.html?_r=0.

²²⁹ Friedersdorf, Conor. "'Every Person Is Afraid of the Drones': The Strikes' Effect on Life in Pakistan." *The Atlantic*, September 25, 2012.

²³⁰ Ibid.

²³¹ Abrar, Hisham. "Victim Stories." *Living Under Drones*. Accessed February 26, 2014. <http://www.livingunderdrones.org/victim-stories/>.

²³² Ibid.

by UAV strikes, it is fairly widespread evidence showing that the drone program has resulted in a significant number of collateral non-combatant deaths. For instance, a prominent report published by Columbia Law School in September of 2012 claims that between 474 and 881 civilians have been killed in nearly 400 drone strikes launched by the U.S. in Pakistan alone.²³³ A second study, co-authored by Human Rights Watch and Amnesty International, also supports the high civilian death toll assertion, alleging that drone strikes have been responsible for the deaths of between 400 and 900 non-combatants and the injury of at least 600.²³⁴

These civilian casualties, in turn, have increasingly radicalized populations in targeted areas.²³⁵ Indeed, a May 2012 report released by the Washington Post following nearly two-dozen in-depth interviews of prominent individuals in targeted areas concluded that, “an unintended consequence of the attacks has been a marked radicalization of the local population.”²³⁶ Given this, it is the opinion of the authors of this report that, when faced with the strong possibility of civilian casualties and the resulting increased radicalized and anti-U.S. sentiment in targeted areas, U.S. policymakers should err on the side of caution, heavily scrutinizing future strikes beforehand for potential mistakes.

Moreover, when evaluating drones in the context of civilian casualties, U.S. policymakers must consider them relative to other weapons systems.²³⁷ While drones may—and in some cases do—cause civilian casualties, viewing these UAV strikes in comparison with similar military capabilities like cruise missiles, bombers and attack helicopters, and night raids among others will allow for a more realistic understanding of the costs of a strike regardless of what platform is used. These other types of war-making capabilities, of course, include their own risks of incurring non-combatant and civilian

²³³ Columbia Law School-Human Rights Clinic. "The Civilian Impact of Drone Strikes: Unexamined Costs, Unanswered Questions." *Columbia Law School Report* (2012): 83.

²³⁴ Amnesty International. "Will I Be Next?": *U.S. Drone Strikes in Pakistan*, 12. London : Amnesty International Publications, 2013.

²³⁵ Khan, Akbar N. "U.S. Policy of Targeted Killing by Drones in Pakistan." *IPRI Journal XI, no. 1* 20. <http://www.ipripak.org/journal/winter2011/Article2.pdf>.

²³⁶ Raghavan, Sudarsan. "In Yemen, U.S. airstrikes breed anger, and sympathy for al-Qaeda." *The Washington Post* (Washington D. C.), May 29, 2012.

²³⁷ Williams, Brian G. *Predators The CIA's Drone War on Al Qaeda*, 184. Dulles: Potomac Books Inc, 2013.

casualties as well.²³⁸ Thus, in spite of the fact that UAVs can cause collateral damage, simply dropping their usage in favor of a shift to more conventional capabilities may very well not produce the desired outcome; unnecessary non-combatant deaths would not be reduced while international ire against U.S. security policies would concurrently remain unchanged.²³⁹ Instead, it will be necessary to modify the existing drone strike policy to regime to mitigate the current drawbacks associated with the program.

Conclusion

The use of unmanned aerial vehicles in 21st century modern warfare represents the first step in a watershed shift in regards to the way conflicts are executed.²⁴⁰ As stated previously, the significantly increased deployment of drones in current-day conflicts not only brings to bear unique tactical and military advantages such as lower casualties and higher quality intelligence,²⁴¹ but also a number of problematic macro-level strategic challenges such as decreased transparency, civilian casualties, and executive overreach among others. In order to combat said challenges, the United States needs take action on multiple levels in order to ensure that the strategic drawbacks of drones do not outweigh their benefits. In regards to action, it will be necessary to reexamine the drone program, with U.S. policymakers taking steps to combat the accusations of inadequate transparency and unnecessary civilian casualties among others. Given the multi-dimensional nature of the current conflict with al Qaeda, policymakers need to take into account the non-military aspects of conflict when making calculations concerning policies changes surrounding controversial topics like drones.²⁴² These steps must be substantive and not just cursory with the ultimate goal of assuaging the concerns of both international and at-risk domestic audiences alike. If policymakers can successfully remedy these concerns, the United States will be able to continue to reap the benefits of

²³⁸ Adams, Thomas K. *The Army After Next The First Postindustrial Army*. Westport, 62. Conn: Praeger Security International, 2006. Strawser, Bradley Jay. *Killing by Remote Control: The Ethics of an Unmanned Military*, 152. New York: Oxford University Press, 2013.

²³⁹ Markey, Daniel. *No Exit from Pakistan: America's Tortured Relationship with Islamabad*, 208. New York: Cambridge University Press, 2013.

²⁴⁰ Singer, P. W.. *Wired for war: the robotics revolution and conflict in the twenty-first century*. New York: Penguin Press, 2009.

²⁴¹ Hussain, Zahid. "Breaking Apart The Myth." In *The scorpion's tail: the relentless rise of Islamic militants in Pakistan and how it threatens America*. New York: Free Press, 2010. 175.

²⁴² Hughes, Geraint. In *The military's role in counterterrorism examples and implications for liberal democracies*. Carlisle, PA: Strategic Studies Institute, U.S. Army War College, 2011. 121

well-considered UAV strikes while minimizing the public relations costs.

Recommendations:

- 1) **Establish a new, clearer, and more restrictive disposition matrix for drone strikes.** A more stringent, well-defined engagement matrix pertaining to the rules of engagement regarding drones that promotes personnel on the ground to work in conjunction with the drones would help bring down the incidences of errant strikes and unintended collateral damage. This would place more control on the conditions in which a drone may be utilized for a strike, especially in the absence of ground personnel to verify intelligence. Furthermore it would establish better precedence for the rules of engagement standards regarding drones not only in the U.S. but also around the world.
- 2) **Reexamine the existing drone targeting process for areas with inadequate protective measures for civilians.** Reexamine the existing drone targeting process, especially in areas where the local populations have been adversely effected by their use. The negative backlash and perceptions of U.S. overreach in those areas may be reduced over an extended period of time. While this would not reverse the affects that drones have already had on the local populace, it would help curtail al Qaeda's exploitation of these affected areas so as to further their agenda.

Section II

Fixing the AUMF – Reform, Oversight, and Regulating Lethal Force

The Current State of Affairs in the War on Terror

Thirteen years after the AUMF was signed into law, the United States finds itself no closer to defeating the violent ideology that led to the horrific attacks of September 11, 2001. Despite the fact that the United States has killed countless high value targets, and even Osama bin Laden himself, one could argue that we are in fact less safe than we were pre-9/11. The steps that we have taken to fight extremism in the short term have caused many to question the legality of our actions; actions that will surely hold long term implications. Thus far, this report has successfully argued that our actions are at least questionable under domestic law. Additionally, under International Humanitarian Law, the legality of our actions seem to fall far outside of what is considered lawful. Legitimate groups such as Amnesty International and Human Rights Watch have condemned our use of military force against suspected terrorists, and our militarized, offensive strategy has damaged our credibility abroad.

Furthermore, the process that the executive branch employs to carry out lethal strikes against individuals is highly problematic. The power that the AUMF in its current form invests in the Executive branch to make decisions as to who is considered an “enemy combatant” and who should be added to an official kill list, completely circumvent the Judicial and Legislative branches of government. This, combined with a serious lack of transparency and oversight of the process by which the Executive makes such decisions, has caused many to fear (including President Obama) that the power that the Executive branch wields in the War on Terror sets a dangerous precedent for future administrations.

Our overreliance on the use of drones—and more broadly the use of military force—in the War on Terror, has created more animosity against the United States in the Muslim world than it has quelled. Hotbeds of extremism against the United States and its allies have materialized in Mali, Iraq, Syria, Indonesia, Somalia, Yemen, Algeria, Nigeria, and Libya.

This diaspora of extremism has been very unpredictable, and has metastasized quickly from its origin in the mountains of Afghanistan since the initial U.S. military invasion. The use of military force that we have employed as the primary tool utilized to defeat extremism has essentially backfired. We have created more battlefields and

enemies across the Middle East than we had started with—our overreliance on the use of military force has given al Qaeda legitimacy in the eyes of many, for strikes—whether they cause actual casualties or not—are used as recruiting material. Moreover, our overreliance on military force has cost the U.S. taxpayers trillions of dollars, and despite this massive investment, regional stability in the Middle East has continued to deteriorate. In the years since 9/11, al Qaeda’s violent message has recruited thousands of additional adherents and their claim that the Muslim world is at war with an imperialist western power has been greatly reinforced by our actions. Our ability to prevent terrorist attacks has become much more difficult as well, for most attempted and carried out attacks since 9/11 have originated from within the U.S. by what has become known as “homegrown” terrorists. Extremist messaging originating thousands of miles away influenced most of these individuals.

After the terrorist attacks on September 11, 2001 the United States needed to respond in self-defense to what seemed to be a threat we could—and should—counter with military force. The Taliban was harboring al Qaeda in rural Afghanistan, and the mission was clear: disrupt al Qaeda’s ability to plan and train operatives, so that they may never again have the capability to carry out another devastating attack against the United States. The international community accepted our initial actions in Afghanistan under the AUMF – for at the time our mission was not outside of the scope of traditional warfare. However, over a decade later, our mission has evolved dramatically. What the original AUMF has taught us is that we will not be able to kill our way to victory, and that the end of the war against extremism will look like a completely different strategy. The following section of this report will address possible changes to the AUMF. It will make realistic recommendations that allow us to curtail our use of military force abroad, increase transparency and oversight of the drone programs, and refocus our strategy so that we can eventually find an endpoint to the longest armed conflict the United States has ever been a part of.

Part I: Rethinking the AUMF – Placing New Limits on the Use of Lethal Force

By Camian Keeble

While the preceding sections of this paper have outlined legal objections and controversial operations that have defined the War on Terror, this section looks at those issues as they relate to the AUMF itself, which 13 years after its inception, must be considered antiquated. The law was originally intended to provide the legal framework to prevent further atrocities by those responsible for the 9/11 attacks. While it can be debated whether or not the AUMF provided the best approach, it is undeniable that those original goals have been accomplished. Indeed, it's already been a year since Director of National Intelligence James Clapper called al Qaeda's core so diminished as to be "probably unable to carry out complex, large-scale attacks in the West."²⁴³ However, military operations against al Qaeda – and various individuals and organizations that the U.S. has linked to al Qaeda – are ongoing. This contradiction has left the U.S. on a weak and unsustainable legal footing in its counterterrorism efforts.²⁴⁴

Setting aside the apparent expiration of that authorization, the hastily written AUMF, which boils down to 60 crucial words, does not provide the specificity required to guide use of force in the context of the War on Terror. Rather, the law has allowed for, if not encouraged, an excessive and expanded use of deadly force. As described in the previous section, the drone program employed under the AUMF – again, setting aside the question of legality – has prompted a massive domestic and international backlash. Besides the outcry from human rights advocates, the strikes have bolstered perceptions of U.S. imperialism and provided recruitment fodder for terrorist organizations.²⁴⁵

In seeking an end to the Global War on Terror, and a more effective strategy to reduce and control terrorist threats, the United States must address these critical problems

²⁴³ Cohen, Andrew. "The Case for Congress Ending its Authorization of the War on Terror." *The Atlantic*. June 10, 2013. <http://www.theatlantic.com/politics/archive/2013/06/the-case-for-congress-ending-its-authorization-of-the-war-on-terror/276699/>

²⁴⁴ Traub, James. "How President Obama Can End the War on Terror, Once and For All." *Foreign Policy*. Feb. 28, 2014.

²⁴⁵ Craig, Iona. "U.S. drone blitz on Yemen swells al-Qaeda's ranks." *Times*. (London, England). May 24, 2012.

with the 2001 AUMF. This section recommends that, first, the United States impose a default sunset date for the current law, demonstrating a commitment to a new approach. Second, given the potential need for continued use of force against current or new threats, future authorizations should avoid similar issues by including both a default sunset date and more specific guidelines and limitations on the use of deadly force.

Issues with 2001 AUMF-based War on Terror

When strictly interpreted, the 2001 AUMF is already an obsolete piece of legislation. Despite some very creative legal interpretations, it still only provides authorization for force against those associated with the 9/11 attacks. However, most of those associated with 9/11 have already been killed or captured. Subsequent codification of the law in the 2012 NDAA included the controversial affirmation that the authorization included indefinite detention of “covered” people, and a more explicit definition of who those people were. However, even that affirmation was still self-limiting, stating “Nothing in this section is intended to limit or expand the authority of the President or the scope of the Authorization for Use of Military Force”²⁴⁶ The objective legal interpretation therefore must be that authorization remains explicitly limited to the original, 2001 language.

This hasn’t been the reality of our current use of military force. Rather, use of drone strikes and other tactics have extended to groups that didn’t even exist in 2001. Al Shebaab, for example, began in 2006, and the State Department didn’t designate it as a terrorist group until 2008.²⁴⁷ Logically, then, it couldn’t have “harbored” or otherwise been associated with those who carried out the attacks. This contradiction poses serious problems for the United States. Despite what is at least implicit Congressional support for the current use of force, the perception (as described in the legal section of this paper), is that we are breaking our own laws. Even the President has requested Congressional action to resolve this problematic legal framework, indicating a level of uncertainty that can only harm national security. This controversy and uncertainty alone is enough to

²⁴⁶ *National Defense Authorization Act, 2012*, Pub. L. No. 112-81. 112th Congress.
<http://www.gpo.gov/fdsys/pkg/PLAW-112publ81/pdf/PLAW-112publ81.pdf>

²⁴⁷ U.S State Department, Office of the Coordinator for Counterterrorism. “Designation of al Shebab.” March 18, 2008. <http://www.state.gov/j/ct/rls/other/des/143205.htm>

warrant the codification of a clearer, more sustainable legal framework to defend against terrorist threats.

The problem with folding all loosely affiliated groups into one broad conception of al Qaeda goes beyond the legal question, though. Even if al Qaeda were one identifiable, unified group, existing intemporally and across the world just as it did on 9/11, it would both include many non-threatening individuals, and exclude many highly threatening individuals. In *Foreign Policy* magazine, Rosa Brooks noted, “The world, it turns out, offers a nearly inexhaustible supply of people who don’t much like the United States”²⁴⁸ with the desire and capacity to carry out an attack. Al Qaeda is clearly not omnipotent, though, or even ideologically uniform across affiliates. Rather, it is quite factionalized and prone to infighting.²⁴⁹ The United States’ lumping of all things terrorist under an al Qaeda banner, then, is both inaccurate and unwise—we could be encouraging that fractionalization and emphasizing divisions and disputes rather than bolstering the al Qaeda brand and ignoring non-affiliated threats. As Cronin suggests, “Our goal must be to differentiate the elements of what we call ‘al Qaeda,’ to hive off local groups and individuals that have recently claimed an association but in the past have been more interested in classic, ethnonationalist-separatist aims.”²⁵⁰ Of course, that strategy becomes problematic when relying on military tactics and the 2001 AUMF. As a result, the War on Terror has really always been limited to a war on whomever we can link to al Qaeda. It’s for that reason that, like Brooks and Cronin, we argue for a comprehensive, less militarized approach.

If it weren’t such a deadly serious issue, the other structural problem with the AUMF could be described largely as one of semantics. As issues described in previous sections demonstrate, though, when it comes to laws, words matter. In particular, the words from the AUMF that the U.S. has chosen to focus on (rather than disregard completely) are open to various interpretations. For example, the use of the words “necessary and appropriate” has allowed the executive branch define its own terms for what authorization it actually has to use lethal force. Legal memos, ostensibly provided

²⁴⁸ Brooks, Rosa. “Mission Creep in the War on Terror.” *Foreign Policy*. March 14, 2013.

http://www.foreignpolicy.com/articles/2013/03/14/mission_creep_in_the_war_on_terror

²⁴⁹ Cronin, Audrey Kurth. *How terrorism ends: Understanding the decline and demise of terrorist campaigns*. Princeton University Press, 2009 (pg 183).

²⁵⁰ *Ibid*

for clarity, have been problematic themselves, with words like “imminent” given meanings far from that which international law has long held.²⁵¹

While this imprecise language does not *cause* overreach or abuse, it can be argued that it encourages it, considering Jurist Cardozo’s often-quoted observation of “the tendency of a principle to expand itself to the limit of its logic.”²⁵² However, rather than describe again the problems that have accompanied the 2001 AUMF, they will be addressed below in terms of solutions that changes to future authorizations might provide.

Why Not Repeal or Amend Now?

There have been a number of calls for the repeal of the AUMF, and demands that changes to the law be made immediately. Indeed, the issues outlined above provide a decent argument for just such action. Ultimately, though, this paper suggests sunseting the law by the end of the current administration, which would provide a crucial signal to the public that the United States is committed to peace as its normal state of existence, as opposed to perpetual war.²⁵³ It would also provide a defined period of transition, so that changes can be implemented smoothly and the military and our country can prepare for, rather than react to, a new paradigm.

Subsequent sections of this paper will recommend major changes to the way the United States defends against the kind of threat it currently addresses with the current AUMF. By establishing a broad new framework for countering terrorism, we will ultimately offer a pathway to peace that a militarized approach simply cannot offer. This kind of major strategic shift does not come without serious obstacles, both political and logistical. With that in mind, we are making recommendations that move the country toward that broad new strategy quickly, but also sustainably—in a way that the majority can actually get behind.

Besides these strategic concerns behind our decision to sunset, there are practical concerns about the feasibility of an abrupt repeal. One issue is that, realistically, the President will not be able to simply cease all operations that are currently authorized

²⁵¹ Brooks, Rosa. “Mission Creep in the War on Terror.” *Foreign Policy*. March 14, 2013.

²⁵² Cardozo, Benjamin, Andrew Kaufman, and Benjamin N. Cardozo. *The nature of the judicial process*. Quid Pro Books, 2010.

²⁵³ Daskal, Jennifer, and Stephen I. Vladeck. “After the AUMF.” (2014). <http://www.lawfareblog.com/wp-content/uploads/2013/05/After-the-AUMF-Final.pdf>

under the AUMF. More likely, there will be few changes at all. The executive branch (under both Obama and Bush) has routinely cited dual rationales for legal justification: The AUMF as one, and the inherent right to self-defense under Article II of the Constitution as the back-up.²⁵⁴ Thus, the Article II justification would end up guiding the War on Terror, which in some ways might end up being worse than the AUMF. For example, Chesney, et. al., point out that the legal basis for detention of terrorists and suspected terrorists—like those still at Guantanamo—would be in question. Their argument is that, as an alternative to deadly force, long-term detention is an important resource for counterterrorism efforts. Statutory authorization like the AUMF is important, they argue, because “reliance on Article II would make targeted killing politically and legally safer than detention.”²⁵⁵

While that concern may have some merit, the choice between indefinite detention and deadly force is a false choice. The framework we argue for would require that subjects be captured rather than killed in all but extraordinary cases, and the section below on law enforcement alternatives will demonstrate how successful that approach can be. As for current detainees, Daskal and Vladeck make the good point that, “the government’s interest in continued detention pursuant to the laws of war ... ought not be the reason for the continuation of the armed conflict.”²⁵⁶ Sunsetting the AUMF would require the release, or prosecution and sentencing of those prisoners. However, it would also provide time to plan for the cases in which successful prosecution is unlikely but safety concerns remain, to make sure their release is followed by tight surveillance.²⁵⁷ Additionally, as with the case of newly emerging threats, none of this precludes Congress from establishing new authorizations providing they fall within the existing statutory framework, including the War Powers Resolution.

²⁵⁴ Savage, Charlie and Scott Shane. “Memo Cites Legal Basis for Killing U.S. Citizens in Al Qaeda.” *New York Times*. Feb. 5, 2013. <http://www.nytimes.com/2013/02/05/us/politics/us-memo-details-views-on-killing-citizens-in-al-qaeda.html?hp>

²⁵⁵ Chesney, Robert, Jack Goldsmith, Matthew C. Waxman, and Benjamin Wittes. 2013. *A statutory framework for next-generation terrorist threats*. media.hoover.org/sites/default/files/documents/Statutory-Framework-for-Next-Generation-Terrorist-Threats.pdf. <http://www.scribd.com/doc/127191153/A-Statutory-Framework-for-Next-Generation-Terrorist-Threats#download>

²⁵⁶ Daskal, Jennifer, and Stephen I. Vladeck. "After the AUMF." (2014). <http://www.lawfareblog.com/wp-content/uploads/2013/05/After-the-AUMF-Final.pdf>

²⁵⁷ *Ibid*

To that point, one important key to this broad framework that we outline in this paper is a return to a more strict application of that existing statutory framework. A closer adherence to long standing principles of war, as described in our legal section above, will go a long way in reducing the kinds of abuse occurring under an expanded AUMF. For example, by operating within the framework of the Uniform Code of Military Justice (UCMJ), as President Obama has suggested, much of the controversy surrounding detainees could be avoided.²⁵⁸ That said, the characteristics of our conflict with al Qaeda, and the War on Terror generally, appear increasingly different from traditional war. In *Hamdi v. Rumsfeld*, the court warned that when “practical circumstances ... are entirely unlike those of the conflicts that informed the development of the law of war,” the legal basis for authority therein “may unravel.”²⁵⁹

With that in mind, the following recommendations seek to bring a movement away from perpetual war toward a norm of peacetime, and provide a more effective and humane approach to countering modern threats.

Recommendations:

- 1) Sunset the AUMF before the end of 2016, and as soon as practically possible.** Congress needs to take the lead here, and respond to the President’s request to “refine, and ultimately repeal, the AUMF’s mandate.”²⁶⁰ While we aren’t privy to issues that are classified, we acknowledge that some problems might arise in the absence of an AUMF. As politics will inevitably make the issue more contentious as election time nears, movement should begin immediately to identify and address any such issues that might require a statutory fix.

- 2) Establish Guiding Principles for Future Authorizations.** The U.S. was taken off guard by the attacks in 2001, and would have benefitted from an established

²⁵⁸ Whitehouse.gov. “Executive Order: Review and Disposition of Individuals Detained at the Guantanamo Bay Naval base and Closure of Detention Facility.” Jan. 22, 2009.

http://www.whitehouse.gov/the_press_office/ClosureOfGuantanamoDetentionFacilities/

²⁵⁹ *Hamdi v. Rumsfeld*. 542 U.S. 507 (2004).

²⁶⁰ Obama, Barack. “The Future of our Fight Against Terrorism.” Speech for National Defense University. May 23, 2013. <http://www.lawfareblog.com/2013/05/text-of-the-presidents-speech-this-afternoon/>

framework for authorizing force in the context of a War on Terror. While we argue that, generally speaking, the authorization for most appropriate force exists within established framework (WPR, etc.), with hindsight of the last 13 years it seems that a more clear framework would be helpful in the event that a similar situation were to arise. With that in mind, we recommend that future authorizations of force should include the following specifications:

- A default sunset date, which requires regular re-authorization by Congress
- A restriction on use of deadly force to those who pose an imminent threat -- defined as per the long standing international norm, established by Daniel Webster: "instant, overwhelming, and leaving no choice of means, and no moment for deliberation."²⁶¹
- A requirement that deadly force be limited to situations in which traditional law enforcement means would be unable to neutralize the threat before casualties occur, thus codifying the President's "strong preference for the detention and prosecution of terrorists."²⁶²
- Required reporting to Congress, on a bi-monthly basis or as needed in cases of emergency use of force, describing the scope of AUMF operations, to include the number of strikes, geographic area in which they occur, estimates of civilian casualties, and evidence of both imminence and lack of non-lethal options. This necessarily ends any so-called "signature strikes," and limits targeted killings.

As stated, though, the more important goal is to start moving immediately toward a new approach. The following sections will detail concrete ways in which that can happen irrespective of any specific authorization for the use of force. While all branches of government should be involved in and support this new paradigm for national defense and security, none should wait for the other to begin moving in the right direction.

²⁶¹ Webster, Daniel. 'Letter to Henry Stephen Fox', in K.E Shewmaker (ed.). *The Papers of Daniel Webster: Diplomatic Papers, vol. 1. 1841-1843* (1983) 62. Dartmouth College Press.

²⁶² Obama, Barack. "The Future of our Fight Against Terrorism." Speech for National Defense University. May 23, 2013. <http://www.lawfareblog.com/2013/05/text-of-the-presidents-speech-this-afternoon/>

Part II: Improving Oversight and Transparency in the War on Terror

By Benjamin Heckert

As stated throughout this paper, the eventual goal of the United States should be to move off a permanent war footing and adopt a law enforcement method of counteracting threats to national security. Accomplishing this will require both long term and short-term solutions. In the short term, this section will propose minimizing the use of force by the U.S. government through greater transparency and oversight. Even as the U.S. transitions from a military “state of war” mentality to a more subtle law enforcement model, the use of force will still sometimes be necessary to prevent immediate attacks and save lives. However, the way in which the United States currently uses force flies in the face of international laws and norms of human decency. The secrecy and lack of oversight in the process of executing targeted killings causes damage to the reputation of the United States abroad as well as contributes to an erosion of Constitutional principles at home. In order to prevent these trends, there are concrete and immediate steps that U.S. policy makers can implement. The first of these is transitioning control of all targeted killings and lethal action from the purview of the CIA to that of the DoD. Additionally, lawmakers must make sure that any targeted killings being executed by the Pentagon are reviewed more thoroughly by Congress and that these operations fall within the legal scope of the UCMJ and existing military doctrine. The United States should also adopt a policy of both disclosing a legally codified “playbook” defining how the use of force is limited and utilized, as well as purposefully acknowledging and defending the legality of all targeted strikes in the media. Additionally, there are tactical considerations that must be considered in implementing transparency and oversight procedures. In order to utilize force in a more appropriate and lawful manner, the practice of signature strikes will need to be officially ended and the scope of all forceful actions explicitly limited to those groups that are actively planning to harm the United States.

Problems with the Current State of Transparency and Oversight

As the United States has proceeded to use force around the world to combat terrorism, the level of transparency and oversight of these various operations has remained an issue of contention between government officials, human rights groups, and

the global and domestic public. On the one hand, there are those individuals (typically within the U.S. government), who have voiced concerns about the use of force being overly transparent and mired in needless bureaucratic oversight.²⁶³ This position holds that the immediate national security concerns of the United States are the most pressing issue to contend with and all other considerations should fall by the way side. Within the current system, when either the CIA or JSOC uses force, there is a minimal level of oversight that is performed both within the executive and the legislative branches of government. Depending on which agency is conducting the operation, the bureaucratic command structure affects the manner in which the operation can be carried out. According to some Republican lawmakers, such as Rep. Mike Rogers, Chairman of the House Intelligence Committee, members of his committee review all drone strikes conducted by the United States on a monthly basis.²⁶⁴ According to policy speeches made by administration officials, when force is used by JSOC, approval for the strikes also comes through an interagency process before reaching the President.²⁶⁵ In the view of many officials, this already represents an unnecessary bureaucratic burden on the military and is actively harmful to our national security. They maintain that the U.S. government must be able to use force quickly and efficiently in response to evolving threats around the globe, and increasing oversight functions will only impede the ability of the DoD and CIA to respond to threats.

On the other hand, a common refrain from concerned individuals and human rights groups has been that the ways in which the U.S. government employs force are overly secretive and insufficiently regulated. Although both the CIA and JSOC report to Congressional oversight committees, it is not clear that the information they report is accurate and of sufficient quality to allow for robust oversight. Organizations such as Amnesty International and Human Rights Watch have accused the United States of operating a program of targeted killing that is inconsistent with international laws and norms and potentially in violation of international laws of war. In addition to other

²⁶³ “Lawmakers in both parties urge oversight of U.S. drone program,” foxnews.com, last modified February 10, 2013. <http://www.foxnews.com/politics/2013/02/10/lawmakers-urge-oversight-us-drone-program/>

²⁶⁴ Ibid.

²⁶⁵ Daniel Klaidman, *Kill or Capture* (Boston, Houghton Mifflin Harcourt, 2012), 200.

considerations, a major factor in this judgment is the intense secrecy that surrounds the U.S. targeted killings program. Amnesty International alleges that there may be human rights violations occurring due to the drone program in particular, but that it remains impossible to ensure any sort of accountability for these crimes due to the secret nature of the operations.²⁶⁶ Under principles of international human rights law, a power such as the United States is obligated to investigate the possibility of unlawful deaths and potentially provide reparations for victims.²⁶⁷ This standard is impossible to uphold when the U.S. government, despite admitting that some civilian deaths have occurred, systematically refuses to acknowledge the drone program in Pakistan and other lethal operations. Although the administration of President Barack Obama has attempted to provide more transparency in public speeches on counter terror policies, the refusal to speak publicly about lethal strikes virtually ensures that international organizations and foreign observers will take a negative view of U.S. policy. In effect, by not acknowledging and defending its actions concerning lethal force, the United States government is losing a public relationships campaign to define the nature of its counter terror struggle.

Transfer Lethal Capabilities from CIA to DoD

The most commonly proposed remedy for providing more transparency and oversight in the use of force against terrorist targets is to take all lethal operations, such as the drone program, out of the hands of the CIA and place them in the exclusive jurisdiction of the Department of Defense. In his speech on counter terrorism policy given on May 23, 2013 at the National Defense University, President Obama alluded to the necessity of moving the drone program from the CIA to the DoD, and a series of announcements stated that this would be the administration's policy goal.²⁶⁸ Advocates for this policy include Senator John McCain (R-AZ), a member of the Senate Armed Services Committee, who has stated that moving the program into the Department of Defense would create adequate oversight and restore the military to its proper role in

²⁶⁶ Amnesty International, "Will I Be Next?: U.S. Drone Strikes in Pakistan" Amnesty International Reports, London, England, 2013, 51.

²⁶⁷ Ibid.

²⁶⁸ Gordon Lubold and Shane Harris, "Exclusive: The CIA, Not the Pentagon, Will Keep Running Obama's Drone War" Foreign Policy Magazine, November 5, 2013, http://complex.foreignpolicy.com/posts/2013/11/05/cia_pentagon_drone_war_control.

kinetic action.²⁶⁹ Restricting the use of force against terror groups exclusively to the DoD is one of the primary recommendations of this paper, and the argument will be fully covered in the following section.

Create Independent Review Board within the Executive

A second option for providing more oversight for operations that use lethal force in counterterrorism practices is to create an independent review board within the executive office. If entrusted with the task of preauthorizing strikes before they happen, this option could take the ability to order a lethal strike out of the hands of one individual, the President, and disperse it among a select group. This carries the advantage of curtailing the power of the President to unilaterally order lethal force, one of the primary concerns of U.S. civil libertarians concerned with executive overreach.²⁷⁰ Alternatively, rather than exercising strike power, this group may be tasked with reviewing Presidential decisions after the fact and determining if they were justified. This method could be effective regardless of whether an operation is carried out by the DoD or the CIA, since the oversight board could be given jurisdiction over both. While this solution directly solves the problem of expanded Presidential power in relation to the use of force, it also presents a myriad of problems. The first of which is that an executive review board may simply add another layer of needless bureaucracy to an already confused process, potentially delaying the ability of the President to act quickly to save American lives. Additionally, this option does nothing to address the issue of much needed transparency in the targeting process. It is likely that any executive review board that is implemented will operate in complete secrecy and not be truly accountable to the public. Furthermore, a looming question about this method is how individuals will be appointed to the review board. If appointed from within the executive with no outside oversight, it seems likely that this group could serve only to provide a rubber stamp and political cover for a sitting President to enact his or her lethal agenda. An alternate scenario would be for the individuals on this board to be appointed by Congress, thus providing an indirect method

²⁶⁹ “Lawmakers in both parties urge oversight of U.S. drone program,” foxnews.com, last modified February 10, 2013. <http://www.foxnews.com/politics/2013/02/10/lawmakers-urge-oversight-us-drone-program/>

²⁷⁰ Micah Zenko, “Reforming U.S. Drone Strike Policies,” Council Special Report No. 65, Council on Foreign Relations, January 2013.

of Legislative branch oversight. Although this option introduces a new layer of oversight into the process, leaving the sole oversight function in the hands of the executive does not go further toward creating a balanced system with appropriate checks on power.

Furthermore, this option will undoubtedly slow down the targeting process, though not in a way that brings the actions of the United States more in line with international law and domestic political concerns, potentially harming national security without providing legal and moral advantages.

Use of Force Court

As a second oversight option, the creation of a special court system to review the use of lethal force by the U.S. government is bolder than a review board that remains within the executive, though it also presents its own problems. The biggest advantage to this idea, also proposed by President Obama in his policy speech at the National Defense University (May 23, 2013), is that it brings into play a completely different branch of government.²⁷¹ Traditionally, the necessity for government to use force has presented a challenge for balancing powers and creating effective checks and balances. With the President as Commander in Chief, the historical trend for the use of force has always been toward increasing power in the hands of the executive. For civil libertarians and others, the extreme concentration of power in the executive branch of the U.S. government as a result of the need for counterterrorism policies is a primary cause for concern.²⁷² Unlike the executive review board, a special court system utilizes the judicial branch of the government and represents a more legitimate method of imposing checks and balances on the use of force. The most commonly envisioned model for an counterterrorism court system is the Foreign Intelligence Surveillance Court, a secret tribunal created in 1978 during the course of the Cold War. At the time, the primary threat to U.S. national security was foreign spying rather than terrorism. There arose a need for a court system that could operate in secrecy so as not to disclose the sources and methods of U.S. spy agencies while also meeting the requirement for a judicial warrant to

²⁷¹ President Barak Obama, "Remarks by the President at the National Defense University," National Defense University, Fort McNair, Washington, D.C. May 23, 2013 <http://www.whitehouse.gov/the-press-office/2013/05/23/remarks-president-national-defense-university>

²⁷² Micah Zenko, "Reforming U.S. Drone Strike Policies," Council Special Report No. 65, Council on Foreign Relations, January 2013.

collect data. Judges on the court are U.S. circuit court judges appointed by the Chief Justice of the U.S. Supreme Court to serve seven-year terms on the court in addition to their regular duties. In the post 9/11 era, the court has come to be used primarily for counter terror purposes, including the authorizations of the controversial meta data collection program by the National Security Agency. Though the Foreign Intelligence Surveillance Court undoubtedly protects the secret methods of U.S. spy agencies, it has also been accused of not providing adequate oversight of the surveillance services. Because the Court has a past track record of approving nearly all the requests submitted to it (1,856 requests in 2012, none of which were denied and only 40 of which were modified).²⁷³ This leads to the accusation that the FISA courts serve as merely a rubber stamp for the law enforcement agencies, providing no legitimate oversight to protect the privacy of the citizenry.

As it is very likely that any court system created to monitor uses of force in the fight against terrorism will very closely resemble the FISA courts in structure and secrecy, it is useful to look to them as a guide to the advantages and disadvantages of the system. Though the advantages have already been stated, distinct disadvantages remain. First and foremost of these is that the FISA court model is notorious for its lack of transparency, and has even been cited by some as unconstitutional.²⁷⁴ If an oversight function is designed to appease the call from international and domestic critics for a higher level of transparency in the use of force, implementation of a special courts model would likely cause even greater suspicion and satisfy few of the current critics. Despite this, the idea is supported by a select few law makers and former cabinet officials, such as Rep. Angus King and Former Secretary of Defense Robert Gates. On the other hand, Senator John McCain has loudly and publicly opposed the concept, stating that it would encroach on the powers of the President to protect the country.²⁷⁵ A further disadvantage is the fact that the judicial system itself has expressed hesitation at the idea of judges

²⁷³ Bill Mears and Halimah Abdullah, "What is the FISA Court?" CNN.com, January 17, 2014, <http://www.cnn.com/2014/01/17/politics/surveillance-court/>

²⁷⁴ Ibid.

²⁷⁵ "Lawmakers in both parties urge oversight of US drone program," foxnews.com, last modified February 10, 2013. <http://www.foxnews.com/politics/2013/02/10/lawmakers-urge-oversight-us-drone-program/>

becoming essentially executioners within the anti-terror system. In sum, though the concept of special courts provides the possibility of a check on the executive branch, creating the judicial infrastructure would do nothing to improve transparency and should not be pursued as a fix for the current targeting procedure in use of force operations.

Acknowledge and Codify the Use of Force

In addition to the oversight options already discussed, it is important that the future methods through which force is used to combat terrorism also provide public accountability. While oversight is an important consideration for instituting checks and balances in a democracy, accountability is a separate though related issue of equal importance. In terms of international law and of promoting the legitimacy of U.S. government actions, providing transparency is the crucial element missing from our current system. It is a fundamental principle of international law that when crimes are committed in an armed conflict, innocents who may have been harmed by those crimes have the right to an investigation and the potential for reparations.²⁷⁶ This is a principle that the United States recognizes during a declared armed conflict, such as the conflict in Afghanistan, where soldiers have conducted investigations into allegations of innocent deaths and in some cases provided compensation to the families of victims.²⁷⁷ However, across the border in Pakistan, where the U.S. government attacks alleged terrorists primarily through drone strikes, there have been many allegations of human rights abuses and no such investigations. Around the world, there are many complaints from international human rights organizations, such as Amnesty International, Human Rights Watch, and the United Nations, that the U.S. is committing war crimes while using force to combat terrorism.²⁷⁸

Since 2012, the Obama administration has sought to address these claims by pledging to provide more transparency about the use of force by the United States. Despite these pledges, it is still impossible for outside groups to be sure of what criteria the U.S. government employs in order to use force, whether those criteria truly comply

²⁷⁶Christof Heyns, “Extrajudicial, arbitrary, or summary executions,” United Nations General Assembly Report A/68/382, September 13, 2013, 21.

²⁷⁷ Amnesty International, “Will I Be Next?: US Drone Strikes in Pakistan” Amnesty International Reports, London, England, 2013, 52.

²⁷⁸ Amnesty International, 8. Human Rights Watch, 88. Christof Heyns, 15.

with international law, and what the rationales behind U.S. policies are. According to Human Rights Watch, “The U.S. government’s unwillingness to admit to, let alone provide any information on specific targeted attacks, has deprived victims of unlawful attacks and their families any meaningful right to redress.”²⁷⁹ In an investigation of six specific drone strikes in Yemen, Human Rights Watch has observed no analyses to determine if the laws of war were adhered to or civilians killed during the course of a military strike by the United States.²⁸⁰ Acknowledged in the agencies report is the fact that there is no way for the organization to determine that an investigation was not conducted, or positive steps taken to ensure compliance with international law. The problem for the United States is that whether or not the government is in fact following the rigorous policy guidelines discussed by the Obama administration in their public statements, the rest of the world will always assume that the U.S. is committing war crimes so long as it continues to use force and they are unable to prove otherwise. This feeds into the image problem that the United States is acquiring as it continues to use force around the world in the name of national security. So long as al Qaeda and similar groups are able to claim that they are defending the Muslim world against the naked aggression and brutal policies of the imperialist United States, they will continue to gain converts. Rather than serve the interests of U.S. national security, the opacity of the targeted killings program feeds into the narrative created by al Qaeda. Specifically, the failure of the United States to even acknowledge that a targeted killing program exists in countries such as Pakistan ensures that the only discourse about that program is generated by sources other than the United States government. In the Muslim world, the United States use of force in anti terror policies is widely seen as unjustified aggression at best and an all out attack on Islam at worst. In a PewGlobal survey released in June of 2013, each Muslim nation represented in the results (Lebanon, Tunisia, Turkey, Egypt, and Jordan) showed more than two thirds of respondents opposed to U.S. drone policies.²⁸¹

²⁷⁹ Human Rights Watch, “Between a Drone and Al Qaeda: The Civilian Cost of US Targeted Killings in Yemen,” United States of America, October 2013, 87.

²⁸⁰ Ibid, 89.

²⁸¹ “Global Opinion of Obama Slips, International Policies Faulted,” pewglobal.com, Last modified June 13, 2012. <http://www.pewglobal.org/2012/06/13/global-opinion-of-obama-slips-international-policies-faulted/>.

This demonstrates that if in fact the United States is using force completely in accordance with international law and is not unnecessarily killing civilians (as the Obama administration claims), the Islamic world remains convinced that the U.S. government is unilaterally killing Muslims for no good reason.²⁸² To combat this narrative and shape the message in a way that is more in line with U.S. interests, it is necessary for any continued use of force to be conducted in a more transparent manner.

The simplest way for the United States to inform both the world and the U.S. public about its actions would be to release a short press statement following each strike. This would allow the government to both acknowledge and defend its operations, and it would not be necessary to disclose so called “sources and methods” as part of this strategy. It is possible that this method could address many of the legal and moral arguments leveled against the United States, including the allegations that lethal force is often used indiscriminately, kills untold numbers of civilians, and is done for arbitrary reasons. Press statements would enable the Obama administration to back up their claims of adherence to international legal standards in the use of force and provide a forum for vigorously arguing for both the necessity and morality of the use of force to defend U.S. citizens. A prominent example of where this would be useful is in Yemen, where the government has officially acknowledged only two targeted strikes, one of which killed the cleric and al Qaeda in the Arabian Peninsula (AQAP) leader Anwar al-Awlaki.²⁸³ Though the administration has reluctantly acknowledged that the strike happened, there have been no public attempts to justify or explain U.S. actions. Additionally, John Brennan has stated that it would be beneficial for the U.S. to “make public the overall numbers of civilian deaths resulting from U.S. strikes targeting Al-Qaeda.” When the United States kills civilians during targeted killing operations, he said, “the United States government should acknowledge it.”²⁸⁴ Despite these assurances to the contrary, the U.S. has never admitted to civilian casualties in Yemen occurring due to U.S. actions. Human

²⁸² White House, “Fact Sheet: U.S. Policy Standards and Procedures for the Use of Force in Counterterrorism Operations Outside the United States and Areas of Active Hostilities,” May 23, 2013, <http://www.whitehouse.gov/the-press-office/2013/05/23/fact-sheet-us-policy-standards-and-procedures-use-force-counterterrorism>

²⁸³ Human Rights Watch, “Between a Drone and Al Qaeda: The Civilian Cost of US Targeted Killings in Yemen,” United States of America, October 2013, 21.

²⁸⁴ Ibid.

Rights Watch has documented numerous credible cases of civilian casualties that have gone unacknowledged and ignored by the United States. If utilizing lethal force to counter terrorist groups continues to remain necessary for United States national security, releasing press statements as a minimum standard of transparency will advance U.S. national security goals rather than hinder them.

Additionally, higher transparency standards than press releases would be to formally publish a codified set of laws dictating how and why strikes occur, a so-called “playbook.” Although the Obama administration has given policy speeches attempting to explain the reasoning behind the use of force and the guidelines that they follow, there remains no authoritative set of laws that publically explain U.S. actions. Although international human rights groups have recognized that the Obama administration is attempting to provide greater transparency through speeches, they still consistently point out that a speech is not a law. If the U.S. government expects to be taken seriously in its claims that it closely adheres to international law and targets alleged terrorists discriminately and proportionally, it needs to hold itself to a set of real standards rather than well-intentioned speeches. The United States is a nation of laws, and the American public should know that their government is following the law in the conduct of national defense.

Banning the Use of Signature Strikes

The practice of signature strikes as a tactic was first implemented in Yemen in 2012, around the time that the U.S. publicly acknowledged taking military action in that country.²⁸⁵ A signature strike, versus a targeted strike, is when lethal force is used against an individual or a group of people who fit into a certain pattern of behavior. Allegedly, signature strikes in Yemen have targeted children, emergency workers responding to an initial drone strike, and funeral processions of deceased militants.²⁸⁶ Though signature strikes have an alluring appeal for those concerned with eliminating as many potential enemies as possible, the drawbacks of using signature strikes are many. Primarily,

²⁸⁵ Human Rights Watch, “Between a Drone and Al Qaeda: The Civilian Cost of US Targeted Killings in Yemen,” United States of America, October 2013, 21.

²⁸⁶ Micah Zenko, “Reforming U.S. Drone Strike Policies,” Council Special Report No. 65, Council on Foreign Relations, January 2013, 14.

signature strikes exacerbate greatly the traditional drone “blowback” concerns. Additionally, they can only be executed in an environment that is lacking in the transparency and oversight that should be required of all uses of force by the United States in the future. They are by definition less precise and discriminating than typical targeted strikes, which open up the possibility of a much larger amount of civilian casualties. More than targeted attacks, signature strikes go a long way toward damaging the reputation of the United States in the Muslim world. Since it is U.S. policy to declare all military age males within the radius of a strike to be “enemy combatants,” it is nearly impossible to argue that this strategy does not result in the deaths of young men and others who are not directly involved in violent terrorism.²⁸⁷ In this sense, the policy also comes into direct conflict with international law principles for the use of force, namely that the Laws of War require knowledge of an individual’s participation in hostile activities for them to become a legitimate target.²⁸⁸ As a recruitment device for anti U.S. terrorist organizations, the use of signature strikes is perhaps the single most effective way for the U.S. to perpetuate the view that it is callously targeting Muslims for death.²⁸⁹ Though signature strikes may seem useful as a short-term tactic in the long run they certainly fuel jihadist ideology and likely create more terrorists than they eliminate. From the evidence, it is clear that the practice of conducting signature strikes in places like Yemen and Pakistan is not a tactic that could continue to exist once appropriate levels of transparency and oversight are achieved. The practice can only continue if it is actively denied by the U.S. government and mired in official secrecy, and has no future in a U.S. counter terror effort defined by public transparency and robust oversight.

²⁸⁷ Scott Shane and Jo Becker, “Secret ‘Kill List’ Proves a Test of Obama’s Principles and Will” *New York Times*, May 29, 2012, <http://www.nytimes.com/2012/05/29/world/obamas-leadership-in-war-on-al-qaeda.html?pagewanted=all>.

²⁸⁸ Human Rights Watch, “Between a Drone and Al Qaeda: The Civilian Cost of US Targeted Killings in Yemen,” United States of America, October 2013, 86.

²⁸⁹ Danya Greenfield, “The Case Against Drone Strikes on People Who Only ‘Act’ Like Terrorists,” *The Atlantic*, August 19, 2013. <http://www.theatlantic.com/international/archive/2013/08/the-case-against-drone-strikes-on-people-who-only-act-like-terrorists/278744/>.

Using Force With Discrimination

Another tactical reform that the United States will need to pursue in the future is the idea of reducing the focus of strikes exclusively toward those groups actively targeting the United States. A principle established by Harold Koh that should be codified into law is the idea that the United States can only justifiably attack individuals if they are part of a group that is “externally focused” on attacking the United States.²⁹⁰ This is a necessary stipulation because the convenience and relatively low risk of using drones has driven our counterterrorism policy by placing too much emphasis on the tactic of killing enemy foot soldiers and not enough on implementing a broader strategy to combat the source of the problem. Drawing a clear line between al Qaeda affiliates with local concerns and those with active plans to harm the U.S. will allow us to prevent attacks while also constraining the use of force in a clear and measurable way. This will force the U.S. government to understand and weigh the differences between such groups as al Qaeda in the Arabian Peninsula, Boko Haram in Nigeria, al Nusra in Syria and al Qaeda in Iraq. It should be a necessary regulation that targeting individuals for the use of force is constrained by the fact that those individuals directly threaten the United States, and narrowing the focus of U.S. efforts in this direction will enable the U.S. to fight terrorism more discriminately and intelligently.

Recommendations:

- 1) **Limit the use of force exclusively to the DoD.** Strengthen the existing Congressional oversight to ensure compliance with the UCMJ and applicable international and domestic law.
- 2) **Implement greater transparency in the use of force.** Acknowledge U.S. strikes through press statements and publishing a codified “playbook” of legal regulations and policy standards that the government openly adheres to.
- 3) **End the use of signature strikes.** Signature strikes blatantly violate international principles of war and are inconsistent with our values and more importantly, with our objectives. Any continued use of force by the United States that incorporates an

²⁹⁰ Daniel Klaidman, *Kill or Capture* (Boston, Houghton Mifflin Harcourt, 2012), 219.

appropriate amount of transparency and oversight will necessarily not include signature strikes as a strategy, because signature strikes can only continue in an atmosphere of opacity and lawlessness.

- 4) **Limit the use of force to only those groups that are “externally focused” and actively seek to target the United States.** Though using force may continue to be necessary, we need to do so with great distinction, focusing only on those groups that are explicitly seeking to attack the United States.

Part III: Reforming the Targeted Killing Programs – Moving Lethal Strikes

From the CIA to the DoD

By Claire Wickstrom

The current use of lethal force by the CIA, especially through the use of drones, is unsuitable due to the lack of oversight, transparency and accountability. The 9/11 Commission Report states that the Department of Defense should take the "lead responsibility for directing and executing paramilitary operations, whether clandestine or covert"²⁹¹ in order to preserve the legality and accountability of the use of lethal force. Instead, the United States has moved in the opposite direction, prioritizing efficiency and deniability and using the CIA to execute their targeted killings. The Department of Defense has the appropriate institutional structure to support the appropriate and legal use of lethal force. To take a meaningful first step toward establishing a degree of accountability and oversight necessitated by current domestic and international pressure, the U.S. government needs to consolidate the leading authority of planning and conducting non-battlefield drone strikes under the DoD.

The Pentagon and Accountability

Currently the use of drones is controversial because of the lack of oversight and transparency that surrounds the programs. There is seemingly little review by Congress or the judicial branch and lethal strikes are left up to the discretion of the President and the CIA. By moving the drone program from the CIA to the DoD, the United States would improve oversight and transparency, and move the drone program into a controlled and properly regulated arena that could ensure correct use of this weapon both currently and in the future.

The DoD is already responsible for performing some lethal strikes. As the DoD institutional structure demands, these strikes go through a much stricter process of oversight for strike authorization in comparison to the CIA. Firstly, strikes performed by the DoD are subject to executive approval.²⁹² In the case of drones, President Obama approves every strike conducted by the Department of Defense, while he only approves

²⁹¹ *The 9/11 Commission Report* (Washington: Official Government Ed., 2004)

²⁹² Miller, Greg. "Obama's New Drone Policy Leaves Room for CIA Role." *Washington Post*. May 27, 2013.

about one third of strikes performed by the CIA.²⁹³ The DoD's process also ensures that relevant U.S. officials abroad receive warning that force will be used. Strikes conducted by the DoD, use the established military system to alert the relevant U.S. Ambassador and U.S. Combat Commands before executing strikes.²⁹⁴ The Department of Defense requires that qualified members of the United States Government oversee and approve military strikes.

Furthermore, using the DoD for targeted strikes allows Congress to get more involved in the policy and process leading up to the use of lethal force.²⁹⁵ With strikes performed by the CIA, members of Congress are frequently denied access to information about strikes and as a result are frequently are misinformed about what is going on in the world of drones.²⁹⁶ In contrast, the established institution of the DoD mandates that quarterly reports go to Congress to review current U.S. defense and military policy, which includes information about drones.²⁹⁷ Congressional review is a crucial part of our democratic process and is necessary with regards to lethal force.²⁹⁸ It is clear that in order to continue the use of the targeted strike program legally and democratically, these programs must be moved to the DoD in order to give Congress the power to influence drone policy and preserve our democracy.

The judicial branch, as well as the rest of the United States government, has a right to review policies that mandate lethal force. The ability of the DoD to share more of their information is the result of the difference between the DoD and the CIA when it comes to the status of their secrecy. The CIA classifies their drone strikes as "covert",

²⁹³ Miller, Greg. "Obama's New Drone Policy Leaves Room for CIA Role." *Washington Post*. May 27, 2013.

²⁹⁴ John T. Bennett, "White House Quietly Shifts Armed Drone Program from CIA to DoD," *Defense News* 28 (March 24, 2013).

²⁹⁵ Zenko, Micah. "Transferring CIA Drone Strikes to the Pentagon." Council on Foreign Relations. April 2013.

²⁹⁶ John T. Bennett, "White House Quietly Shifts Armed Drone Program from CIA to DoD," *Defense News* 28 (March 24, 2013).

²⁹⁷ John T. Bennett, "White House Quietly Shifts Armed Drone Program from CIA to DoD," *Defense News* 28 (March 24, 2013).

²⁹⁸ See previous section, "Acknowledge and Codify the Use of Force"

which prevents almost everyone from accessing any information about the strikes.²⁹⁹ The CIA can deny the existence of programs to the majority of the United States government. However, the Department of Defense is more constrained when it comes to their classification system with regards to secrecy. The Department of Defense classifies its most secret missions as “clandestine.”³⁰⁰ This slight difference of rhetoric changes the ability of the judicial and legislative branches to review and question targeted killing programs.

Under a classification of “clandestine”, the Department of Defense and JSOC are allowed to keep missions secret.³⁰¹ However, if questioned by Congress or certain members of the judicial branch they are required to admit to the programs existence and divulge all information that does not compromise current or future missions.³⁰² Much of the controversy around drones comes from the mystery of the process and execution of targeted strikes.³⁰³

By giving the jurisdiction over targeted strikes to the DoD the U.S. military would be able to discuss the drone program publically and with Congress. They would be able to answer questions about the process to the best of their ability. Although JSOC is still a secretive organization, moving the drone program to the Department of Defense is a good step toward increasing the transparency surrounding the program.

The CIA and Plausible Deniability

As is the nature of the institution, the CIA operates within the legal and diplomatic shadows of the international system. In the case of drones one of the arguments for keeping the program in the CIA is the ability of the CIA to operate under “plausible deniability”. Plausible deniability allows the United States to execute strikes in countries, with the permission of countries that would not publicly support United States drone

²⁹⁹ Gordon Lubold and Shane Harris, "The CIA, Not the Pentagon, Will Keep Running Obama's Drone War," *Foreign Policy*, November 5, 2013

³⁰⁰ Daniel Klaidman, "No More Drones for CIA," *The Daily Beast*, March 19, 2013, section goes here, <http://www.thedailybeast.com/articles/2013/03/19/exclusive-no-more-drones-for-cia.html>.

³⁰¹ Priest, Dana, and William M. Arkin. "'Top Secret America': A Look at the Military's Joint Special Operations Command." *Washington Post*. September 03, 2011.

³⁰² Daniel Klaidman, "No More Drones for CIA," *The Daily Beast*, March 19, 2013, section goes here, <http://www.thedailybeast.com/articles/2013/03/19/exclusive-no-more-drones-for-cia.html>.

³⁰³ See Section on Drones

strikes in their sovereign land. The clearest case for keeping the targeted killing program in the CIA is the case of Pakistan.

Worldwide it is clear that the CIA is executing drone strikes in Pakistan; however neither country formally recognizes this partnership.³⁰⁴ In fact, publicly Pakistani officials have urged the U.S. to stop drone strikes since the program's start in 2004. In October 2013, leaked CIA memos were published stating that the Pakistani government had endorsed and used the CIA drone program to their advantage.³⁰⁵ The CIA memos were marked top secret by the United States but top Pakistani officials were allowed to read and understand these memos. The CIA and the United States used this relationship with Pakistan to execute numerous drone strikes. However, even after the memos were published, the Pakistani government continues to ignore these documents and unite against U.S. executed drone strikes. In a statement after the release of the documents, Prime Minister Sharif said the issue had become a "major irritant" in the Pakistani-U.S. relationship and advocated for an end to drone strikes.³⁰⁶

However, there is a larger issue with the policy of plausible deniability. As previously stated, plausible deniability puts enormous stress on the public relations between countries. Plausible deniability hinders important relationships with our partners and the benefits of "secret" strikes do not outweigh the cost of a jeopardized relationship with Pakistan. Although plausible deniability provided by the CIA is an effective method to execute targeted killings in countries that are only willing to engage in special private relationships with the U.S., it is not an effective policy to solve the long-term problem of terrorism.³⁰⁷

Furthermore, plausible deniability allows the CIA to execute drone strikes with no factor of accountability or need to justify their actions. The lack of accountability, paired

³⁰⁴ Miller, Greg, and Bob Woodward. "Secret Memos Reveal Explicit Nature of U.S., Pakistan Agreement on Drones." *Washington Post*. October 24, 2013. http://www.washingtonpost.com/world/national-security/top-pakistani-leaders-secretly-backed-cia-drone-campaign-secret-documents-show/2013/10/23/15e6b0d8-3beb-11e3-b6a9-da62c264f40e_story.html.

³⁰⁵ Miller, Greg, and Bob Woodward. "Secret Memos Reveal Explicit Nature of U.S., Pakistan Agreement on Drones."

³⁰⁶ Miller, Greg and Bob Woodward, "Secret Memos Reveal Explicit Nature of U.S., Pakistan Agreement on Drones."

³⁰⁷ Whitlock, Craig. "Remote U.S. Base at Core of Secret Operations." *Washington Post*. December 01, 2012.

with numerous, unexplained strikes performed by the CIA has caused a great amount of anti-American sentiment in Pakistan and around the world, further threatening our relationships abroad.³⁰⁸ The policy of plausible deniability of targeted killings is not a long-term solution to terrorism and must be changed. The United States must use the institutions and laws it has in place to regulate force. CIA strikes conducted in secret are not a long-term policy solution. The regulation and structure of the United States military is the only way to move such a controversial program out of the shadows, and forward toward a future that consist of the appropriate and transparent use of lethal force.

The CIA and Effective Strikes

The second argument for maintaining the CIA's control over the drone program is that the CIA is effective at executing strikes. The CIA's ability to execute drone strikes stems from its structure.³⁰⁹ Once a decision is made that a target must be eliminated, the CIA does not have to go through a military chain of command to launch a drone strike.³¹⁰ The civilian in charge can simply approve the strike once they have received the green light. The CIA is given significant discretion to strike when they see necessary. The CIA's effectiveness also stems from its role as an intelligence-gathering agency. The CIA can quickly turn its intelligence into action by being both the source of the intelligence and the executor of force.

However, the reasons for the effectiveness of the CIA are also the reasons that the DoD must take over the drone program. Firstly, the CIA can execute these strikes because they have minimal oversight that prevents them from launch drones at certain subjects. The effectiveness of the CIA is a result of their lack of accountability for their actions, both to the United States government and to the world. Secondly, the CIA was formed to gather intelligence, not to execute force on the behalf of the United States military. Although permitted to use force when necessary in covert operations, the Central Intelligence Agency was not formed, and is not structured, to oversee and execute

³⁰⁸ Anti-American sentiment has been known to encourage terrorism as is discussed in Section **ideology**

³⁰⁹ Miller, Greg. "Obama's New Drone Policy Leaves Room for CIA Role." Washington Post. May 27, 2013.

³¹⁰ Zenko, Micah. "Transferring CIA Drone Strikes to the Pentagon." Council on Foreign Relations. April 2013.

acts of violence and war on a conventional basis.³¹¹ The CIA should refocus its efforts toward its original purpose, gathering intelligence to support and inform the actions of the military and the DoD.

The Department of Defense provides the United States Government with a tried and true framework to control and successfully execute lethal force. This report has argued that drones just another weapon of war and should therefore be used only within the tested framework of the Department of Defense. By moving targeted strikes and the drone programs from the CIA to the DoD, the United States can effectively move away from a controversial and legally questionable policy to a counterterrorism approach that limits the use of legal lethal force.

Recommendations

- 1) The Central Intelligence Agency should transfer all targeted killing programs to the Department of Defense.** The Central Intelligence Agency is an intelligence-gathering agency and does not have the proper infrastructure, oversight and review process to allow it to legally execute lethal force. The Department of Defense and the United States military are the only institutions with the appropriate structure to oversee the use of lethal force.

³¹¹ Zenko, Micah. "Transferring CIA Drone Strikes to the Pentagon." Council on Foreign Relations. April 2013.

Section III

Alternative Strategies for Combating Global Terrorism

Shifting Strategies – Waging a Smarter War on Terror

A continued use of force cannot be adequately addressed “absent a broader international and interagency approach.”³¹² A war reliant on U.S. military might against extremist groups cannot continue indefinitely. The nature of this conflict is quickly producing a permanent state of war and this conflict requires a new approach to the use of force that is ethical, transparent, and accountable to the American people it aims to protect. As Admiral Mullen has stated, “We can’t kill our way to victory, and no armed force anywhere can deliver these keys alone. It requires teamwork and cooperation.”³¹³ An alternative strategic vision to that of the current AUMF requires a newer, comprehensive security strategy that will undermine the ideology of our enemies. These alternatives include:

- Understanding and delegitimizing violent extremist ideology encompassed by al Qaeda and its offshoots.
- Shifting away from a military approach to a counterterrorism strategy that relies more heavily on law enforcement to counter terrorist activities.
- Establishing and reinforcing the use of the 3Ds model. This will include:
 - 1) **Defense:** U.S. security agencies must shift their focus toward providing effective training and equipment, and expand Building Partner Capacity (BPC) programs so that our allies can take the lead in providing security for their regions. Expanding the BPC model to ungoverned regions would open these regions to beneficial economic growth.
 - 2) **Diplomacy:** It is imperative we rethink diplomatic strategies to re-message our intended values and objectives as well refocus our policy toward the Middle East.

³¹² Adm. Mike Mullen, Hearing on Iraq and Afghanistan. House Armed Services Committee, September 10, 2008. <http://www.dod.gov/dodgc/olc/docs/testMullen080910.pdf>

³¹³ Ibid.

- 3) **Development:** We must recalibrate our national foreign assistance apparatus to effectively leverage short-term and long-term development assets that best support defense and diplomacy in “winning the hearts and minds” of disaffected populations in the developing world.

Our measures of success cannot sustainably be gauged according to the use of lethal force but rather should be judged by our ability to win the respect and support of the local populace we engage with on a daily basis.³¹⁴ Winning the battle of wits, as General David Petraeus stated, will require a renewed approach to protecting local populations and building the security capacity of our partners abroad to counter terrorism locally.³¹⁵ While we have killed key leaders of al Qaeda, their ideology has endured and it is spreading in ways that have not eliminated risks of potential terrorist attacks.

The unique nature of this conflict warrants a new approach to the use of force that must be grounded in a respect for the values and rule of law enshrined in domestic and international law. To do so, the United States must clarify short-term goals on the use of military force as well as specify actionable recommendations toward narrowing the scope of military force.

Our continued military presence reinforces our enemies’ belief that the United States means to propagate Western aggression abroad or that we aim to kill Muslims. Military influence will create more enemies than “our operations can eliminate.”³¹⁶ In the eyes of the jihadists, continued U.S. military aggression “confirms Mr. bin Laden’s decade-old claims that the United States is at war with the Muslim world” and we are doing little to prove them wrong.³¹⁷

³¹⁴ Adm. Mike Mullen, Hearing on Afghanistan Troop Withdrawals, House Armed Services Committee, June 23, 2011. http://armedservices.house.gov/index.cfm/files/serve?File_id=1c315563-ca19-42e9-b92b-8a4d848b1365

³¹⁵ Gen. Stanley McChrystal. ISAF Commender’s Counterinsurgency Guidance. International Security Assistance Force. Kabul, Afghanistan. 2009.

³¹⁶ Hughes, Michael. “Petraeus COIN guidance focuses on corruption, culture, and public relations.” *The Examiner*. August 4, 2010. <http://www.examiner.com/article/petraeus-coin-guidance-focuses-on-corruption-culture-and-public-relations>

³¹⁷ Shane, Scott. "London, Madrid, Bali. And Yet Nothing Here.." *NY Times*, September 11, 2005. http://www.nytimes.com/2005/09/11/weekinreview/11shane.html?pagewanted=print&_r=0 (accessed February 2, 2014).

As we begin to significantly reduce our use of military force, we need to build strategic partnerships based on shared values and goals. Our use of force will diminish, as it should, and the partnerships we build with our allies will last longer than any military superiority can observe.³¹⁸ Furthermore, we need our partnerships and development strategy to be envisioned with local populations “involved as active participants in the success of their communities.”³¹⁹ Therefore, the keys to us ending our permanent state of war rest with our ability to understand our enemy, work with our partners, and use law enforcement to counter terrorism.

³¹⁸ Adm. Mike Mullen, Hearing on Afghanistan Troop Withdrawals, House Armed Services Committee, June 23, 2011.

³¹⁹ Gen. Stanley McChrystal. ISAF Commender’s Counterinsurgency Guidance. International Security Assistance Force. Kabul, Afghanistan. 2009.

Part I: Combating an Ideology—How Al Qaeda Recruits

By Jwanah Qudsi

This section explores the effect of the 2001 Authorization for the Use of Military Force (AUMF) on al Qaeda's expansion potential and its ideological message. The military activities and policies that the United States has carried out abroad, especially since 9/11, have generated mass amounts of animosity in certain Muslim countries. This sentiment, along with simple theocratic rhetoric and a strong marketing campaign are what al Qaeda uses to fuel its ideology. In other words, the more the United States expands its military activities, the easier it is for al Qaeda to render its point legitimate in the eyes of its present and future adherents. The United States' policies in the War on Terror have therefore not deterred, but instead have helped sustain al Qaeda since 9/11. In order to reverse that effect the United States needs to reshape our strategy so that it is more effective in combating al Qaeda's rhetoric and recruitment efforts.

To support this argument, this section will first explain al Qaeda's message, address how it has lasted so long, and demonstrate how it uses rhetoric claiming, that "Islam is under attack," mainly by the U.S., to motivate its members. This section will then explain how al Qaeda delivers its message to potential recruits both in the United States and in the rest of the world through effective communication strategies and provision of social services.

At this point it is important to remember that al Qaeda itself has not been the sole target of military force used by the United States in the War on Terror, but that this section will only discuss al Qaeda's ideology. Many nuances in ideological differences among differing extremist groups exist, and it is important to be aware of those differences. However, because of al Qaeda's roll as an umbrella organization for smaller groups, and because of their mention in the language of the 2012 NDAA, al Qaeda's per **Al Qaeda's Message, its History, and How it has Transformed—A Simple Populist Message**

Al Qaeda, unlike other Muslim militant extremist groups, has succeeded in sustaining itself, its ideology, and growing into its current size by using a very simple, populist message.

When al Qaeda was formed in 1989, Osama bin Laden had just witnessed the end of the 1979-1989 Soviet-Afghan War. A young bin Laden had been drawn to Afghanistan at the age of 23³²⁰ to fight a holy war, a *jihad* against the Soviet invasion of the Muslim country, inspired by the religious sermons of Palestinian cleric Abdullah Azzam. When the war came to an end, bin Laden and Azzam, along with a few others including current al Qaeda leader Ayman al Zawahiri,³²¹ formed “the base,” or “al Qaeda” in Arabic. Azzam had hoped that the creation of this organization would mean that he would not need to disband his army of Arab volunteers and would allow him to undertake the broader goal of reconquering the Muslim world.³²²

Azzam, however, was killed in Peshawar by a car bomb in 1989. His disciple and the new *emir* (which literally means “prince” in Arabic) bin Laden, decided to give the organization a new message; a message that has helped al Qaeda grow rapidly and remain prominent worldwide.³²³

Up until bin Laden’s era, militant Islamists had called for the creation of an Islamic state, an *Umma* that would extend across all Muslim nations and unite them. This was the ideology created by Sayyid Qutb in the 1960s, but was also the ideology Azzam, himself a disciple of Qutb, wished to instill in al Qaeda. This message, however, was not enough to mobilize large numbers of Muslims, since not many were willing to sacrifice their lives for the “abstract” notion of an Islamic state. In fact, al Qaeda strategist Abu Musab al Suri has added that Muslims are much more likely to die for a cause such as the liberation of the Al Aqsa mosque in Jerusalem, or the liberation of countries under occupation such as Palestine, Afghanistan, and Iraq. This second approach was the one bin Laden chose to craft his message with, and it did indeed prove more successful.

³²⁰ Moyers, Bill, “Brief History of Al Qaeda,” *PBS KCTS9*, accessed January 25 2014, <http://www.pbs.org/moyers/journal/07272007/alqaeda.html>

³²¹ Wander, Andrew, “A history of terror: Al-Qaeda 1988-2008” *The Guardian*, Jul 12 2008, <http://www.theguardian.com/world/2008/jul/13/history.alqaida>

³²² Gérard Chaliand and Arnaud Blin, *The History of Terrorism, From Antiquity to Al Qaeda*, (Berkeley: University of California Press, 2007), p314

³²³ Brynjar Lia, “Explaining Al Qaeda’s Continued Appeal”, *Final Report of the NATO Human Factors and Medicine Research Task Group 140 (2011)*, accessed January 20th 2014, <http://ftp.rta.nato.int/public/PubFullText/RTO/TR/RTO-TR-HFM-140/TR-HFM-140-05.pdf>

Al Qaeda has therefore avoided the missteps and failures of other Muslim extremist organizations by propagating a simple, populist, pan-Islamic message that, rather than being revolutionary, is based on the notion of “Islam is under attack.” The simplicity of this message is precisely what has made it so easy to propagate.

A Provocative, Violent, and Religious Vocabulary

In addition to its simple populist message, al Qaeda has adopted a provocative, sensationalist vocabulary that is apparent in general al Qaeda statements as well as in those attributable to bin Laden and Ayman al Zawahiri. This strong vocabulary uses the West’s policies as a centerpiece, violently denouncing its “conspiracy”^{324*} against Muslims and its favoritism for a “so-called state of Israel.”³²⁵

Among the phrases most commonly used by al Qaeda leaders and members is the “Zionist-Crusader alliance.” This expression, which refers to the collaboration of Israel and the United States, is used eight times in bin Laden’s first “Fatwa” against the United States in 1996 alone.³²⁶ The words “Crusader” and “Zionist” are subsequently used in all of the following key speeches to refer to the United States (or sometimes the West)³²⁷ and Israel respectively. This vocabulary is what helps al Qaeda portray these two entities as the enemy that Islam needs to combat, drawing on shared memories of the actual the Crusader invasions.

On the other hand, al Qaeda refers to Muslims as “brothers” and urges them to fulfill “obligations” to fight “injustice.” Al Qaeda’s 2011 statement declaring Zawahiri as bin Laden’s successor calls on Muslims to “battle the pagan invaders who violate the

^{324*} Bin Laden actually says this in his 1996 Fatwa: “but also with a clear conspiracy between the USA and its’ allies and under the cover of the iniquitous United Nations, the dispossessed people were even prevented from obtaining arms to defend themselves.” in reference to the “atrocities” that the world has stood by and watched.

³²⁵ “Text of al Qaida’s announcement that Zawahiri is its leader” *McClatchy Newspapers*, June 16 2011, accessed January 25 2014, <http://www.mcclatchydc.com/2011/06/16/115999/text-of-al-qaidas-announcement.html>

³²⁶ “Bin Laden’s Fatwa” *PBS Newshour*, August 23 1996, http://www.pbs.org/newshour/updates/military-july-dec96-fatwa_1996/

³²⁷ Lia, 2011

homes of Islam, led by America the Crusader and its sidekick, Israel... We will fight them with all our strength.”³²⁸

In addition to all of this, of course, is the religious rhetoric that accompanies the Muslim call to duty. The word “Allah” (Arabic for “God”) is obligatory in all letters whether they be to salute the Muslims or to promise them all the virtues they will gain from taking part in this global *jihad*. “Nothing is more sacred than belief except repulsing an enemy who is attacking religion and life,” says bin Laden in his first Fatwa in 1996, quoting an important Muslim Imam. “The morrow is nigh for he who awaits,” he adds in his 2007 video address to Americans on the sixth anniversary of 9/11.³²⁹ Bin Laden also admitted to Robert Fisk in a 1993 interview in Sudan that he was never afraid of death. Bin Laden stated, “As Muslims, we believe that when we die, we go to heaven. Before a battle, God sends us *seqina*, tranquility.” Al Qaeda and bin Laden therefore not only convince Muslim followers that their quest will be rewarded in the afterlife, but that God, Allah, will give them the strength to *win*.

Al Qaeda’s Message: Adaptive, Anti-Foreign Occupation Rhetoric

“More than 95 percent of all suicide attacks are in response to foreign occupation”

—Robert A. Pape,
Foreign Policy, 2010

The core argument of al Qaeda’s message is derived through the obfuscation of U.S. foreign policy. Every one of bin Laden’s video messages (which began appearing in 2001) has mentioned (or addressed) the United States, underlining U.S. involvement in conflicts abroad and criticizing them. Al Qaeda has focused greatly on U.S. support of Israel, the Jewish “Zionist” entity occupying the Holy Land of Islam³³⁰ and perceived U.S. responsibility for the “murder” of Muslim Palestinians in Jerusalem.³³¹

³²⁸ “Text of al Qaida’s announcement that Zawahiri is its leader” *McClatchy DC*, June 16 2011, <http://www.mcclatchydc.com/2011/06/16/115999/text-of-al-qaidas-announcement.html>

³²⁹ “‘The Solution’ – A Video Speech from Usama bin Laden Addressing the American People on the Occasion of the Sixth Anniversary of 9/11 – 9/2007” <http://counterterrorismblog.org/site-resources/images/SITE-OBL-transcript.pdf>

³³⁰ “Al Qaeda: Declarations & Acts of War” *The Heritage Foundation*, <http://www.heritage.org/research/projects/enemy-detention/al-qaeda-declarations>

³³¹ “Al Qaeda’s Second Fatwa” *PBS Newshour*, February 23 1998, http://www.pbs.org/newshour/updates/military-jan-june98-fatwa_1998/ “Third, if the Americans’

In a video sent to Al Jazeera news channel on Oct. 29, 2004 in which bin Laden takes credit for the events of Sept. 11 for the first time, he says that the events that “affected [his] soul in a direct way” and allowed him to even imagine that 9/11 was his witnessing of the Israeli Invasion of Lebanon in 1982. “I couldn't forget those moving scenes, blood and severed limbs, women and children sprawled everywhere. Houses destroyed along with their occupants and high rises demolished over their residents, rockets raining down on our home without mercy,” he said, appealing to the emotions of his target audience in order to vilify the United States.³³²

Although this anti-Israel and anti-U.S. rhetoric largely dominated the early statements made by bin Laden and al Qaeda up until Sept. 11, the organization has also *adapted* its rhetoric to the changing nature of U.S. foreign policy since 2001. U.S. wars in Iraq and Afghanistan have been incorporated into jihadist rhetoric and have become key arguments in al Qaeda's post 9/11 statements.

In addition to taking credit for 9/11 in his 2004 address, bin Laden also places a great deal of importance on the 2003 Invasion of Iraq, which claimed the lives of over 115,000 Iraqi civilians and almost 500,000 people total.³³³ Subsequently, al Qaeda began further emphasizing how this foreign invasion sought to “plunder” Iraq's oil resources, and how it was costing the lives of Muslim civilians, creating yet another reason to fight the United States. Bin Laden and the leader of al Qaeda's affiliate in Iraq, Abu Musab al Zarqawi began calling the Iraq war a “golden and unique opportunity for jihadists to engage and defeat the United States.”³³⁴

Scholars have therefore concluded that the U.S. invasions of Iraq and Afghanistan following 9/11 have not succeeded in winning the War on Terror, but instead have helped

aims behind these wars are religious and economic, the aim is also to serve the Jews' petty state and divert attention from its occupation of Jerusalem and murder of Muslims there”

³³² Author Unknown, “Bin Laden Claims Responsibility for 9/11” *Fox News*, October 30 2004, accessed January 31st 2014, <http://www.foxnews.com/story/2004/10/30/bin-laden-claims-responsibility-for-11/>

³³³ Sheridan, Kerry, “Iraq Death Toll Reaches 500,000 Since Start Of U.S.-Led Invasion, New Study Says” *Huffington Post*, Oct 15 2013, accessed February 16 2014 http://www.huffingtonpost.com/2013/10/15/iraq-death-toll_n_4102855.html

³³⁴ “Al Qaeda: Statements and Evolving Ideology” The Navy Department Library <http://www.history.navy.mil/library/online/al-queda%20evolve.htm>

strengthen al Qaeda's message by reinforcing some their claims. Byman argues that the U.S. war in Iraq actually helped *rescue* al Qaeda both operationally and ideologically. "The war vindicated Bin Laden's message ... proving' to skeptics that the United States was indeed bent on controlling the Islamic world." He also adds that the war motivated new young jihadists to travel to Iraq and fight.³³⁵ Pape argues that the U.S. occupation of two large Muslim countries, in addition to using military force in Muslim countries such as Yemen, Somalia, Sudan, etc, and "compelling a huge Muslim army to root out a terrorist sanctuary" in Pakistan is what motivates attempted terrorist attacks against the United States. He explains that although The United States may be safer today than on 9/11 because there have not been any successful attacks on U.S. soil since, it is "perilously unsafe" in a broader sense because each month there are more attempted suicide bombings against the U.S. and its allies in Afghanistan, Iraq, and other Muslim countries than in all the years before 9/11 combined.³³⁶

Finally, aside from the U.S. military presence abroad via troops and financial support of Israel, the use of drones for targeted strikes by the United States has also exacerbated the sentiment of anger against them in the Middle East. Previous sections of this paper have explained the psychological effects of drones on a population more elaborately, but it should also be noted that this disruption of the psyche is an important factor that leads youth to join al Qaeda. In this case however, the recruits join less for the ideology, and more out of rage, despair, and a sentiment of revenge after witnessing the deaths of their loved ones. According to Meleagrou-Hitchens, from the International Center for the Study of Radicalization, "drones will always be an easy way for [organizations like al Qaeda] to gain anti-American support, when something like a drone strike comes crashing down in people's front bedrooms or front rooms, that's going to help you recruit and radicalize, absolutely."³³⁷ Even Robert Grenier, a former CIA station

³³⁵ Byman, Daniel, "The History of Al Qaeda," *Brookings Institution*, September 1, 2011, <http://www.brookings.edu/research/opinions/2011/09/01-al-qaeda-history-byman>

³³⁶ Pape, Robert, "It's the Occupation, Stupid" *Foreign Policy*, Oct 18 2010, accessed Jan 30 2014, http://www.foreignpolicy.com/articles/2010/10/18/it_s_the_occupation_stupid

³³⁷ Cox, Joseph, "Are American Drones Al Qaeda's Strongest Weapon in Yemen?", *Vice*, August 19, 2013, accessed January 20 2014, <http://www.vice.com/read/are-us-drones-al-qaedas-strongest-weapon>

head, has argued that “carelessly” targeted drone strikes will only further encourage Yemenis to join al Qaeda in the Arabian Peninsula (AQAP).³³⁸

The United States’ foreign policy has therefore been at the center of al Qaeda’s ideology, because it is very easy for al Qaeda to criticize, and subsequently, demonize it. Al Qaeda not only uses past U.S. policy to strengthen its stance, it adapts its message with the changing nature of U.S. military presence abroad.

Rethinking U.S. Strategy

“The key to an exit strategy is to exit,” says Brookings’ Bruce Riedel. As the U.S. has indeed exited Iraq since this statement was made in 2007, the answer as to how the U.S. should sway al Qaeda’s influence and delegitimize its ideology is still to envision a long-term disengagement of the U.S. from aggressive military activity in Muslim countries. Another essential part of delegitimizing al Qaeda’s ideology is removing their cornerstone argument, that of the occupation of Palestine. Riedel called the Arab-Israeli peace policy a way to “pull the rug out from under al Qaeda,” stressing that if the conflict no longer existed, the rationale behind al Qaeda’s narrative would crumble.³³⁹

How al Qaeda Diffuses its Message

This sub-section will first explain the principal ways in which al Qaeda spreads its message and expands its clout to potential recruits worldwide, and then it will suggest one way in which that influence can be limited.

Al Qaeda’s Image: Notorious and Famous, Largely Thanks to Western Media

An important element in al Qaeda’s message-spreading strategy is the image that is often associated with its name. Since 9/11 al Qaeda has gained much notoriety worldwide, however, this increase in fame has been especially evident in the Muslim

³³⁸ Grenier, Robert, “Yemen and the US: Down a Familiar Path,” *Al Jazeera*, May 10 2012, accessed February 15 2014, http://www.aljazeera.com/indepth/opinion/2012/05/201251071458557719.html?utm_source=Press+mailing+list&utm_campaign=f6f7c603ab-2012_05_11_drones_Munter_CIA&utm_medium=email “One wonders how many Yemenis may be moved in future to violent extremism in reaction to carelessly targeted missile strikes, and how many Yemeni militants with strictly local agendas will become dedicated enemies of the West in response to US military actions against them. AQAP and those whom it trains and motivates to strike against civilian targets must continue to be resisted by the joint efforts of the civilised world.”

³³⁹ Bruce Riedel, “The Search for Al Qaeda,” (Washington: Brookings Institution Press, 2008), 135

world. Lia argues that the 9/11 attacks on The United States made al Qaeda and bin Laden a “household name” worldwide. This household name is further propagated by the important place that al Qaeda occupies in the media, what British Prime Minister Margaret Thatcher called “oxygen for publicity.”³⁴⁰ “Surely Rupert Murdoch’s network, with its saturation of coverage on the War on Terror, did more to elevate bin Laden’s profile than any other news outlet,” says David Ignatius, referring to Fox News.³⁴¹ The media attention that has been given to al Qaeda portrays it as a “vanguard” to Muslims around the world, and especially to its followers.³⁴² Even George W. Bush’s declaration of the War on Terror is said to have contributed immensely to al Qaeda’s popularity, making it into a strong brand name.

Al Qaeda, of course, knows this, and uses it to its advantage. Ignatius argues that bin Laden had an obsession with the media side of his war against the United States. Bin Laden even had his own U.S.-born media adviser, Adam Gadahn, who advised him on the best times to release his videos after 2010 — around the time of the U.S. midterm elections for example or on the anniversary of 9/11 — and to publish them in high-definition. Gadahn had his own opinions about each of the U.S. main media outlets, he hated Fox news, has mixed feelings about CNN, and complemented CBS and ABC, and also had a strategy about which sources to offer “scoop” material to in order to best propagate the message in question. This strategic use of the mass media is therefore another essential aspect of al Qaeda’s sustained appearance and appeal, one that helps them rally more troops.

A Battle for Hearts and Minds

Although al Qaeda has managed to rally followers around its ideology, it has also alienated some local populations with the level of violence it employs. Gadahn, in a letter to bin Laden, listed 13 operations that showed “the tragedy of tolerating the spilling of

³⁴⁰ Norway. Norwegian Defence Research Establishment. *Causes of Terrorism: An Expanded and Updated Review of the Literature*. By Lia Brynjar and Skjølberg Katja. Kjeller: FFI Rapport, 2004. <http://rapporter.ffi.no/rapporter/2004/04307.pdf>.

³⁴¹ Ignatius, David, “How al-Qaeda tried to control the media” *The New York Times*, March 20 2012, http://www.washingtonpost.com/opinions/al-qaedas-attempts-to-control-the-media/2012/03/20/gIQAbu0EQS_story.html

³⁴² Brynjar Lia, “Explaining Al Qaeda’s Continued Appeal”, *Final Report of the NATO Human Factors and Medicine Research Task Group 140 (2011)*, accessed January 20th 2014

[Muslim] blood.” Gadahn even attributed al Qaeda reversals in Iraq and elsewhere to “punishment by God on us because of our sins and injustices.”³⁴³ Al Qaeda has therefore realized the need to win the “hearts and minds” of Muslims, and has done so through a strategic marketing strategy which consists in improving its image online and appealing to local populations with social services that their governments fail to offer them.

According to David Kilcullen, Jabhat al-Nusra, the al Qaeda affiliated Islamist militant faction in Syria, which has made it onto the U.S. State Department’s Foreign Terrorist Organizations list,³⁴⁴ was borrowing tactics from other militant organizations such as Hezbollah by providing social services and protection to local populations under its control.³⁴⁵ This has made al Qaeda affiliated groups in certain territories into more of an insurgency that thrives on the support of local populations rather than just an ideological transnational movement. This new attribute has further promoted al Qaeda’s popularity in conflict-ridden and poorly governed areas. The following sections will give examples of al Qaeda social service efforts, of online marketing campaigns, and of online al Qaeda outreach to potential recruits.

Al Qaeda’s Online Marketing Strategy

In a time when social media is enough to mobilize entire revolutionary movements, violent and extremist organizations have used a vast array of Twitter feeds, YouTube videos, and Facebook pages to motivate their followers.³⁴⁶

One organization that uses Twitter to promote its cause is Jabhat al Nusra, an al Qaeda affiliate in Syria. Jabhat al Nusra has several twitter pages on which it diffuses

³⁴³ Ignatius, David, “How al-Qaeda tried to control the media” *The New York Times*, March 20 2012, http://www.washingtonpost.com/opinions/al-qaedas-attempts-to-control-the-media/2012/03/20/gIQAbu0EQS_story.html

³⁴⁴ In fact, Victoria Nuland, State Department Spokesperson, in a Press Statement released on Dec 11 2012, designated Jabhat al Nusra as an “Alias” of Al Qaeda in Iraq. <http://www.state.gov/r/pa/prs/ps/2012/12/201759.htm>

³⁴⁵ Slavin, Barbara, “Al-Qaeda-linked group exploits ISIS decline in Aleppo,” *Al Monitor*, February 20, 2014, accessed Feb 20 2014, http://www.al-monitor.com/pulse/originals/2014/02/al-qaeda-isis-aleppo-gains-syria.html?utm_source=Al-Monitor+Newsletter+%5BEnglish%5D&utm_campaign=11be3d1a1c-January_9_2014_8_2014&utm_medium=email&utm_term=0_28264b27a0-11be3d1a1c-93137369

³⁴⁶ Schmitt, Eric, “A U.S. Reply, in English, to Terrorists’ Online Lure,” *The New York Times*, Dec 4 2013, accessed January 30 2014, <http://www.nytimes.com/2013/12/05/world/middleeast/us-aims-to-blunt-terrorist-recruiting-of-english-speakers.html>

news and posts recordings of messages from its leader, Abi Muhammad Al-Jolani. This group's Twitter and Facebook activity will be the case study used for this sub-section.

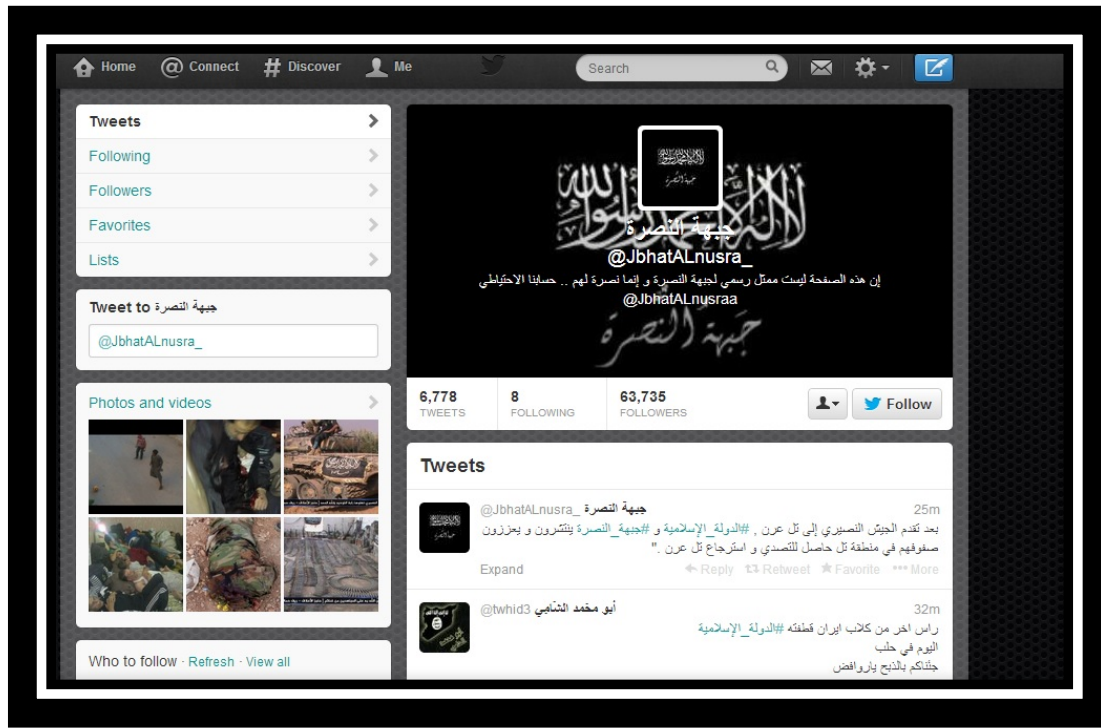


Figure 1: Screen shot of Jabhat al Nusra's most popular Arabic twitter page from November 2013, today this twitter handle (@JbhatAlnusra) no longer exists.

The authenticity of these pages is difficult to verify, but the group has managed to rally up tens of thousands of followers, and use the pages to spread news of its attacks, pictures of its victims, video and audio messages from its leaders, and most importantly, influence. The group has both English and Arabic pages, though the latter generally have many more followers: 83,000 on the most followed Arabic page today @JbhatAlnusra versus about 2,500 on the most followed English one @AlNusrah.

One of the webpages that was very popular in 2013 has disappeared from Twitter (a practice that will be discussed in the following subsection). Figure 1 is the last post that was made was in April 2013, consisting of a link to download a voice clip of Al-Jolani, al Nusra's leader.

Again, it is important to reiterate that the authenticity, the plausibility, and the true source of these pages cannot be confirmed. Their existence in itself, however, is an

indication of how al Qaeda-affiliated groups can have an effective online marketing strategy that promotes their cause and allows them to reach out to Muslim youth.

Social Services: Al Qaeda's image as a Social Philanthropist

Another strategy that al Qaeda uses to win the hearts and minds of its followers is to offer social services, especially in regions where the local government cannot. This idea will be expanded upon in a later section about development strategies.

One example of this was the road building initiative that Osama bin Laden took in Sudan a few years after the end of the Afghan - Soviet War in 1993.³⁴⁷ The project consisted of building a 745 mile-long highway connecting the rural village of Almatig to the capital, Khartoum and extending it all the way to Port Sudan—all at bin Laden's expense. The initiative was welcomed by the locals of the area, one sheikh from Almatig told Robert Fisk, the first western journalist to have interviewed bin Laden, that they had been waiting for the road since the beginning of the past three revolutions. "We waited until we had given up on everybody—and then Osama Bin Laden came along," he said.

Bin Laden, with the help of his jihadi army of followers who fought for him in Afghanistan, therefore managed to win the "hearts and minds" of the local populace of Sudan, by offering them infrastructure that would improve their economic situation.

Today, such behavior can also be observed in Syria, where Jabhat al Nusra has established local Sharia Councils and other civil society organizations.³⁴⁸ Figure 2 shows a Twitter post on the Nusra Twitter page that claims their Sharia Council in the city of Aleppo organized the removal of debris and garbage from streets and sidewalks in April 2013.

These kinds of projects are exactly the kind of social philanthropy that al Qaeda and its affiliates uses to appeal to its potential recruits and improve its image.

³⁴⁷ Fisk, Robert, "Anti-Soviet warrior puts his army on the road to peace: The Saudi businessman who recruited mujahedin now uses them for large-scale building projects in Sudan. Robert Fisk met him in Almatig" *The Independent*, Dec 6 1993, accessed January 30 2014.
<http://www.independent.co.uk/news/world/antisoviet-warrior-puts-his-army-on-the-road-to-peace-the-saudi-businessman-who-recruited-mujahedin-now-uses-them-for-largescale-building-projects-in-sudan-robert-fisk-met-him-in-almatig-1465715.html>

³⁴⁸ "Governance in Aleppo." First Mile Geo. February 2014. Accessed March 02, 2014.
http://www.firstmilegeo.com/case_studies/aleppo/governance.



Figure 2: Snap shot of the @JbhatALnusra Twitter page taken on February 22nd 2014.

The Internet to Recruit: Al Qaeda's Jihadi Forums

Whereas established Islamic political movements such as the Muslim Brotherhood choose to communicate with the public through official websites, al Qaeda and its affiliates communicate with their followers through online Arabic language discussion forums. These forums are now recognized as essential hubs for the propaganda and recruitment efforts of al Qaeda.³⁴⁹

The websites are not easy to access and usually require that specific links and passwords be communicated with the potential recruit in order to read them. One New York Times article described the process as follows:

For example, this past Sept. 11 [2006], Abu Omar said, a link sent to a jihadist e-mail list took him to a general interest Islamic Web site, which led him to a password-protected Web site, then onto yet another site containing

³⁴⁹ Mohammed Ali Musawi, *Cheering for Osama, How Jihadists use internet discussion forums* Quilliam, August 2010, ISBN number: 978010906693-13-7 <http://www.quilliamfoundation.org/wp/wp-content/uploads/publications/free/cheering-for-osama-how-jihadists-use-the-internet-forums.pdf>

*the latest release from Al Qaeda: a lecture by its No. 2 man, Ayman al-Zawahri, threatening attacks on Israel and the Persian Gulf. Abu Omar said he then passed the video to friends and confidants, acting as a local distributor to other sympathizers.*³⁵⁰

Through these online forums, al Qaeda not only spreads its message and its ideology with letters and video/audio messages from its leadership, it also offers potential recruits training, financial support, and weapons. According to a Daily Mail article published in 2012, a few of the most prominent jihadist forums, including “Al-Fidaa,” “Shmouk,” “al-Islam,” and “Honein,” were publishing advertisements prompting potential suicide bombers to contact unspecified people via email with details about their experience and their proposed targets in the U.S., Israel, and France in order to offer them training.³⁵¹ As many of these websites are in Arabic, some groups have begun targeting English-speaking populations the world over.

Al Shabaab, an Islamist militant group in Somalia, has begun placing English subtitles on its website propaganda. Homegrown U.S. terrorists (who account for the majority of convicted terrorists in the U.S.)³⁵² are also often recruited via entirely English-language jihadi websites. In fact, the Department of State (DoS) announced a campaign against these websites since dozens of Americans began travelling or attempting to travel to Syria in 2011 to fight with the rebels against the Assad regime.

The Department of State’s campaign against these websites is actually handled by the Center for Strategic Counterterrorism Communications, a small office of online analysts and bloggers who try to understand what inspires al Qaeda’s target audience and who speak Arabic, Urdu, Somali, and Punjabi. The objective is to counter al Qaeda’s

³⁵⁰ Fattah, Hassan M., “Al Qaeda Increasingly Reliant on Media,” *The New York Times*, Sep 30, 2006, accessed February 17th 2014, http://www.nytimes.com/2006/09/30/world/30jordan.html?pagewanted=all&_r=0

³⁵¹ Reilly, Jill, “Al-Qaeda posts online recruitment adverts offering training for suicide bombers to target the US, Israel and France,” *The Daily Mail*, June 6 2012, accessed January 31 2014, <http://www.dailymail.co.uk/news/article-2155682/Al-Qaeda-posts-online-recruitment-adverts-offering-training-suicide-bombers-target-US-Israel-France.html>

³⁵² Lake, Eli, “Report: Majority of Convicted Terrorists in U.S. are American Citizens,” *The Daily Beast*, Feb 26 2013, accessed February 5 2014, <http://www.thedailybeast.com/articles/2013/02/26/report-majority-of-convicted-terrorists-in-u-s-are-american-citizens.html>

influence on these websites with deterrent messages. These messages attempt to counter al Qaeda's appeal by spreading their own rhetoric. One example is of an image of a young man from Alabama named Omar Hammami who traveled to Somalia to fight with al Shabaab and was allegedly killed by that group, the image reads, "They came for jihad but were murdered by Al Shabaab." Each of the online posts carries a warning: "Think again. Turn away."³⁵³

Messages coming from the counterterrorism center, unlike those propagated by hired American cyberwarriors in chat rooms, are clearly identified as products of the State Department and will sometimes even carry its logo,³⁵⁴ which seems like it would further alienate an already angry group of young Muslims against The United States. Despite the transparency of identifying these messages as belonging to the DoS, this could be used as yet another argument by al Qaeda against the United States, picturing it as attacking Muslims' freedom of speech, even online.

Countering al Qaeda's online initiatives is therefore already under way by the United States and its allies, but the following recommendation will suggest a more efficient way of doing so. Al Qaeda's attempt to rally followers via the Internet and social media has been thwarted by both the websites in question and government security agencies. Facebook³⁵⁵, YouTube, and Twitter^{356 357} continue to delete and suspend

³⁵³ Ibid.

³⁵⁴ Ibid, "By contrast, the center's postings will be clearly identified as products of the State Department and will in some cases carry the agency's logo, agency officials said. The postings are aimed at foreign websites, though Americans, obviously, can visit the sites."

³⁵⁵ S. Smithson, "Terrorists discover uses for Twitter," *The Washington Times*, April 28 2011, accessed February 15 2014. <http://www.washingtontimes.com/news/2011/apr/28/terrorists-discover-uses-for-twitter/?page=all>

³⁵⁶ Waterman, Shaun, "Twitter suspends Somali terrorist militia's account," *The Washington Times*, Jan 28 2013, accessed Jan 23 2014, <http://www.washingtontimes.com/news/2013/jan/28/twitter-suspends-somali-terrorist-militias-account/?page=all>

³⁵⁷ Dvorin, Tova, "Cyber Victory: Hamas Twitter Accounts Suspended," *Arutz Sheva, Israel National News*, January 19 2014, accessed February 19, 2014, <http://www.israelnationalnews.com/News/News.aspx/176449#.UwkY2kJdV4U>

accounts related to terrorism, and the U.S. government bans access to certain jihadist forum websites.³⁵⁸

Conclusion

Al Qaeda is a non-state actor targeting the United States that fuels its followers not with nationalism or patriotism, but with religious ideology. It recruits Muslims from a vast array of countries by appealing to their emotions with an “Islam is under attack” rhetoric, which, as this section has explained, is much easier than asking Muslims to wage jihad for an abstract concept of a single Islamic *Umma*—state. It illustrates its “Islam is under attack” argument by pointing to both Western occupations of Muslim countries and U.S. military occupation and involvement in those countries as well. It also adapts its message to fit any new U.S. involvement in Muslim countries over time. Its archetypical example of Islam being under attack is the Israel-Palestine conflict, blaming the “Zionist-Crusader” alliance of Israel and the United States of occupying and causing the injustices against Palestinians. This is why this section’s first recommendation will be to further encourage the two-state solution negotiations.

Al Qaeda also uses a specific methodology with which it recruits its followers. It reaches potential recruits around the world through the internet and online jihadi discussion forums, urging them to fight a *jihad* for the Muslim cause and even offering to train them and pay for their travels. In addition to its strategic online marketing campaign, al Qaeda has also adapted insurgency tactics that consist in offering social services to local populations in conflict areas where the government is unable or unwilling to provide these services itself. Al Qaeda has therefore succeeded in winning the “hearts and minds” of its followers and the way in which this section and the subsequent sections propose to counter this influence is by appealing more strongly to the potential recruits than al Qaeda does.

³⁵⁸ Schmitt, Eric, “A U.S. Reply, in English, to Terrorists’ Online Lure,” *The New York Times*, Dec 4 2013, accessed January 30 2014, <http://www.nytimes.com/2013/12/05/world/middleeast/us-aims-to-blunt-terrorist-recruiting-of-english-speakers.html>

Recommendations

1) **Further encourage efforts to achieve an Israeli-Palestinian two-state solution.**

The key to swaying al Qaeda's influence and delegitimizing its ideology is to remove its cornerstone argument, the issue of the continued occupation of Palestine. Riedel called the Arab-Israeli peace process a way to "pull the rug out from under al Qaeda," stressing that if the conflict no longer existed, the rationale behind al Qaeda's narrative would crumble. The United States' continued open support of Israel both militarily and financially has made it easier for al Qaeda to demonize it and paint it as responsible for the plight of Palestinian Muslims. For this reason, the United States must make a strong, clear effort to show that it is in full support of ending the conflict and achieving a two-state solution. Showing the world that the U.S. cares about peace for the Palestinians and not only about supporting its ally, Israel, would take away al Qaeda's ability to claim that the United States "attacking" Islam in Palestine. This would be the first and most important step in showing the world that Islam is not, in fact, "under attack" by the United States. It would be a considerable blow to al Qaeda's ideology and would make it substantially more difficult for al Qaeda to recruit followers.

2) **Grow the "small" office of the Center for Strategic Counterterrorism.** The Center for Strategic Counterterrorism Communications office of the DoS as it currently exists is too small and too limited. Since it carries out the important task of countering al Qaeda's propaganda on jihadi websites in English, then it should also be able to do it on websites that are in foreign languages as well, and should have specialists in more languages than the ones it already has. Pashtu and Farsi are important because they are the languages spoken in Afghanistan and in parts of Pakistan. An important factor would also be to ensure the specialists have a native-level comprehension of the language, so that they can understand al Qaeda's jihadi discussion boards should they employ a dialect specific to certain areas in certain Muslim countries. Finally, as stated in the final section of this paper, the messages should not be clearly identified as products of the State Department and should not carry its logo, for this may further alienate an already angry group of young Muslims against the United States.

Part II: Transitioning to a Law Enforcement Approach – Demilitarizing the War on Terror

By Karen Maniraho & Adriana Meharry

As mentioned in previous sections, the continuous use of military force to fight terrorism throughout the world has been under increasing scrutiny both at home and abroad. The militarized approach to countering terrorism has proven to be unsustainable and counter-productive, and has hurt more than helped the United States' cause.³⁵⁹ In light of this, the United States needs to adjust its approach to counter terrorism. This section argues that the criminal justice model of counterterrorism has several advantages over the militarized model, and that the United States should place greater focus on law-enforcement methods while withholding the use of military force as a last resort. Military force should be used only when capture and criminal prosecution are not viable options and when there is a clear, imminent threat, or a clear need for self-defense. This section will start with a short description of the war model of counterterrorism as well as the criminal law model of counterterrorism, and discuss the benefits of the criminal law model over the war model. Secondly, it will address concerns related to past counterterrorism failures in law enforcement. Lastly, this section will discuss several instances in which terrorism was handled successfully by law enforcement, and make recommendations to strengthen law enforcement efforts to combat terrorism.

Law Enforcement vs. Military Force

Counterterrorism strategy can be divided into two models. The criminal justice model (CJM), in which law enforcement is used to combat terrorism; or the war model (WM), in which military force is used in order to fight terrorism.³⁶⁰ Prior to 9/11, U.S. counterterrorism strategy emphasized cooperation among nations and the primacy of law enforcement, but after 9/11, counterterrorism became consistently reliant on military action in response to the perceived war on terror.³⁶¹ The criminal justice model treats terrorism as a crime given that most terrorist acts constitute crimes that are defined in the

³⁵⁹ Benjamin, Daniel. "Strategic Counterterrorism." *Brookings Institute* (2008).
<http://www.brookings.edu/research/papers/2008/10/terrorism-benjamin>.

³⁶⁰ Ronald D. Crelinsten. Cambridge, UK: Polity Press, 2009.

³⁶¹ *Ibid.*, 9

criminal code.³⁶² The CJM highlights the importance of understanding the root causes of terrorism; recognizes the importance of diplomacy and negotiations as a counterterrorism tool; this model sees human rights, international law, and international cooperation as being of central importance, and underscores the prerogatives of due process.³⁶³ The war model on the other hand, prioritizes the prevention of terrorism through military force rather than upholding liberal democratic rights, treats terrorism as an act of war, privileges the use of force, and relies on unilateralism.³⁶⁴

While the military approach can have advantages—such as the speed at which it can function given that it circumvents lengthy processes such as requests for extradition of suspects—its use prior to 9/11 was minimal. The traditional response to terrorism, both within the United States and abroad, has been to employ the criminal justice model.³⁶⁵ Military action has never been discarded as an option, but it has always been reserved as a last resort.

The terrorist attacks of September 11, 2001 marked a shift in the way the United States chose to handle terrorism. The U.S. took a reactive approach to terrorism, which in the aftermath of 9/11 was widely accepted given that the magnitude of the attacks was enough to incite a response of self-defense and to take military action. Thirteen years later, however, the continual use of military force can hardly be excused since the urgent situation that justified it at that moment no longer exists. At this point, the use of military force indicates a preventive role because in many occasions drone strikes have taken place in order to eliminate a threat. As a result, the use of military force to fight terrorism has been under increasing scrutiny both at home and abroad. One of the reasons for such scrutiny is the undermining of fundamental rights such as due process. This, in turn, not only threatens the fabric of existing democratic societies but also risks becoming normalized and setting a precedent for other nations to follow.

³⁶² Ibid., 52

³⁶³ Ibid., 12, 48

³⁶⁴ Steven, Graeme C. S., and Rohan Gunaratna. Counterterrorism a reference handbook. Santa Barbara, California: ABC-CLIO. 101; Ronald D. Crelinsten. Cambridge, UK: Polity Press, 2009. 73.

³⁶⁵ Gary D. Solis. The law of armed conflict: International Humanitarian Law in War. Cambridge, Cambridge University Press, 2010. 165.

Advantages of the Criminal Justice Model

The continuous use of military force to combat terrorism has not contributed to the United States' goal of defeating the al Qaeda ideology.³⁶⁶ Instead, the use of military force to address the threat has actually created new grievances that contribute to feelings of resentment against the United States.³⁶⁷ An act of terrorism constitutes a crime, and it should be treated as such.³⁶⁸ Accordingly, the United States should place greater focus on the law-enforcement model of counterterrorism, which adheres to due process.

Besides being consistent with democratic governance and widely accepted by the international community, the criminal justice model has several other advantages.³⁶⁹ 1) Treating terrorism as a crime performs a delegitimizing function that works against its glorification. The criminalization of terrorism shows that the use of violence against civilians in pursuit of political, ideological, and religious goals is not acceptable.³⁷⁰ This is the case not only for the would-be-terrorists but also for women and children within their communities who could act in opposition to a terrorist's goals. 2) Terrorists can remain incapacitated while in jail instead of becoming a martyr and inspiring possible followers. 3) Using the CJM is a more ethically acceptable way of dealing with terrorism as it is consistent with universal principles of human rights. This makes the CJM more effective in trying to combat terrorist inclinations and ideology in the long term because it shows that the United States practices what it preaches. As the previous section showed, acting through law enforcement channels discredits the extremist rhetoric that frames the United States as an imperialistic power, and thereby it denies terrorist networks a recruitment tool. This, in turn, helps improve U.S. reputation in areas of the world considered to be possible breeding grounds for extremist ideologies, where most people currently do not see the United States in a positive light—in large part because of excessive military action in their countries. 4) The CJM will ease growing domestic

³⁶⁶ Daniel Benjamin. "Strategic Counterterrorism." Brookings Institute (2008).
<http://www.brookings.edu/research/papers/2008/10/terrorism-benjamin>.

³⁶⁷ Cronin, Audrey. "Why Drones Fail." Foreign Affairs.
<http://www.foreignaffairs.com/articles/139454/audrey-kurth-cronin/why-drones-fail>.

³⁶⁸ Michael Kraft and Edward Marks. U.S. Government Counterterrorism: A Guide to Who Does What. Boca Raton, FL: CRC, 2012. Print. 33

³⁶⁹ Ronald D. Crelinsten. Cambridge, UK: Polity Press, 2009.

³⁷⁰ *ibid.* 57

concerns relating to abuses of power and a lack of transparency within the executive branch.

In a war model of counterterrorism, "...success tends to be defined in terms of victory and defeat,"³⁷¹ and in the struggle against violent extremism this is clearly problematic because terrorism is a tactic, and as such, it cannot be defeated. Not only can terrorism as a tactic not be defeated, but al Qaeda's ideology will not be ultimately defeated by the continuous killing of suspected terrorists because as one dies another one occupies their place.³⁷² Furthermore, innocent people caught in the crossfire take up arms against the country they blame for the violence and the killing of loved ones. The goal of what has been called the War on Terror has often been defined by the "disrupting, dismantling, and defeating" of al Qaeda.³⁷³ Law enforcement is a tool that accomplishes these goals because it is capable of disrupting and dismantling plots through investigation and prevention, and ultimately defeating it by using legal means to convict and delegitimize suspected terrorists—rather than using overwhelming force that can create a sense of injustice and produce further grievances for those who fall victim to it. As analysts point out:

In looking at how other terrorist groups have ended, the RAND study found that most terrorist groups end either because they join the political process, or because local police and intelligence efforts arrest or kill key members. Police and intelligence agencies, rather than the military, should be the tip of the spear against al Qaida in most of the world, and the United States should abandon the use of the phrase "war on terrorism," researchers concluded.³⁷⁴

For democratic societies, the disadvantages of the war model to counter terrorism far outweigh the benefits, especially when used for such an extended period of time. Advocates of the war model claim that national security should be the top priority, but

³⁷¹ Ronald D. Crelinsten. Cambridge, UK: Polity Press, 2009. 75.

³⁷² FBI. "By Lauren B. O'Brien, M.S.F.S." FBI. <http://www.fbi.gov/stats-services/publications/law-enforcement-bulletin/september-2011/the-evolution-of-terrorism-since-9-11>.

³⁷³ "Fact Sheet: U.S. Policy Standards and Procedures for the Use of Force in Counterterrorism Operations Outside the United States and Areas of Active Hostilities." The White House. The White House, 23 May 2014. Web. 19 Feb. 2014. <<http://www.whitehouse.gov/the-press-office/2013/05/23/fact-sheet-us-policy-standards-and-procedures-use-force-counterterrorism>>.

³⁷⁴ "U.S. Should Rethink "War On Terrorism" Strategy to Deal with Resurgent Al Qaida." RAND Corporation Provides Objective Research Services and Public Policy Analysis. <http://www.rand.org/news/press/2008/07/29.html> (accessed February 16, 2014).

those who are concerned with civil liberties argue that the excessive focus on national security becomes a justification for excesses in government. Given that both national security and civil liberties are extremely important aspects of governance, there clearly needs to be a careful balance between these two aspects so as to ensure that one does not overshadow the other. In order to do this, there needs to be a proper assessment of the threats the United States faces, and to treat these threats proportionately. As previously mentioned, the use of military force should be reserved for use only when there is a clear case for self-defense, or an imminent threat (as defined in Section I of this paper). It is important to remember that one of the goals of violent extremism is to break down Western ideals and institutions and to provoke a repressive response.³⁷⁵ According to Osama bin Laden, al Qaeda's ultimate aim is to disrupt the U.S. economy, attain a disproportionate psychological impact, and erode the trademark values and liberties of U.S. society.³⁷⁶ As a result, the continual use of military force and disregard for human rights fulfills some aspects of the al Qaeda's goals and provides them with a powerful recruiting tool.

Concerns Related to Past Law Enforcement Failures in Countering Terrorism

Detractors of the CJM commonly argue that if law enforcement were an effective method of combating terrorism, 9/11 would not have happened. However, the attacks of September 11 were the exception, not the rule. The failure to prevent 9/11 cannot be attributed to only one cause, and ever since 9/11 the law enforcement model has been successfully used to prevent terrorist attacks throughout the world.³⁷⁷ The 9/11 Commission was highly critical of law enforcement's inability to prevent 9/11. The Commission pointed out that on September 11, 2001, only about 1,300 agents (six percent of the FBI's total personnel) worked on counterterrorism when it should have been a much larger percentage given that terrorist threats had been on the radar for quite some time.³⁷⁸ John O'Neill, the FBI's leading expert on al Qaeda, had forecasted a

³⁷⁵ Ronald D. Crelinsten. Cambridge, UK: Polity Press, 2009. 78.

³⁷⁶ Sarah Chayes. "Blinded by the War on Terrorism" Carnegie Endowment for International Peace. <http://carnegieendowment.org/2013/07/28/blinded-by-war-on-terrorism/ggqp>.

³⁷⁷ "FBI National Security Branch." FBI. <http://www.fbi.gov/about-us/nsb> ; Michael Kraft and Edward Marks. U.S. Government Counterterrorism: A Guide to Who Does What. Boca Raton, FL: CRC, 2012. Print.

³⁷⁸ https://ia600506.us.archive.org/2/items/911_hearings_staff_statements/staff_statement_9.pdf

looming attack but due to the Bureau's focus on the criminal division and disregard for counterterrorism, O'Neill's warnings were largely ignored.³⁷⁹

Another issue raised by the Commission was the lack of collaboration between agencies that dealt with counterterrorism, such as the CIA and the FBI.³⁸⁰ The critiques presented by the 9/11 Commission, however, refer to procedural issues in prevention rather than to fundamental issues with the CJM. After the report was issued every criticized agency carried out fundamental reforms.³⁸¹ Some of the changes include the FBI's reforms. After 9/11, FBI Director Muller declared that the FBI's top priority was to prevent terrorist attacks.³⁸² In order to do this, the FBI had to remove the "wall," which kept criminal and intelligence investigations related to terrorism separate within the FBI. After the "wall" was removed, the criminal code and the intelligence code of the FBI were consolidated.³⁸³ The FBI had traditionally been decentralized, but in light of the new terrorism challenge, the FBI established more coordination between headquarters, field offices, and Joint Terrorist Task Forces (JTTFs).³⁸⁴ The FBI also formed the National Security Branch (NSB) to improve counterterrorism coordination and efforts.³⁸⁵

It should also be noted that while several beneficial procedural changes were effected, many of the measures that gained importance after 9/11 already existed before but were underfunded.³⁸⁶ At the time of the September 11 attacks, the overall spending on counterterrorism was approximately \$7 billion, while the aggregate funds appropriated to the National Intelligence Program (NIP) for FY 2010 was \$53.1 billion.³⁸⁷

One criticism that does fundamentally take issue with the CJM in countering terrorism, says that following due process and reading Miranda rights to a suspected

³⁷⁹ "The Man Who Knew." PBS. PBS. Web. <<http://www.pbs.org/wgbh/pages/frontline/shows/knew/>>.

³⁸⁰ "National Commission on Terrorist Attacks Upon the United States." National Commission on Terrorist Attacks Upon the United States. <http://govinfo.library.unt.edu/911/archive/hearing10/9-11Commission_Hearing_2004-04-13.htm

³⁸¹ Michael Kraft and Edward Marks. U.S. Government Counterterrorism: A Guide to Who Does What. Boca Raton, FL: CRC, 2012. Print.

³⁸² Ibid.

³⁸³ Ibid. 257

³⁸⁴ Ibid. 245

³⁸⁵ Ibid. 17

³⁸⁶ Ibid., 16

³⁸⁷ Ibid., 12

terrorist will encourage the suspect to be uncooperative during interrogation.³⁸⁸ This, however, is an unfounded fear and there has not been any evidence to support this claim. In fact, FBI Director Robert Mueller emphasized, that reading a suspected criminal their Miranda rights has not stood in the way of attaining significant and extensive intelligence.³⁸⁹ Although in most cases arrested suspects must be advised of their rights under Miranda prior to investigation, there are some public safety exceptions to the Miranda rights that are used in situations of emergency.³⁹⁰ Furthermore, it is the international community's consensus—as stated by the U.N.—that, "All persons detained, including those suspected of terrorism, have the right to habeas corpus or equivalent judicial procedures at all times and in all circumstances to challenge the lawfulness of their detention."³⁹¹

There will always be a threat of terrorism, and there is no risk-free model. After the FBI reforms following 9/11, the function of law enforcement in preventing terror plots has demonstrably improved.³⁹² As a result, the United States should rely more heavily on the law enforcement approach internationally as well. This approach should be done in conjunction with partners abroad given that terrorism is a transnational problem.

Challenges to the Criminal Justice Model

Though the criminal justice model is a preferable method of countering terrorism than the war model, it is important to keep in mind that the CJM also faces challenges that need to be overcome. 1) No one can be prosecuted for an offense that has not been defined in a criminal code. As a result, states need to make sure to keep up with new forms of criminality and to codify accordingly.³⁹³ This codification has been successfully happening over the years as crimes take new forms. In 1997, one hundred and sixty four parties signed the International Convention for the Suppression of Terrorist Bombings.

³⁸⁸ PolitiFact. <http://www.politifact.com/truth-o-meter/statements/2009/jul/14/republican-national-committee-republican/gop-claims-obama-has-ordered-fbi-read-miranda-right/> (accessed February 19, 2014).

³⁸⁹ Strohm, Chris. "FBI Says Miranda Readings Don't Hurt Bureau." Congress Daily, October 6, 2010. <http://bipartisanpolicy.org/news/articles/2010/10/fbi-says-miranda-readings-dont-hurt-bureau>.

³⁹⁰ Ibid.

³⁹¹ UN. "International Law Aspects of Countering Terrorism." UNODC.

<http://www.unodc.org/documents/terrorism/Publications/FAQ/English.pdf>.

³⁹² <http://www.heritage.org/research/reports/2012/04/fifty-terror-plots-foiled-since-9-11-the-homegrown-threat-and-the-long-war-on-terrorism>

³⁹³ Ronald D. Crelinsten. Cambridge, UK: Polity Press, 2009. 59.

This convention, "Creates a regime of universal jurisdiction over the unlawful and intentional use of explosives and other lethal devices in, into, or against various defined public places with intent to kill or cause serious bodily injury, or with intent to cause extensive destruction of the public place."³⁹⁴ As a result of this convention, terrorist bombings are now a codified crime for which terrorists can be prosecuted. 2) In the case of terrorism, criminal evidence can be hard to gather. This in turn has led terrorist suspects to be released for lack of evidence. 3) Extradition has been a constant issue of contention when national interests and international cooperation come into conflict. The principle of *aut dedere aut iudicare* (either extradite or prosecute), which is designed to combat impunity for serious criminal offenses including terrorist offences, is not always followed in practice.³⁹⁵ There have been instances in which a nation has refused to extradite an indicted criminal. Nevertheless this principle is largely considered part of customary law, and as such, it should be followed.³⁹⁶ One way of improving this issue is to negotiate more bilateral extradition treaties. 4) The criminal justice model is inherently slower than the war model of counterterrorism. The processes involved in criminal law naturally make it so. As a result, law enforcement mechanisms need to work tirelessly in order to coordinate well, be effective, and achieve a strategic advantage over potential terrorists.

Although the aforementioned challenges are very real, national and multinational efforts are adapting and rising to the challenge that transnational terrorism poses. Over the last decade, the FBI has broadened training initiatives to strengthen legal and police systems overseas.³⁹⁷ Some of these initiatives include bilateral training programs, international law enforcement academies, law enforcement task forces, and joint operations.³⁹⁸ The legal attaché program (also referred to as *legat*) was developed to "pursue international aspects of the FBI's investigative mandates through established

³⁹⁴ Ibid.

³⁹⁵ UN. "International Law Aspects of Countering Terrorism." UNODC. <http://www.unodc.org/documents/terrorism/Publications/FAQ/English.pdf> (accessed February 17, 2014).

³⁹⁶ "International Law Commission - Summaries: Obligation to extradite or prosecute (*aut dedere aut iudicare*)." Web. 19 Feb. 2014. <http://legal.un.org/ilc/summaries/7_6.htm>.

³⁹⁷ "International Operations." FBI. 17 Mar. 2010. <http://www.fbi.gov/about-us/international_operations>.

³⁹⁸ "Ten Years After: The FBI After 9/11." FBI. 10 Aug. 2011. Web. <<http://www.fbi.gov/about-us/ten-years-after-the-fbi-since-9-11/just-the-facts-1/international-operations>>.

liaison with principal law enforcement and security services in foreign countries and to provide a prompt and continuous exchange of information with these partners."³⁹⁹ This program, which is managed by the FBI Headquarters in Washington, D.C., maintains close contact with other federal agencies, with the Interpol, foreign police and security officers in Washington, and national and international law enforcement associations. There currently are 60 fully operational legat offices and 15 sub-offices.⁴⁰⁰

In addition to the legal attaché program, the FBI's international law enforcement activities also focus on international training. Training allows the FBI to demonstrate counterterrorism techniques as well as other investigative techniques to foreign law enforcement officers. Training also establishes a better working relationship abroad, thereby strengthening cooperation among law enforcement personnel around the world. Significant training programs include the International Law Enforcement Academies in Budapest, Bangkok, and Gaborone—all of which are funded by the DoD and DoS. Besides the latter programs, there also are several bilateral working groups targeting counterterrorism, and various other counterterrorism training programs in the Middle East.⁴⁰¹

There also are multinational initiatives such as the United Nation Counter-Terrorism Committee (CTC) and the Global Counterterrorism Forum (GCTF), which exist in order to improve the efficacy of transnational law enforcement and multinational cooperation. The GCTF—the most recent counterterrorism multinational platform—serves as a mechanism for furthering the implementation of the universally agreed upon U.N. Global Counter-Terrorism Strategy, and to reinforce existing multilateral counterterrorism efforts.⁴⁰² One of its primary goals is to promote criminal justice responses to terrorism that are grounded in the rule of law. With the adoption of the *Rabat Memorandum on Good Practices for Effective Counterterrorism Practice in the Criminal Justice Sector* in June 2012, a series of awareness workshops focused on the internationally recognized good practices were catalogued in order to provide,

³⁹⁹ http://www.fbi.gov/about-us/international_operations/overview

⁴⁰⁰ Ibid.

⁴⁰¹ Ibid.

⁴⁰² "Focus Areas of the GCTF." GCTF. <http://www.thegctf.org/web/guest/focus-areas>.

"...practical guidance to investigators and prosecutors dealing with active terrorism threats in their countries or regions."⁴⁰³

The criminal justice model for dealing with terrorism might be complex, but as human rights law underscores, the right to a fair trial must be guaranteed even in cases of terrorism.⁴⁰⁴ The OSCE— the world's largest security-oriented intergovernmental organization— highlights that: "Where states fail to respect human rights in their counterterrorism efforts, they undermine the sense of trust and security in the very communities that they are trying to protect from terrorist acts."⁴⁰⁵ Several departments in the U.S. government have taken steps to create greater communication and cooperation among each other in order to prevent another 9/11 from happening. In addition to these domestic changes, the international initiatives mentioned above provide a good foundation to improve joint efforts to fight violent extremism through a criminal justice model.

The Effectiveness of Law Enforcement in Countering Terrorism

The criminal justice model has been able to successfully thwart terrorism in several instances. Domestically, after 9/11, the FBI made counterterrorism one of its operational priorities and devoted more efforts to this cause as was recommended by the 9/11 commission.⁴⁰⁶ Internationally, multilateral and bilateral efforts have also proven successful in thwarting terrorist plots and in bringing indicted terrorists to the court of law. From 2001 to 2011, the FBI working in conjunction with other agencies at home and abroad prevented or disrupted over 50 plots of terrorism.⁴⁰⁷

Successful examples

For law enforcement to be a successful counter terrorism tool, it must be able to thwart potential attacks effectively. There are a range of cases in which the CJM has proven to be effective in preventing attacks from happening. On May 1, 2003, Iyman

⁴⁰³ Ibid.

⁴⁰⁴ UN. "International Law Aspects of Countering Terrorism." UNODC. 96.

<http://www.unodc.org/documents/terrorism/Publications/FAQ/English.pdf>.

⁴⁰⁵ "Extradition and Human Rights in the Context of Counter-terrorism." OSCE.
<<http://www.osce.org/odihr/24392>>.

⁴⁰⁶ "FBI News." FBI Briefs International Partners on Operational Priorities. FBI, 2 Nov. 2010. Web.
<http://www.fbi.gov/news/news_blog/international-conference>.

⁴⁰⁷ "50 Terror Attacks Foiled Since 9/11." The Heritage Foundation. The Heritage Foundation.
<<http://www.heritage.org/research/reports/2012/04/fifty-terror-plots-foiled-since-9-11-the-homegrown-threat-and-the-long-war-on-terrorism>>.

Faris was detained in Ohio. He was sentenced to 20 years in prison for providing material support and resources to al Qaeda and conspiracy for providing [al Qaeda] with information about possible U.S. targets for attack.⁴⁰⁸ In his prosecution, Faris admitted to traveling to a training camp in Afghanistan where he spoke to Osama bin Laden “to procure an escape plane” as well as critical communications with senior operational leaders of al Qaeda. Those communications revealed plans to destroy a New York City bridge’s structure. The case was a significant feat of coordination between the U.S. Attorney’s Office for the Eastern District of Virginia and the Counterterrorism Section of the Criminal Division, U.S. Department of Justice, along with assistance from the U.S. Attorney’s Office for the Southern District of Ohio. The investigation was led by the Federal Bureau of Investigation and was a “significant accomplishment in our mission to prevent another terrorist strike in the United States.”⁴⁰⁹

On August 11, 2006, British law enforcement officials thwarted a planned attack against seven transatlantic, U.S.-bound flights from London that would have killed an estimated 1,500 people. Eight men were arrested and three were convicted of attempting to commit this crime.⁴¹⁰ British security officials had been aware of this terrorist cell’s movements.⁴¹¹ With the coordination of British, Pakistani, and U.S. law enforcement officials, enough evidence was available to arrest the men in question and simultaneously collect a wide body of intelligence for trial. Three of the eight men arrested were sentenced to life in prison. The men were found to be lead conspirators of an al Qaeda cell based in Britain. The intelligence gathered from this case contributed to the severe limitations of liquids for airline passengers today.⁴¹²

There have also been cases on successful extradition through multinational collaboration. Wesam al-Delaema, was extradited from the Netherlands in January 2007, and was charged with trying to kill Americans in Iraq. The Iraqi-born Dutch citizen was

⁴⁰⁸ Washington, D.C.: U.S. Department of Justice, 2003. "Iyman Faris Sentenced for Providing Material Support to Al Qaeda." http://www.justice.gov/opa/pr/2003/October/03_crm_589.htm.

⁴⁰⁹ Ibid.

⁴¹⁰ Dodd, Vikram. “Three terrorists convicted of plotting to blow up jets over Atlantic.” *The Guardian*, September 7, 2009. <http://www.theguardian.com/world/2009/sep/07/terrorists-plot-atlantic-liquid-bombs>

⁴¹¹ Greenberg, Richard, Paul Cruickshank, and Chris Hansen. "Inside the Terror Plot that 'Rivaled 9/11'." *NBC News*, September 14, 2009. http://www.nbcnews.com/id/26726987/ns/dataline_nbc-the_hansen_files_with_chris_hansen/t/inside-terror-plot-rivaled/

⁴¹² Ibid.

sentenced to 25 years in prison for conspiring to murder Americans overseas, including the planting of roadside bombs targeting U.S. soldiers in Fallujah.⁴¹³ More recently, a Nigerian court granted the extradition of Lawal Olaniyi Babafemi—also known as Ayatollah Mustapha— on August, 2013. He was accused of having links with al Qaeda and recruiting members to train in Yemen.⁴¹⁴

Though there have been several cases of successful extraditions, other times the U.S. has resorted to questionable capture methods such as unannounced military raids. While there may be some cases in which the use of a raid to capture might be necessary, it remains crucial that this is only done when there is absolute necessity. This is the case because raids and alleged illegal captures are also a source of significant backlash abroad. For example, there was and still is significant controversy surrounding the recent raid into Libya to capture Abu Anas al-Liby. The Libyan government demanded an explanation of the unannounced move and the people of Libya felt disrespected and violated.

When referring to ungoverned spaces/lawless regions (in which there is no governmental counterpart willing or able to take action) the method employed becomes even more complicated legally. Since each case has its own peculiarities and relations between states vary, it is outside of the scope of this paper to go in depth into every instance in which a capture mission was carried out. There will always be a possibility for extenuating circumstances. Suffice it to say that the U.S. should strongly avoid the use of military force, and that when considering the process of extradition or the transfer of suspects it should not turn a blind eye to the potential for breaches of human rights.⁴¹⁵

The national and international collaborative counterterrorism efforts mentioned above have played a pivotal role in enabling law enforcement efforts to thwart myriad terrorist threats over the past decade. And as FBI Director Robert Mueller III recognizes, “Working side by side is not only our best option, it is our only option.”⁴¹⁶ The success of

⁴¹³ Whitlock, Craig. "U.S. Efforts to Extradite Terrorist Suspects Founder." The Washington Post World. The Washington Post.

<<http://www.washingtonpost.com/wpdyn/content/article/2008/12/20/AR2008122002096.html>>.

⁴¹⁴ "Nigeria al-Qaeda suspect to be extradited to US." BBC News. <<http://www.bbc.com/news/world-africa-23868899>>.

⁴¹⁵ "Extradition and Human Rights in the Context of Counter-terrorism." OSCE. Web. <<http://www.osce.org/odihr/24392>>.

⁴¹⁶ FBI. "By Lauren B. O'Brien, M.S.F.S." FBI. <http://www.fbi.gov/stats-services/publications/law-enforcement-bulletin/september-2011/the-evolution-of-terrorism-since-9-11>.

law enforcement in foiling national and international plots demonstrate that there is an effective network setup to combat acts of terrorism through a criminal justice model. Considering that, 1) the networks in law enforcement that have been developing over the past decade can demonstrably counter terrorism without the need to resort to military force, 2) individuals are increasingly becoming radicalized within the U.S., and 3) there is no evidence available to clearly demonstrate that the victims of targeted killings or raids posed an imminent threat, the reasons for the use of military force abroad become increasingly weaker.

Looking Forward

The use of military force and criminal justice are not mutually exclusive. As Charles E. Berger, a CFR National Intelligence Fellow puts it, "terrorists are criminals and should be treated as such, but the criminal justice system is not a shield from military action." As argued throughout this section, the criminal justice model has numerous advantages over the use of military force, and it should be used most of the time. The use of military force, on the other hand, should be resorted to only when absolutely necessary. More specifically, only when, 1) capture and criminal prosecution of a terrorist suspect are clearly not available options when there is an imminent threat to the United States and its citizens, 2) in self-defense.

As mentioned in Section II, Part I official speeches claim that the use of force is reserved for extraordinary circumstances. President Obama claims that:

The policy of the United States is not to use lethal force when it is feasible to capture a terrorist suspect [...] capture operations are conducted only against suspects who may lawfully be captured or otherwise taken into custody by the United States and only when the operation can be conducted in accordance with all applicable law and consistent with our obligations to other sovereign states.⁴¹⁷

However, there is no mechanism to know whether or not these claims are followed. In fact, there are no records of an extradition request for some people who were

⁴¹⁷Fact Sheet: U.S. Policy Standards and Procedures for the Use of Force in Counterterrorism Operations Outside the United States and Areas of Active Hostilities." The White House. The White House, 23 May 2014. Web. 19 Feb. 2014. <<http://www.whitehouse.gov/the-press-office/2013/05/23/fact-sheet-us-policy-standards-and-procedures-use-force-counterterrorism>>.

killed in targeted killings, such as Abdul Rahman al-Awlaki, a seemingly innocent 16-year old U.S citizen who was killed while sitting at a cafe in Yemen.⁴¹⁸ This is also true for many of the captures that have taken place. Instances such as these, which look suspicious and not in line with the administration's stated policies, highlight the problematic nature of the current approach to counterterrorism.

The use of military force cannot coerce people into changing their ideologies. The United States cannot kill its way to victory. Despite some setbacks to al Qaeda's training program caused by the loss of key leaders and an increasingly difficult operating environment, al Qaeda has not stopped. Instead, it has continued to recruit and train potential operatives.⁴¹⁹ In order to strategically strengthen counterterrorism efforts, the United States needs to scale back the use of military force and rely more heavily on law enforcement efforts. The U.S. should resist a reactive military response when and if there is a terrorist attack, and invest in strengthening law enforcement to counter terrorism. In addition, there are other steps that need to be taken in conjunction in order to attain a more sound strategy to counter terrorism. The next section will further expand on this.

Recommendations:

- 1) **Keep military force as a last resort.** Military force should only be used when capture and criminal prosecution are not viable options and when there is a clear, imminent threat to the United States and its citizens, or a clear need for self-defense.
- 2) **Actively participate in and fund multinational initiatives** such as the GCTF, which focus on transnational cooperation to counter terrorism.
- 3) **Periodically assess and work to continuously improve interagency communication** and cooperation, both within domestic agencies, and between international law enforcement agencies.

⁴¹⁸*How Do You Surrender To A Drone?* Jeremy Scahill. Media Sanctuary, 2013.

⁴¹⁹ FBI. "By Lauren B. O'Brien, M.S.F.S." FBI. <http://www.fbi.gov/stats-services/publications/law-enforcement-bulletin/september-2011/the-evolution-of-terrorism-since-9-11> (accessed February 9, 2014).

- 4) **Strengthen bilateral and multilateral law enforcement partnerships** in order to help turbulent regions secure themselves and manage threats. Expand the FBI's legat program.

Section IV

The 3D Strategies for Long-Term Security – Defense Partnerships, Diplomacy and Development

Moving Towards Sustainable, Long-Term Solutions

The threat of transnational terrorism has been constantly changing and the United States' current counterterrorism strategy has not been proven to effectively deter terrorist threats. In understanding al Qaeda's ideology, we can better understand how to undermine recruitment efforts. Current approaches to counterterrorism rely too heavily on the use of military force. This has weakened the economic and social foundations of U.S. security and eroded our international credibility. In order to shift from this approach we need to focus on law enforcement techniques coupled with the 3Ds foreign policy model as the backbone for our engagement with the developing world. Coined in the Bush administration's 2006 National Security Strategy,⁴²⁰ and reiterated by former State Secretary Hillary Clinton,⁴²¹ the "3Ds" paradigm advances the instruments of national power—Defense Partnerships, Diplomatic Efforts and Messaging, and Economic and Social Development. It develops synergies among their comparative advantages to meet the growing challenges of the post-9/11 environment.

⁴²⁰ The White House. *The National Security of the United States of America*. March 2006. <http://nssarchive.us/NS> SR/2006.pdf (accessed February 26, 2014).

⁴²¹ Hillary Rodham Clinton, "On Development in the 21st Century," Center for Global Development (January 6, 2010) <http://www.cgdev.org/doc/2009/Clinton%20Transcript2.pdf> (accessed February 26, 2014).

Part I: Building Security Capability of Partner Nations

By Yelizaveta Minkina & Fabian Valencia

Building Partner Security Capacity (BPSC) in allied nations removes the necessity for United States military intervention abroad. BPSC, first introduced into the Pentagon's lexicon by the 2006 Quadrennial Defense Review,⁴²² is a U.S. initiative to aid allied partner's security capacity in order to protect their borders and defend their local population from terrorist organizations. This benefits the U.S. by positively influencing public opinion, freeing up the defense budget, and breaking the cycle of violence that the United States has been condemned with instigating.⁴²³ As part of this initiative, the United States has provided military assistance and training to foreign partners with the hope of defeating terrorism around the world. These U.S. military operations serve a wide variety of purposes that involve law enforcement, intelligence, diplomatic relations and financial efforts. Furthermore, building partners' defense strategies enables our global partners to become more efficient in protecting their populations, securing their territory and resources, and facilitating their emergence into the global market. The United States should prioritize BPSC due to the history of success of training partner nations to implement counterterrorism operations. The 2010 Quadrennial Defense Report affirmed that building allied partners' capacity is a crucial element in ensuring that the rule of law is enforced globally, restoring peace to areas that have been devastated by terrorist groups and maintaining and promoting the professionalization of our partner's military forces.⁴²⁴

Hands on efforts to provide security force assistance to our partner nations have been met with positive perceptions internationally and domestically. The initiative is considered a successful alternative to the use of military force and provides the United States with an alternative option to lethal uses of security intervention such as Drones. Greater coordination between the U.S. military forces and our partner allies' forces will occur through such initiatives through knowledge sharing, adapting to the local culture and obtaining a greater understanding of the local territory in order to identify hidden

⁴²² Donnelly, Tom. "Building Partner Capacity." *Center for Defense Studies*. N.p., Sept. 2010. Web.

⁴²³ Lyle, Amaani. "Building Partner Capacity Serves U.S. Interests." *United States Department of Defense*. N.p., 14 Feb. 2013. Web.

⁴²⁴ Gates, Robert. "Quadrennial defense review." *Washington, DC* (2010).

areas controlled by terrorist leaders.⁴²⁵ BPSC aids the United States in interagency cooperation as the Department of Defense (DoD), Department of State (DOS), and the Central Intelligence Agency (CIA) must improve their interagency collaboration in order to successfully implement special security operations. By advancing diplomatic relations and security cooperation, it helps to create enduring relationships with foreign partners, which is crucial to U.S. national security objectives.⁴²⁶

Endeavors to provide security force assistance have had a long trajectory in many parts of the world. Both Republican and Democratic administrations have endorsed these efforts throughout the course of the second half of the twentieth century. During this period, the military's special operations community has trained, advised and equipped foreign militaries. Successful examples of building partnership capacity include the case of Colombia where the United States provided security force assistance under the campaign "Plan Colombia" in order to combat the Marxist extremist group known as *Fuerzas Armadas Revolucionarias de Colombia* (FARC)⁴²⁷ and the Philippine case in which the United States aided and trained the Philippine security forces to eradicate Islamic extremist group presence in the region of Mindanao. There are countless other case examples where the United States has provided assistance to allied partners' security capacity which in turn has diminished the threat of terrorist activities both in the U.S. and abroad.

BPSC proves to be an effective initiative due to the large amounts of success it has had in previous regions where there have been uprisings of insurgency groups threatening U.S. national interests. Ultimately, the goal is to enable partner nations to effectively combat and deter local extremist groups that pose a threat to their population and stability in the region. In return, this would benefit the United States' security objectives by reducing the need for troops on the ground, decreasing the cost of

⁴²⁵ Livingston, Thomas K. "Building the Capacity of Partner States Through Security Force Assistance." Congressional Research Service, Library of Congress, 2011.

⁴²⁶ Lange, John K. *Building Partner Capacity through Combat Training Centers*. Carlisle Barracks, PA: U.S. Army War College, 2012. Print.

⁴²⁷ Marquis, Jefferson P., Jennifer D.P. Moroney, Justin Beck, Derek Eaton, Scott Hiromoto, David R. Howell, Janet Lewis, Charlotte Lynch, Michael J. Neumann, and Cathryn Q. Thurston. "Jefferson P. Marquis, Jennifer D. P. Moroney, Justin Beck, Derek Eaton, Scott Hiromoto, David R. Howell, Janet Lewis, Charlotte Lynch, Michael J. Neumann, Cathryn Q. Thurston Prepared for the United States Army Approved for Public Release; Distribution Unlimited Developing an Army Strategy for Building Partner Capacity for Stability Operations." *RAND Corporation*. Arroyo Center, 2010. Web.

defense.⁴²⁸ It is in the United States' interest to build allied nations' security capabilities because it would also improve public opinion of U.S. military intervention abroad into one that credits the United States as a reliable partner for the creation of a sustainable and peaceful environment of other countries.

BPSC Can Negate the Need for AUMF, Drone Strikes

By building the capacity of partner nations to provide security within their borders, and shifting most counterinsurgency efforts to host countries, the United States can save both blood and treasure. It also prevents our partners from falling into anarchy due to their inability to defend their borders from these extremist groups. Domestic security forces have the advantage of a greater cultural understanding, and familiarity with the territory.⁴²⁹ In the short term, building partner capacity will minimize the use of drones in areas where Islamic extremists are present because our partner's military forces will become better equipped, trained and more able to execute counterterrorist operations.

Violence is perpetrated by fear and as mentioned in the previous ideology section, citizens of countries will turn to extremist groups for protection and services. In the short term, if the United States can train partner nation's security forces to provide protection and greater access to services, there will be less motivation to join the extremist forces,⁴³⁰ again minimizing the need for drone usage and U.S. intervention. The case of Yemen provides a counterexample; the fear of drone strikes has become deeply rooted into the lives of civilians such as those of Yemen. They create an environment of fear, making it almost impossible to attain a peaceful life.⁴³¹

The United States needs to stop relying on the drone program to combat insurgencies in countries like Yemen not only because of the detrimental effect on civilians, but because it blinds Yemeni officials from other possibilities of combating terrorism. At the least, in order to start setting the platform for future collaboration, the U.S. should avoid drone strikes that aren't approved by the Yemeni government. In the

⁴²⁸ Roberts, James Q. "Building Partner Capacity." *EBSCO Host*. University of Washington Libraries, 1 Mar. 2010. Web.

⁴²⁹ Wuestner, Scott G. *Building Partner Capacity/Security Force Assistance: A New Structural Paradigm*. Strategic Studies Institute, 2009.

⁴³⁰ Whittington Jr, Joseph E. *Determining Mobility Support Advisory Squadron Effectiveness in Support of Building Partner Capacity*. No. Afit/imo/ens/12-14. Air Force Inst of Tech Wright-Patterson AFB Oh Graduate School of Engineering and Management, 2012.

⁴³¹ "Don't Drone on." *The Economist* [Sana'a] Sept. 2012: n. pag. Print

long run, however, the ultimate solution should be to build Yemen's security capacity to resolve their own domestic issues and remove the need for any U.S. intervention. Drones are one way to address the current instability, but they are not by themselves an effective strategy for eradicating extremist organizations.

The Quadrennial Defense Report (QDR) has continuously reaffirmed that building a network of security forces to partner nations is a means to actively collaborate in peacekeeping operations should be a top priority for the executive branch. The 2010 QDR states, "These SFA activities can help enable host-country participation in coalition stability operations and multilateral peacekeeping operations that improve regional security."⁴³² Collective work among the United States and partner countries to enforce the rule of law and create the space for proficient security agencies is an essential element for counterinsurgency operations around the world. Governments throughout the world where there are a high presence of extremist organizations welcome assistance from the United States precisely because they want to avoid the complete government collapse and allow these terrorist groups to seize power. As security capacity begins to unwrap, these governments become more cooperative in terms of enabling their security services to received effective training, advice and adequate equipment to deter extremist organizations.

The United States has been forced to become involved in regions of the world where there is a lack of law enforcement or in nations that contain ineffective military forces who have the capacity to deal with insurgencies. The case for Somalia during the 1990s and most recently in Afghanistan can be made in which the United States was forced to intervene for the purpose of restoring peace and assist these countries in developing a sustainable path that would facilitate their emergence into the world economy. In 2005, President George W. Bush enacted the National Security Presidential Directive 44 (NSPD-44) as a way to make stabilization and reconstruction of partner nations that have been in the midst of political and economic collapse, a priority and essential component in the war against global terrorism.⁴³³ The NSPD-44 gives direct responsibility to the DoS and distinguishes as the lead agency accountable for

⁴³² Gates, Robert. "Quadrennial defense review." *Washington, DC* (2010).

⁴³³ Bush, George W. "National Security Presidential Directive 44 (NSPD-44)." *Washington, DC: The White House, Executive Office of the President* (2005).

coordinating with other U.S. security agencies to ensure that planning and execution of stability operations are undertaken. Essentially, formulating the transition to more democratic state through the development of partner capacity lays the foundation for long-term stability and reestablishes the political, socioeconomic as well as physical infrastructure of the country. Counterterrorism education and training for partner security forces should be a top priority for triggering economic development.⁴³⁴ An economy that lacks protection from international or domestic threats is at best stagnant, and prone to collapse.

In addition, BPSC emphasizes a broad range of security cooperation activities between the United States and partner allies. Set clear short-term and long-term goal can be the start to collective cooperation in defending common interests and allocating equal responsibilities to ensure global safety. Effective management of such a set of objectives by all security services and agencies will constitute building a partner's security force that is effective and efficient in deterring insurgencies at minimal cost and with fewer civilian casualties than what the recent drone strikes have caused.⁴³⁵

Long Term Connection to U.S. Security Objectives

Providing security assistance to partner nations is one of the most effective ways to combat global terrorism. It enables these countries to protect its citizens and pave the way for sustainable economic growth without the disruption from insurgent groups creating instability. By implementing these efforts, the United States can benefit from mutual economic trade with these partner countries and helping decrease the economic gap which continues to be a major global issue and a priority for international agencies such as the United Nations.

Terrorist groups concentrate in states that lack efficient security forces in order to recruit new members, establish training centers, build new leaders and harbor attacks against the United States and its citizens. Without the adequate assistance to our allied partners, a war against terrorist groups might continue for decades to come. While drone warfare and the use of military force abroad have succeeded in eliminating top leaders of

⁴³⁴ Calfee, Sharif, Joseph Lee, Peter Crandall, and Young R. An. *Security Cooperation, Security Assistance and Building Partner Capacity: Enhancing Interagency Collaboration*. NATIONAL DEFENSE UNIV NORFOLK VA JOINT FORCES STAFF COLL, 2011.

⁴³⁵ Hearing. U.S. Government Printing Office. "Building the Capacity of Foreign Military Forces." *Committee on Armed Services*. U.S. Government Printing Office, Apr. 2006. Web.

al Qaeda, they have also caused extraordinary resentment among civilians in areas where drones or U.S. military perform their strikes. Resentment toward the United States fuels their desire for revenge. For example, local civilians in Yemen have built considerable resentment toward the idea that a foreign power is able to target and kill Yemeni citizens, questioning the usage of drones as a means to combat terrorism. With the increase in civilian casualties during drone strikes, there is an escalation of resentment toward the United States, making recruitment efforts for extremist groups more successful. This in turn undermines the security goals of the United States through the creation of more enemies that may attempt some form of threat against in U.S. territory or against U.S. interests. This cycle of violence is in fact detrimental to the United States security. BPSC can reinvent the public image of the United States in a more favorable light. The civilians in Yemen and other places in the world where extremist organizations are present need hope for a more stable and peaceful future; the local representative government needs to set the foundation for economic prosperity and for a undisruptive nation through a solid security force system.

In the long term, the United States benefits from BPSC due to the fact that it minimizes its defense obligations worldwide. By imparting equipment, skills, information to partner nations this will increase proficiency and self-sufficiency of partner allies and reduce the need for U.S. involvement on ground.⁴³⁶ There is a limit to U.S. capacity for global missions, and BPSC incurs a largely lower cost. It is also more effective for partner nations to address their security issues as they have a better understanding of local language, geography, and culture. Furthermore, it is necessary to address the issue of political sensitivity toward the presence of U.S. forces at home and abroad. Further, a key assumption in U.S. policy toward states to which it provides security assistance is that improving security capacity will increase the willingness of these states to act in ways that serve U.S. objectives.

There will always be wars, conflicts, and threats to U.S. security. The United States cannot rely on ground involvement with all of the countries that contain terrorists.

⁴³⁶ Nina M. Serafino., *Security Resistance Reform: "Section 1206" Background and Issues for Congress*, CRS Report RS22855 (Washington, DC: Library of Congress, Congressional Research Service, April 19, 2013).

Therefore, alternative “indirect warfare” needs to be employed. The United States needs to have a clear strategy in dealing with the next person that the United States will identify as putting a bomb on a plane that will threaten United States policy. There should be a clear military strategy in which the U.S. can work with other governments to extract said persons.

Background, Authorization, and Responsibility on Building Partnership Security Capacity

BPSC has been a tactic prevalent within the United States defense strategy dating back to initiatives such as the Marshal Plan and the Taiwan Act of 1979. Every fiscal year the review of the National Defense Authorization Act reaffirms BPSC efforts and authorizes the Department of Defense, with the concurrence of the DoS, to provide military training, equipment and advising to the military forces of allied partners. These initiatives differ according to specific country situations.

September 11, 2001 reestablished and redefined the presence of United States forces abroad and changed the utilization of BPSC. Before the terrorist attack, BPSC efforts were geared toward making allies and maintaining intelligence capacity, the vital threat to U.S. Security rendered BPSC a necessity to U.S. foreign policy as the nature of war and U.S. threats changed from one of nation states to non-state actors that have a tactical advantage of information. They are difficult to detect and target because they are dispersed and embedded in the local population. They have a further advantage in their familiarity with the culture, land, and infrastructure in which they are operating capable of responding quickly to actionable intelligence. In response to the new nature of these security threats to the U.S., the government began prioritizing more funding toward partner nations in initiatives such as the Global Security Contingency Fund, a joint program between the DoD and the Defense of State \$250 million to meet emergency security issues.

These emergency responses and authorizations of both the utilization of military force and BPSC efforts faced many challenges on the onset. Foremost was the lack of transparency on the authorization of programs and budgets. This has resulted in a current layout of BPSC that contains an abundance of overlap and inefficiency. The complexity

of jurisdiction is evidenced by the example of the Special Operations Forces and all of the agencies that have jurisdiction over their programs.

Historically, the U.S. military's Special Operations Forces (SOF) have had the primary responsibility for training, advising, and assisting foreign military forces. It is important to notice who is responsible for the oversight and budget of Security Forces Assistance (SFA). Currently, The National Security Council (NSA) provides the initial guidance of national-level decisions pertaining to SFA. Then the DoS is the lead government agency and builds and carries out national policies and priorities with the regard to the SFA.⁴³⁷ Further, the United States Agency for International Development (USAID) is responsible of the non-military assistance programs. The Director of National Intelligence (DNI) and the Director of the Central Intelligence Agency (CIA) support the mission national-level advisory capacity and the regional and country levels through SFA. This indicates that 5 different agencies have jurisdiction and budget toward the SFA.⁴³⁸

In order to understand the current infrastructure of Building Partner Security Efforts it is first crucial to understand the authorization and responsibility given to the programs by the National Defense Authorization Act sections 1203, 1206, and 1207:

Section 1203 of the National Defense Authorization Act FY2013 states that the Department of Defense may, with the concurrence of the DoS, provide military assistance to foreign allied partners in order to enhance their military capabilities. The security assistance is directed to the national military forces, security agencies serving a similar function, counterterrorism forces, and other border forces of Djibouti, Ethiopia, Yemen and Kenya. These special security forces will develop the capacity to combat al Qaeda and affiliates, as well as al Shabaab. This section also authorizes development assistance for national military forces involved in the African Union Mission in Somalia to conduct counterterrorism operations against extremist organizations that have a strong presence in the region. The assistance in this section includes the provision of equipment, supplies, training and minor military construction. Nonetheless, such assistance

⁴³⁷ United States. Department of Defense. U.S. Government Printing Office. *National Defense Authorization Act*. Washington, D.C.: U.S. G.P.O., FY2013. Print.

⁴³⁸ Brian M. Burton, "The Promise and Peril of the Indirect Approach," Features, section goes here, http://www.relooney.info/NS4053e/Aid_7.pdf.

operations may be conducted in a manner that respects human rights and fundamental civilian freedoms.

Section 1206 of the NDAA FY2013 provides the Secretary of Defense with authority to train and equip foreign military forces for two specified purposes: counterterrorism and stability operations, and foreign maritime security forces for counterterrorism operations (CT).⁴³⁹ This was implemented by a Special Operations and Low Intensity Conflict-Counter-terrorism (SOLIC-CT) office provides program oversight and established priorities, DSCA provides program management, and Country teams work through geographic Combatant Commands (COCOMs) to nominate proposals. Nevertheless, in FY2013 facilitated the transfer of funds from the DoD to 10 European countries for the purpose of enabling their participation in the International Security Assistance Force (ISAF) in Afghanistan, as well as assistance to five African countries. Section 1206 is a temporary authority that allows the Department of Defense (DoD) to use up \$350 million per fiscal year. From NDAA FY2011-FY2012, the majority of the funding was given to Mauritania, Yemen, Uganda and Burundi (jointly), Romania, Tunisia, Georgia, and Bangladesh. Section 1206 of the NDAA FY2014 provides the Secretary of Defense in Cooperation with the DoS the authority to develop a strategic framework for United States counterterrorism assistance and cooperation in the Sahel and Maghreb region of Africa. Nevertheless, the current programs that are being conducted include, the Trans-Saharan Counterterrorism Partnership, Operation Enduring Freedom-Trans Sahara, and related security.⁴⁴⁰

Section 1207 of the National Defense Authorization Act FY 2013 allocates funds to enhance the capabilities of a country's national military forces, and other national security forces that conduct border and maritime security, internal defense, and counterterrorism operations, as well as the government agencies responsibilities for such forces to participate in or support military, stability, or peace support operations consistent with the United States foreign policy and national security interests.⁴⁴¹

⁴³⁹ Thomas K. Livingston. *Building the Capacity of Partner States Through Security Force Assistance*, CRS Report R41817 (Washington, DC: Library of Congress, Congressional Research Service, May 5, 2011).

⁴⁴⁰ United States. Department of Defense. U.S. Government Printing Office. *National Defense Authorization Act*. Washington, D.C.: U.S. G.P.O., FY2013. Print.

⁴⁴¹ Ibid.

Summary of Current Programs Building Security Capacity and their Effectiveness

Since the terrorist attacks on 9/11, there have been numerous initiatives implemented by various government agencies for the purposes of building the security capacity of allied partners. This section analyzes the following programmatic components within previous and current partnership capacity building efforts: Budgetary concerns, length of duration, agency jurisdiction, and location. The intention of this analysis was to use sample key studies and authorizations in order to provide future BPSC options and recommendations.

Trans-Sahara Counterterrorism Partnership

The growing presence of terrorist safe havens in northwestern Africa, as well as the region's vast ungoverned spaces, smuggling routes, and fragile states, all contribute to an environment vulnerable to the spread of violent extremist ideology. The affiliation of some terrorist groups in the region with al Qaeda, as well as such groups' increased efforts to attract young recruits, has also prompted concern that the region could be used as a base for launching attacks against U.S. interests.⁴⁴² Eliminating terrorist safe havens in ungoverned regions to prevent such attacks is a critical U.S. national security goal.

The Trans-Sahara Counterterrorism Partnership is the primary vehicle of U.S. counterterrorism policy in northwestern Africa. Established in 2005, TSCTP is a multiyear, multi agency effort to support diplomacy, development assistance, and military activities aimed at strengthening country and regional counterterrorism capabilities and "inhibiting the spread of extremist ideology."⁴⁴³ TSCTP presently operates in nine partner countries: Chad, Mali, Mauritania, Niger, Algeria, Morocco, and Tunisia, Nigeria and Senegal – and may extend to other countries in the future.

Key agencies participating in TSCTP are the DoS, USAID and the DoD, with State's Bureau of African Affairs as the program lead. Since the program's inception, the key agencies' obligation and commitments for TSCTP have amounted to about \$353 million, primarily for diplomacy, development assistance, and military activities,

⁴⁴² Johnson, Charles Michael. *Combating Terrorism: Actions Needed to Enhance Implementation of Trans-Sahara Counterterrorism Partnership*. DIANE Publishing, 2009.

⁴⁴³ Bray, F. John. *The Trans-Sahara Counterterrorism Partnership: Strategy and Institutional Friction*. Army War Coll Carlisle Barracks PA, 2011.

respectively.⁴⁴⁴ The Departments of the Treasury and Justice and several intelligence agencies also conduct limited counterterrorism activities in TSCTOP partner countries.

Challenges: Despite collaboration at the headquarter level, disagreement between the DoD and the DoS persist regarding the issue of whether the State should have authority over DoD personnel assigned to conduct TSCTP activities.⁴⁴⁵ Both agencies have taken the initiative to develop their own documents to plan separate TSCTP activities that can result in unintended consequences.⁴⁴⁶ This could ultimately hamper the progress toward the program's goals and should be prioritized in order to continue with the commitments for successful implementation of the program.

Success: The Trans-Sahara Counterterrorism Partnership has significantly decreased the presence of terrorist groups in the Northwestern African region.⁴⁴⁷ The organization of al Qaeda in the Islamic Maghreb (AQIM) had expressed strong interest in the region, conducting several terrorist and recruitment operations with the intention of establishing an Islamic Caliphate in Algeria. However, since the implementation of the TSCTP program, the terrorist organization has had significant issues managing the finances of the organization as well as a lack of broad general appeal to moderate Sufi Muslims in the region. Due to the training and equipping of Algerian security forces, the AQIM organization has had difficulties in expanding its presence into other major cities in Algeria precisely because the Algerian forces have taken control and are better trained in fighting the terrorist group. This has also reduced the amount of U.S. troops in the region which adds value to the idea that the.

Combined Joint Task Force: Horn of Africa

The United States Central Command developed a special task force in October, 2002 for the purpose of dismantling transnational terrorist organizations operating in the region. However, over the past several years, under the AFRICOM, the task force has

⁴⁴⁴ Forest, James J. F. *Countering Terrorism and Insurgency in the 21st Century: International Perspectives*. Westport, CT: Praeger Security International, 2007. Print.

⁴⁴⁵ GAO, *Defense Management: Improved Planning, Training, and Interagency Collaboration Could Strengthen DoD's Efforts in Africa*, GAO-10-794 (Washington, D.C.: July 2010)

⁴⁴⁶ Calfee, Sharif, Joseph Lee, Peter Crandall, and Young R. An. *Security Cooperation, Security Assistance and Building Partner Capacity: Enhancing Interagency Collaboration*. National Defense Univ Norfolk VA Joint Forces Staff Coll, 2011.

⁴⁴⁷ Kim, Anthony B., Charlotte Florance, and James Phillips. "U.S. Should Support Tunisia's Democratic Progress with Concrete Action." *The Heritage Foundation* Feb. 2014: n. pag. Print.

been redefined in order to reflect a cooperative approach between U.S. military services and the security forces of African countries within the CJTF-HOA. Around 2,000 to 2,500 rotational U.S. military and civilian personnel make up the CJTF-HOA.⁴⁴⁸ This body of military personnel encompasses and assists Djibouti, Ethiopia, Eritrea, Kenya, Seychelles, Somalia, and Sudan as well as Gulf of Aden, and the Indian Ocean. Recently, the CJTF-HOA has named Burundi, Chad, Comoros, the Democratic Republic of the Congo, Madagascar, Mauritius, Mozambique, Rwanda, Tanzania, Uganda and Yemen as possible areas of interest.⁴⁴⁹

Nevertheless, the CJTF-HOA personnel have focus in training the region's security forces in conducting effective counterterrorism efforts. Military professionalization and advising the forces in peace operations are also key elements in achieving CJTF-HOA objectives. The task force has provided military assistance and training to Burundian and Uganda military forces that were deployed to support the African Union Peacekeeping Mission in Somalia. Much of the African forces had little experience in conducting maritime operations.⁴⁵⁰ The task force team has cooperated with other humanitarian organizations to provide medical supplies to the African Union Peacekeeping forces to assist people of Mogadishu. They support other humanitarian groups in order to restore peace in other regions of East Africa and build trust among the local populations to enhance long-term stability while, at the same time, they deter local youth from joining extremist organizations. Such efforts of building community trust and restoring peace include infrastructure projects like digging wells and repairing schools and hospitals to decrease mortality rates among children and women.

Challenges: Despite the large success of the program since it was implemented in 2002, the task force has encountered critical issues that would undermine its long-term effectiveness in building security capacity in the Horn of Africa region. Currently, the task force's sustainability is uncertain because AFRICOM, in concert with the

⁴⁴⁸ Ploch, Lauren. *Africa Command: US strategic interests and the role of the US military in Africa*. DIANE Publishing, 2010.

⁴⁴⁹ Kagwanja, Peter. "Counter-terrorism in the Horn of Africa: New security frontiers, old strategies." *African Security Studies* 15, no. 3 (2006): 72-86.

⁴⁵⁰ Stevenson, Jonathan. "Jihad and piracy in Somalia." *Survival* 52, no. 1 (2010): 27-38.

Department of Defense or Navy, has not developed plans for long term funding. Several other agencies, like the GAO, have strongly encouraged including the projected costs of ongoing operations in the DoD's base budget requests.⁴⁵¹

Success: The Combined Joint Task Force – Horn of Africa is a clear successful example of U.S. counterinsurgency special operations forces working together with local indigenous forces of allied partners to deter extremist organizations and built a sustainable environment. Such successes have been especially significant in communicating with local populations. In Tanzania, for example, team members of the CJTF-HOA became proficient in Swahili, enabling them to develop stronger relationships with the local community. Getting to know the native language, culture and the people in the region has contributed significantly in strengthening Tanzanian-U.S. partnership in a region that's common to extremist organizations to operate. Furthermore, key accomplishments have also been reached in other regional states. The team members have enhanced Ethiopia, Kenya and Djibouti capacity to combat local insurgencies. They have expanded military-to-military training operations with local military forces and as a result have created strong/positive relationships with host nation's military and ministerial leadership⁴⁵².

Operation Enduring Freedom – Philippines (OEF-P) or Operation Freedom Eagle

The Southern Philippines have a high level of Islamist militant activity mostly through terrorist groups such as the Abu Sayyaf Group, Jemaah Islamiya, and the New People's Army. Their operations are based within regions of the Philippines that are ill governed, contain civil unrest, and are comprised of a large discontented Muslim population dominated by a predominantly Catholic government. Additionally, a large amount of Muslims live under the poverty line in many of the provinces. These regions are an example of what Sean Anderson calls "grey areas" which are "...ungovernable areas in developing nations over which unstable, weak national governments have nominal control but which afford criminal syndicates of terrorists and insurgent groups excellent bases of operation from which they can conduct far reaching operations against targeted nations." It is within these "grey areas" of the Philippines that the Abu Sayyaf

⁴⁵¹ Kfir, Isaac. "The Challenge of AFRICOM." *Joint Forces Quarterly* (2008).

⁴⁵² Redente, Jennifer. "Winning Minds." 85.1 (2009)

Group “claims to promote an independent Islamic state in western Mindanao and the Sulu Archipelago,”⁴⁵³ and have the broader objective of a pan-Islamic State spanning Southeast Asia.” In order to fulfill this goal of autonomy, the Abu Sayyaf Group relies on extremist tactics such as kidnapping for political power and the development of training bases to start terrorist operational activities in the ill governed areas. This region became a primary concern for the United States in May 2001, when Abu Sayyaf kidnapped twenty people and demanded ransom payments, and they beheaded an American citizen. In response to this situation and 9/11, the United States began Operation Enduring Freedom-Philippines (OEF-P), otherwise known as the Joint Task Force of U.S.-Philippine operations in 2012.

The Joint Task Force of U.S.-Philippine Operations “works together with the Armed Forces of the Philippines to fight terrorism and deliver humanitarian assistance to the people of Mindanao. U.S. forces are temporarily deployed to the Philippines in a strictly non-combatant role to advise and assist the AFP, share, information, and to conduct joint civil military operations.” According to their mission statement, they work at the behest of the Philippine government. They have included initiatives for “full spectrum embedding and engagement,” “operations and Intelligence fusion,” and “military transition of internal security responsibilities to the police.”⁴⁵⁴ The JTF-UPO has been credited as one of the United States’ most instructive examples of countering unconventional warfare and terrorist activities.

Challenges: The Joint Task Force of U.S.-Philippine Operations faced image problems within the region, as well as struggles attaining resources and authority designation. The United States–Philippine relationship caused U.S. BPSC efforts to be feared by the Philippine public as a U.S. desire to re-establish permanent bases in the Philippines. Moreover, JSOTF-P was heavily limited in its operational capacity due to its authorization by the AUMF which initially indicated that the United States would be able to aid Philippine forces only in connection to efforts against al Qaeda affiliated terrorist activities. Resources were further constrained by funding concerns, as it had to rely on “peacetime humanitarian assistance processes” rather than authorized funds under the

⁴⁵³ United States, The National Counterterrorism Center, *Abu Sayyaf Group (ASG)*, <http://www.nctc.gov/site/groups/asg.html>.

⁴⁵⁴ Ibid.

Commander's Emergency Response Program such as for Iraq and Afghanistan operations. Effective diplomacy by the U.S. Country Team and a history of successful operations implemented in the region have both alleviated public apprehension in the region and garnered increased funding.⁴⁵⁵

Success: The Joint Task Force for U.S.–Philippine counterterrorism initiative has largely constrained the ability of extremist groups to conduct terrorist activities inside the Philippines. The Abu Sayyaf Group has not conducted a significant attack against the Filipino population since the 2005 ‘Valentine’s Day Bombings,’ and their total numbers of personnel have been reduced from more than 1,200 in 2002 to less than 500.” With the help of this U.S. task force, the Philippine government launched the *Payapa at Masaganang Pamayanan (PAMANA)* program, “a national program that extends development interventions to isolated, hard-to-reach, and conflict-affected communities, ensuring that they are not left behind.” This program has had a huge impact in reaching isolated regions to provide an alternative to terrorist involvement and influence. Furthermore, the Joint Task Force was a large success in protecting United States interests in national security, budget, diplomacy and more. The United States effectively developed and implemented a counterterrorism program that destroyed the threat to U.S. Security and cost only took \$50 million per year needed to sustain 600 U.S. personnel in the Philippines, compared to the campaign in Afghanistan, which was costing \$2 billion per week in 2013. Further, it established long-term relationships and sustained commitment between the U.S. and Philippine governments and provided long term support from partner nations in areas such as intelligence, communication, logistics, and other vital collaboration.

Pakistan Security Force Assistance

Following the 9/11 attacks in 2001, Pakistan was one of the first nations to withdraw their support from Taliban and join the U.S. in the War of Terror as an ally. Pakistan has been among the leading recipients of U.S. foreign assistance since its creation in 1947, but after its declaration of shifted away from Taliban and endorsed a security partnership with the United States, which ultimately secured further assistance

⁴⁵⁵ David S. Maxwell, "Partnership, Respect Guide U.S. Military Role in Philippines," *World Politics Review*, February 5, 2013, pg. #, <http://www.worldpoliticsreview.com/articles/12685/partnership-respect-guide-u-s-military-role-in-philippines>.

and funding. Operation Enduring Freedom – Afghanistan (OEF-A), one of the U.S.’ responses to the 9/11 attacks, began driving out Taliban and al Qaeda members from Afghanistan into the Pakistan’s Federally Administrated Tribal Areas (FATA).⁴⁵⁶ Pakistan’s western tribal areas (FATA) are remote, isolated, and lawless, creating an attractive breeding ground for violent extremists. A poll of FATA residents showed that nearly 70% want the Pakistani military alone to fight Taliban and al Qaeda militants in the tribal areas.⁴⁵⁷ U.S. security efforts include but are not limited to three funding programs that act as Building Partnership Capacity Programs within Pakistan. These are the Foreign Military Financing, International Military Education and Training, and Peacekeeping Operations that were authorized by section 1206 of the NDAA FY2014. Further the Pakistan Counterinsurgency Capability Fund (PCCF) was authorized in FY 2009 providing \$400 million in funding to assist the government of Pakistan in building the capacity of Pakistan’s security forces to conduct counterinsurgency operations in support of U.S. efforts in Operation Enduring Freedom.⁴⁵⁸

Challenges: The largest challenges in maintaining the security partnership between U.S. and Pakistan are the events that occurred in FY2011. Beginning with a CIA contractor killing two Pakistanis in broad daylight, to the U.S. raid on Osama bin Laden at a compound near the Pakistan Military Academy, to a twenty-two hour assault on the U.S. embassy. These issues placed a hiatus on many joint efforts and caused huge distrust between the two nations. Further, that same year, a structural flaw in the partnership was identified – the two countries have a one-dimensional transactional relationship centered along security concerns, specifically, the war against the Taliban and al Qaeda.⁴⁵⁹ The two nations have had a history of strategic events that have forced them into close cooperation: during the Cold War (the 1950/60s); during the fight against the Russians

⁴⁵⁶ "Coalition Operations in Pakistan," *United States Central Command*,

<http://www.informationclearinghouse.info/pakistan-uscentcom.htm> ed.

⁴⁵⁷ Center for Global Development, *Aid to Pakistan by the Numbers*, report, section goes here, <http://www.cgdev.org/page/aid-pakistan-numbers>.

⁴⁵⁸ Stimson Center: Pragmatic Steps for Global Security, *DoD Authorities for Foreign and Security Assistance Programs*, report, July 20, 2009, section goes here, http://www.stimson.org/images/uploads/research-pdfs/DoD_security_assistance_authorities.pdf.

⁴⁵⁹ Malik Z. Iqbal, *An Appraisal of the Afghanistan-Pakistan Strategy to Counter Terrorism*, diss., Strategic Studies Institute, 2010, pg. #12.

(the 1980s); and currently in the global war against terrorism.⁴⁶⁰ As soon as U.S. security interests do not coincide with Pakistani or vice versa the entire partnership becomes at risk. This identifies the common concern of BPSC that all security assistance partnerships must be conducted hand in hand with diplomatic and development partnership efforts.

Successes: Since 9/11 and the commencement of the security partnership, Pakistan has been providing crucial support to the United States and its allies in Afghanistan in numerous operations throughout the region. More than 500 al Qaeda militants have been captured due to these combined efforts. According to the U.S. Departments of State and Defense, “Pakistan has provided the United States with unprecedented levels of cooperation. This includes permitting the U.S. military access to bases in the country, aiding in identification and detention of extremists, helping to seal the border between Pakistan and Afghanistan, and blocking terrorist financing.”⁴⁶¹ In March 2009, Obama outlined his strategy of facing the extremist threat in this area and despite continued mistrust; the number of terrorists that were thwarted by a partnership between Pakistan and the U.S. is a large success in the removing the security threat.⁴⁶²

Yemen

Yemen poses a large threat to the United States and undermines its security objectives within the Arabian Peninsula, especially as a hotspot for harboring attacks against the U.S. and recruiting new members to form part of their ideology. Yemen is in the strategic crossroads between the Arabian Peninsula and the Horn of Africa. It is the main operational center and base of al Qaeda in the Arabian Peninsula (AQAP) and it has also made volatile by piracy.⁴⁶³ AQAP is responsible for many U.S. security threats including the 2008 bombing of the U.S. embassy in Sanaa, Yemen, the 2009 Christmas Day Bomb attempt, and the 2010 cargo planes bomb attempt. The central government of Yemen is highly unstable with a fragmented security force due to the multi ethnic and religious groups present within the nation. It is one of the poorest countries, with a third

⁴⁶⁰ Shehzad H. Qazi, "US-Pakistan Relations: Common and Clashing Interests," *World Affairs Journal*, May/June 2012, pg. #, <http://www.worldaffairsjournal.org/article/us-pakistan-relations-common-and-clashing-interests>.

⁴⁶¹ Ibid, pg #4.

⁴⁶² Ibid, pg. #3.

⁴⁶³ <http://www.gpo.gov/fdsys/pkg/CHRG-112shrg73916/html/CHRG-112shrg73916.htm>

of its population living in extreme poverty. John Brennan, Director of the CIA and formerly the chief counterterrorism advisor to President Obama states, “The final pillar of our comprehensive approach to Yemen: improving security... Put simply, Yemen cannot succeed politically, economically, socially so long as the cancerous growth of AQAP remains.”⁴⁶⁴ He continues by saying that, “Ultimately, the long term battle against AQAP in Yemen must be fought and won by Yemenis.” Essentially, the United States is leading the effort to help reform and restructures Yemen’s military into a professional, unified force under civilian control. For example, almost all of the \$159 million in security assistance that the U.S. gave to Yemen in 2012 was for BPSC and building Yemeni security forces.

Challenges: The largest challenge to BPSC of Yemen is the wide range of instability in the region. Yemen is a country struggling with deeper problems than simply security, they are lacking infrastructure. High unemployment rates, widespread poverty, lack of food, and economic under-development all burden the nation. While training security forces is critical to the eradication of al Qaeda in the Arabian Peninsula, the United States must specify what our funding and training will be contributing to in the future in order to assist the transition to a democratic state instead of contributing toward civilian chaos.

Successes: The overarching U.S. policy goal in Yemen is to create a stable and secure state. To further that endeavor, U.S. agencies have allocated more than \$642 million in security assistance to Yemen, \$326 million specifically to Building Security Capacity efforts. The DoD has been implementing programs that “strengthen Yemen’s ability to promote security and minimize threats.”⁴⁶⁵ That is, their partnership has surrounded training Yemeni forces in a counterterrorism framework. In summer 2012, the Yemeni forces launched an offensive against AQAP and with a force of 20,000 regular army soldiers, Saudi Arabia funding, and U.S. BPSC efforts prevailed, expelled AQAP forces from many urban areas in Southern Yemen.⁴⁶⁶

Plan Colombia Initiative:

⁴⁶⁴ https://csis.org/files/publication/130808_yemen_burkechair_updated.pdf

⁴⁶⁵ <http://www.strategicstudiesinstitute.army.mil/pdf/files/PUB1157.pdf>

As part of its anti-narcotics and counterterrorism strategy, the United States along with the collaboration of the Colombian government developed the Plan Colombia with the aim of reducing terrorist threats to both the United States and Colombia, reduce the flow of narcotics into to the U.S. and reduce the percentage of kidnappings and other violent acts against civil society. Since the implementation of the program in 1999 through FY 2011, the United States has provided more than \$8 billion dollars to fund the Plan Colombia as well as other follow-up programs.⁴⁶⁷ The initiative has provided training, equipment and funding to the security forces of Colombia for the purpose of carrying out operations to combat ideological extremist groups who pose a threat to the national sovereignty of Colombia. Nevertheless, the United States has provided training in areas such as counternarcotics and counterterrorism, alternative development, law enforcement, institutional strengthening, human rights and labor rights as well as conflict management and peace promotion.⁴⁶⁸

The FBI has been increasingly involved in enabling successful outcomes for the program. Specifically, they have worked with Colombia's judicial system to improve law enforcement capabilities, criminal justice procedures and making the judicial branch an effective and fair system that the local population can rely own for enforcing the stability within the region. Notably, the FBI has specialized in providing various training programs that would Colombian and other allied partners in South America to track down fugitives, share information and dismantle criminal and security threats. Such programs included the Colombia Strategic Development Initiative, International Law Enforcement Executive Development Seminars, Bilateral Training Programs and International Law Enforcement Academies, all of which serve the purpose of teaching cutting-edge leadership and investigation techniques to allied partner's judicial system in manner that is similar to the FBI National Academy.⁴⁶⁹

Challenges: Despite the large reduction of criminal activity in regions of Colombia that are vital to economic growth, the initiative has encounter management and

⁴⁶⁷ Bureau of Western Hemisphere of Affairs. "The Colombia Strategic Development Initiative (CSDI)." *U.S. Department of State* (2012): n. pag. Web.

⁴⁶⁸ Serafino, Nina M. "Colombia: Plan Colombia Legislation and Assistance (FY2000-FY2001)." Congressional Research Service [Library of Congress], 2001.

⁴⁶⁹ "U.S. Government Law Enforcement Training Programs in the Americas." *Organization of American States*. N.p., Nov. 2013. Web.

financial challenges that can undermine the continuation of success of the program. The United States Embassy in Colombia has made modest progress in ensuring that the National Colombia Police assume full responsibility of the aerial eradication program; while at the same time, the Colombian National Police have not revealed sufficient evidence with regard to its issues of counternarcotics assistance.⁴⁷⁰ Similarly, the United States has not provided concrete support to maintain and continue operations with U.S.-provided equipment, which play a vital role in countering the transportation and production of illegal drugs.

Success: The well being and safety of Colombian citizens can be attributed to the security efforts made through the ratification of Plan Colombia both by the United States and Colombian government. With the aerial eradication program in place, the Colombian army has sprayed over 136,551 hectares of cocaine cultivation and over 3,000 hectares of opium in 2004.⁴⁷¹ There has also been an increased in the number of extradited criminals with ties to narcotic and money laundering activities, all amounting to a total of 217 individuals during the Uribe administration. Increasing efforts in enforcing the institutional and human rights sector have also taken place in order to assist the Colombian government reinforce the core functions and values of the civil society. With the assistance of the FBI, there have numerical programs put into practice to help the Colombian government strengthen its judicial system through training for prosecutors, judges and polices investigators.⁴⁷²

Middle Eastern Law Enforcement Training Center

The establishment of the Middle Eastern Law Enforcement Training Center was another step forward toward enforcing the rule of law in the Middle East. The program is a joint law enforcement training initiative between the FBI and the Dubai, United Arab Emirate police department. The center is funded entirely by the Arab Emirates government. The ultimate purpose of the center is to address transnational/cross-border crimes in the Middle East region. The FBI has become increasingly involved in providing training to the police department in Dubai and intelligence support as those crimes

⁴⁷⁰ GAO, *Drug Control: Challenges in Implementing Plan Colombia*, GAO-01-76T (Washington, D.C. October 2000).

⁴⁷¹ Noriega, Roger F. "Plan Colombia: Major successes and new challenges." *DISAM Journal of International Security Assistance Management* 27, no. 4 (2005): 57.

⁴⁷² Hylton, Forrest. "Plan Colombia: The measure of success." *Brown J. World Aff.* 17 (2010): 99.

committing within the region may impede both the United States and United Arab Emirates from reaching their national interests in the region.⁴⁷³ With cooperation with local police officials, the FBI has identified several of crime issues that will be addressed by the Center's trained officials. Those issues include corruption, counterterrorism, organized crime, money laundering, drugs and other issues that hinder economic as well as social stability within the region.

In addition, the Middle Eastern Law Enforcement Training Center serves as one of the several initiatives in which the FBI has provided large amounts of support in order to protect the interests of the United States and those of its allied partners.⁴⁷⁴ The FBI seeks to maintain an active presence in countries abroad by training law enforcement officers of partner nations. Reducing the threats posed by insurgencies is the driving factor of increasing the FBI presence abroad.

Challenges: The Law Enforcement Training Center has faced some challenges with regards to the overlapping between which U.S. security agencies should be providing specific training activities. There hasn't been clear communication between the various security agencies (CIA, FBI, DoD, etc.) and the result has been inefficiency in building the U.S. allied partner's security forces in the Middle East.

Success: Since the implementation of the program, the United Arab Emirate police department has become more proactive in issuing operations to capture criminals in the area. Such criminals pose a threat to the overall stability of the region while at the same time may construct ties with extremist groups from other places and harbor attacks against the United States or allied partners. Recently, the Dubai police have captured 23 individuals who presented charges with illegal money laundering, organized crime and drugs; all illegal activities may have presented ties with terrorist organizations and may have aided some of their activities within the region.⁴⁷⁵

Afghanistan Security Force Assistance

As part of the overall U.S. security objective to dismantle and deter Al Qaeda and its affiliates, a security force assistance program in Afghanistan was implemented for the

⁴⁷³ GAO, *International Crime Control: Sustained Executive-Level Coordination of Federal Response Needed*, GAO-01-629 (Washington, D.C. August 2001).

⁴⁷⁴ "International Training." *FBI*. The FBI Training Academy, Aug. 2010. Web.

⁴⁷⁵ GAO, *International Crime Control: Sustained Executive-Level Coordination of Federal Response Needed*, GAO-01-629 (Washington, D.C. August 2001).

purpose of transitioning the responsibility to the Afghanistan's government to take action against these extremist groups. To build upon the success of the overall objective, the NATO Training Mission in Afghanistan (NTM-A) was developed as the core program to build the security capacity of Afghanistan in terms of having an effective police system as well as an efficient military force.⁴⁷⁶ Similarly, the United States has assigned the Combined Security Transition Command-Afghanistan with the responsibility for developing Afghanistan's National Security Forces. The program's key task was the development of Afghan National Security Forces through strengthening recruiting, training and fielding. Developing these units is essential to winning the war against the extremist groups that operate in this region. The local government would then have an adequate police system with the support of an effective national security force to combat insurgencies.⁴⁷⁷

Challenges: The Afghan government faces challenges developing and maintaining the civil service expertise needed to manage and account for funds in the Afghanistan Reconstruction Trust Fund, one of the most important components of U.S. assistance to the Afghan government. Not having the efficient and appropriate government auditing standards has allowed for corruption and hindered the ultimate goals of the CSTC-A program.⁴⁷⁸

Success: The Afghan National Army's capabilities have been improving steadily over the past years. The ANA has taken the lead in more than 30 significant operations and the success of these operations has demonstrated increasing effectiveness, competence and professionalism.⁴⁷⁹ In the year 2008, the Joint Coordination and Monitoring Board (JCMB) approved a proposal to expand the authorized end-strength of the Afghan National Army from 70,000 to 80,000 personnel; that same year, the Afghan Security Forces Fund requested approximately \$2.7 billion, which included 1,711 million for the ANA, 980 million for the ANP, and 9.6 million for detainee operations. For the

⁴⁷⁶ Tasikas, Vasilios. "Developing the Rule of Law in Afghanistan: The Need for a New Strategic Paradigm." *Army Law*. (2007): 45.

⁴⁷⁷ Younossi, Obaid, ed. *The long march: building an Afghan National Army*. Vol. 845. Rand Corporation, 2009.

⁴⁷⁸ Caldwell, I. V., B. William, and Nathan K. Finney. *Building police capacity in Afghanistan: The challenges of a multilateral approach*. NATIONAL DEFENSE UNIV WASHINGTON DC, 2010.

⁴⁷⁹ McNeill, Dan K. "International Security Assistance Force in Afghanistan." *BNET.com* (2007).

National army itself, it would equip and sustain the 70,000-troop, 14-brigade force and expand education and training, including the National Military Academy, counter-improvised explosive device training, mobile training teams, branch qualification courses, and literacy and English language programs.⁴⁸⁰

Recommendations:

- 1) Expand the extent and number of BPSC Programs.** BPSC programs offer a low cost approach for the U.S. military to combat regional and global terrorism inside a partner nation's sovereign territory. The U.S. has already implemented successful BPSC Programs, such as the JSOTF-P, Trans-Saharan counterterrorism partnership, Combined Joint Task Force - Horn of Africa, OEF-Philippines, Pakistan Security Force Assistance and others. It is evident that these initiatives have had major successes in reducing both the number of U.S. troops engaged in combat in these regions and the monetary cost incurred due to their activities. Further, these enterprises have assisted in averting the cyclical force of violence as BPSC has established the United States role abroad in a more positive light.
- 2) Identify conflict-prone for BPSC priority.** In order to effectively administer BPSC Programs, the United States should put more emphasis on hard to isolated, conflict-prone areas in countries terrorist groups such as al Qaeda, Taliban, al Shabaab; Abu Sayyaf could establish a foothold. These lawless regions are the breeding grounds for extremism. The people living within them are often devoid of economic opportunity, the ability of political expression, or the ability to defend themselves from extremist rule of law. Examples of regions such as these are: the FATA Regions of Pakistan and the Southern Islands of the Philippines, particularly throughout the islands of Mindanao and the Sulu archipelago, Trans-Sahara and Yemen. These hot spots are the origination of security issues that threaten the United States and other allies.
- 3) Relocate Coordination Centers to Operational Regions.** Establish Military Commands centers for Special Ops Team or Task Force Operations in order to

⁴⁸⁰ Taylor, Claire. *Afghanistan: The timetable for security transition*. House of Commons Library, 2011.

effectively facilitate the resources and information sharing among Special Operation Commands. There is need to be more localized coordination centers in regions in which we operate. With the official establishment of the AFRICOM in 2008, there have been wide disputes in locating the Command's headquarters in Africa rather than its current location in Stuttgart, Germany. Given that the AFRICOM is responsible for military operations as well as military relations with 53 African nations, it is necessary to reestablish the headquarters in Africa in order to facilitate the handling of information among allied partner forces and our data centers. Additionally, deploying AFRICOM's staff in close geographic location to their African counterparts would enable more effective interaction. Even though it has not been determine the exact future location of the AFRICOM command, it is speculated that the command is to be established in a region containing political stability and levels of corruption are low; this would enable a more effective cooperation between the command and the hosting country in terms of strengthening local security forces to combat extremist groups affiliated to Al Qaeda. Furthermore, there is going to be an increase of U.S. forces dispersed throughout 35 different African nations to assist partner security forces with training and equipping in order to combat insurgent groups. Having a localized coordination center like AFRICOM would facilitate the distribution of resources to U.S. forces as well as allied partner to conduct successful anti-insurgent operations.

- 4) **Train partner security forces according to their agency specialization to avoid overlap and inefficiency and implement clear channels of interagency communication and oversight.** The Unites States should training partner security forces according to their agency specialization, meaning DoD should train foreign partner nation's military forces, the CIA should train foreign partner nation's intelligence, and FBI should train foreign partner nation's domestic forces. It is important that various U.S. agencies establish clear channels of interagency communication and oversight over military operations that each agency conducts. This will contribute to the overall objective of enforcing the rule of law and maintaining stability within regions where extremist groups are located. In reinforcing this idea of establishing clear channels of communication, the primary

security agencies should share a common mechanism that would allow them to execute on their responsibilities as an agency for BPSC programs. That is, there shouldn't be a fluctuation of the distribution of funds between each agency to conduct activities regarding the development of the U.S. partner nation's security capacity; limitations of funds shouldn't prohibit the FBI from assisting the Mali government in establishing an effective judicial system through the development of Law Enforcement Academies; the DoD shouldn't have limitations for training and equipping allied partner's forces. Equal distribution of funds to match the goal of each BPSC program should be a key element of successful implementation of any programs into other lawless regions in the world. Each United States agency should be responsible for training and guiding relative forces in partner countries.

Part II: Diplomacy – Reclaiming Credibility Abroad

By Jacob Beeders

In the evolving future of the Global War on Terror, diplomacy will be a cornerstone of our national policy. As our military commitments around the globe draw down, we increasingly rely on foreign partners to undertake the bulk of counterterrorism activities. In turn, our diplomatic policy should address the willingness and capability of partner nations to confront this global issue. To do this we must form stronger relationships with key countries and regional powers. Building lasting relationships means convincing partners of the mutual benefits of cooperation, and the mutual threat of inaction. It also means addressing our lack of credibility, due to contradictory messaging and action. The United States has alternately claimed to stand for principles such as democracy, while at the same time supporting undemocratic regimes. Our credibility has suffered in turn, with partners increasingly unsure of our objectives. We cannot be all things to all people. U.S. foreign policy has consistently contradicted itself, making the United States look unreliable and hypocritical. In order to address these issues, we must limit the scope of our objectives in the Middle East and bring clarity to our position. A clear and actionable set of objectives can ameliorate the United States' glaring lack of credibility in the Islamic world, outlining long-term goals insulated from short-term tactical objectives. Improving our credibility would make countries more amenable to cooperation against terrorist threats while removing some of the ideological underpinnings of al Qaeda's recruitment.

The Decline of U.S. Credibility

The United States finds itself with a low amount of international credibility, with allies and enemies from Brazil to Iran doubting the sincerity of our messages and intent.⁴⁸¹ In no region is our lack of credibility more pronounced than in the Middle East, a focal point of U.S. foreign policy. The Middle East's strategic importance, as a major resource provider and ideological crossroads, has brought significant U.S. involvement. The United States' repeated involvement over the decades has polarized opinions. The

⁴⁸¹ Brattberg, Erik. "Commentary: NSA Scandal Hurts US Exports." Defense News. <http://www.defensenews.com/article/20140107/DEFREG02/301070018/Commentary-NSA-Scandal-Hurts-US-Exports>.

diplomatic policies of the Bush and Obama administrations during the War on Terror have exacerbated this problem.

The Bush presidency was marked by several major events and initiatives in diplomacy in relation to the War on Terror. From the onset of the conflict, Bush consistently employed rhetoric of a American desire for the promotion of democracy and human rights in the Middle East. In the 2002 National Security Strategy he outlined four key points the United States must emphasize in order to “Champion Aspirations for Human Dignity.”⁴⁸² These include, speaking out about violations of human dignity “using our voice in vote in international institutions to advance freedom”, employing foreign aid to promote freedom, “make freedom and the development of democratic institutions key themes in our bilateral relations,” and “take special efforts to promote freedom of religion and conscience.”⁴⁸³ Similar proclamations were commonplace in other public settings. Bush notably created the Middle East Partnership Initiative, which sought to support the growth of democracy by funding activists, civil servants and entrepreneurs at the local level rather than direct aid to the state. This was the flagship program of Bush’s Freedom Agenda, which sought to spread democracy throughout the Middle East.

President Bush’s proclamations in favor of the promotion of democracy and human rights conflicted with his inconsistent record of accomplishment. The Invasion of Iraq, ostensibly launched to deny terrorists support and contain nuclear weapons, would in addition serve as a beacon for democratization for the Arab World. Addressing the United Nations General Assembly in 2002, Bush asserted that removing Saddam would inspire “reforms throughout the Muslim world.”⁴⁸⁴ The reality of U.S. troops killing Muslims, and the flawed democratic transition, belied these well-meaning assertions. The administration also focused its democratization efforts on Lebanon, the Palestinian territories and Iran. These policies achieved some notable success, but ultimately undemocratic and contradictory action undermined them. Undoubtedly, Iraq is a more

⁴⁸² United States Department of State. *The National Security Strategy of the United States of America*. September 2002. <http://www.state.gov/documents/organization/63562.pdf>. 4

⁴⁸³ United States Department of State. *The National Security Strategy of the United States of America*. 4

⁴⁸⁴ Bush, George W. "Statement by President Bush." Speech, United Nations General Assembly, UN Headquarters, New York, September 12, 2002.. <http://www.un.org/webcast/ga/57/statements/020912usaE.htm>.

democratic state than under Saddam, and Lebanon and the Palestinian territories held elections. When the 2006 Palestinian parliamentary elections brought Hamas into power, the United States rejected the results and sought to bring about their collapse through sanctions. These trends highlighted the notion that the United States favors democracy only when the rulers are pro-American.

On the other hand, President Obama's policy and public message toward the Middle East diverged from that of his predecessor. While Bush often spoke of the desire to reshape the political climate of the Middle East, Obama has been far more reserved in his speech. Obama's Cairo Speech was significant in several regards, most notably in that it directly engaged and spoke in a considerate manner toward its Arab Audience. Obama proclaimed, "to seek a new beginning between the United States and Muslims... based on mutual interest and mutual respect."⁴⁸⁵ He placed particular emphasis on the Palestinian-Israeli peace process, with clear reference toward the halt of settlement growth.⁴⁸⁶ In the immediate term, the Cairo Speech was a boon for pro-American feelings, but in the longer-term its commitments further widened the credibility gap. The message and Koranic tinged language of the Cairo speech resonated with Arab audiences. Feelings reversed as the United States failed to advance the Palestinian-Israeli peace process, and halt the construction of settlements. Abdel Moneim Said Aly, chairman of the Board of the popular Egyptian daily al Ahram, stressed that Obama's "big fault" was "the lack of progress on the peace process" despite the speech's positive effects.⁴⁸⁷

The Arab Spring fundamentally shifted the dynamics of the Middle East, forcing the Obama administration to adjust its policy and speech rapidly to an ever-changing situation. Very few people, especially within the administration, predicted the onset of the Arab Spring and its subsequent developments. Within months, relative unknowns without established relationships with the United States replaced longtime partners. The United States had to balance its commitment toward the promotion of democracy and human rights, with that toward its allies. The resultant policy was confused, and often contradictory as the administration sought to balance two opposing poles.

⁴⁸⁵The White House. *Remarks by the President at Cairo University*. June 4, 2009.

http://www.whitehouse.gov/the_press_office/Remarks-by-the-President-at-Cairo-University-6-04-09.

⁴⁸⁶The White House. *Remarks by the President at Cairo University*.

⁴⁸⁷Blakely, Andrew. 2010. "Obama Fire Doused by Cold Shower." *Washington Report On Middle East Affairs* 29, no. 2: 51-52. *Military & Government Collection*, EBSCOhost(accessed February 3, 2014).

Because of our opacity and ambiguities in policy, regional powers independently began to resolve major policy issues, often with results against U.S. interests. In Syria, the United States' limited support to the opposition seemingly contradicts its pro-democratic statements. In this policy void Saudi Arabia, Qatar and the United Arab Emirates have funded groups amenable to their interests in Syria, frustrated by the United States' lack of initiative.⁴⁸⁸ The Saudi-backed suppression of dissidents in Bahrain, met with little response from Washington. The United States' reluctance to act in Bahrain, along with its reserved strategy toward Syria, was "difficult for them [people in the region] to understand" considering the U.S.-backed intervention in support of Libyan democratic forces.⁴⁸⁹

The United States' changing narrative toward democracy in Egypt has damaged our relations with the current regime, as well as the Gulf States. The United States' acceptance of Mubarak's fall, Muslim Brotherhood rule, and the recent military coup has confused all parties. In turn, both popular and regime opinion toward the U.S. has soured.⁴⁹⁰ After the United States pressured Mubarak to resign, Obama defended his policy publicly, stating the United States was on the "right side of history" in its actions.⁴⁹¹ He gingerly lent support to other democratic movements, warning rulers that "the world is changing," and "you can't maintain power through coercion."⁴⁹² After the military coup that removed president Morsi, Obama expressed that he was "deeply concerned."⁴⁹³ Despite this proclamation, and U.S. law forbidding assistance toward countries that have militarily removed elected leaders, aid persists. While the United

⁴⁸⁸ DeYoung, Karen, and Bob Woodward. "Syrian Conflict: Persian Gulf Officials, Tired of Waiting for U.S., Move to Boost Aid to Rebels." *Washington Post*. November 03, 2013. http://www.washingtonpost.com/world/national-security/syrian-conflict-persian-gulf-officials-tired-of-waiting-for-us-move-to-boost-aid-to-rebels/2013/11/02/af0c8554-4324-11e3-8b74-d89d714ca4dd_story.html.

⁴⁸⁹ Brookings Institution, and United States. 2013. *The United States and the Middle East: avoiding miscalculation and preparing for conflict*. [www.brookings.edu/~media/research/files/reports/2013/12/05%20centcom%20pollack/centcom%](http://www.brookings.edu/~media/research/files/reports/2013/12/05%20centcom%20pollack/centcom%5),

5

⁴⁹⁰ "Egyptian Attitudes September 2013." Zogby Research Services, Llc. November 26, 2013. http://b3cdn.net/aai/fe64c5aaef408b33d1_0lm6bnk0v.pdf.

⁴⁹¹ Halloran, Liz, and Ari Shapiro. "Obama: U.S. Is 'On Right Side Of History' In Mideast." NPR. February 15, 2011. <http://www.npr.org/2011/02/15/133779423/obama-u-s-is-on-right-side-of-history-in-mideast>.

⁴⁹² Halloran, Liz, and Ari Shapiro. "Obama: U.S. Is 'On Right Side Of History' In Mideast."

⁴⁹³ The White House. *Statement by President Barack Obama on Egypt*. July 5, 2013. <http://www.whitehouse.gov/the-press-office/2013/07/03/statement-president-barack-obama-egypt>.

States' stance vacillated, Saudi Arabia, the UAE, and Kuwait pledged \$12 billion in aid and loans as "a move intended to signal support for a return to the pre-2011 status quo."⁴⁹⁴

Assessing the accomplishments and failures of the Bush and Obama diplomatic programs, policymakers can develop a new strategy moving forward. While each president followed distinct policies toward the Middle East, the same problems inhibited their success. Both presidents' public messaging contradicted with their administrations actions, particularly in regards to democracy and human rights. Confusion about U.S. diplomacy has bred mistrust among Middle Eastern states, who have in turn increasingly struck out against U.S. initiatives. It is in the United States' interest to reconcile its actions with its words, in order to better our relations with frontline states in the War on Terror. When our message becomes clearer, we can act to discredit the competing message of al Qaeda and its affiliates.

Re-Shaping the U.S. Message

Moving forward in the global conflict against al Qaeda, the United States will need to formulate a clear message detailing its objectives in the Middle East. Scaling back our stated commitments and articulating a clear and consistent set of policy goals will help the United States avoid appearing hypocritical. Doing so will ameliorate the confusion fostered by contradictory messaging, and eventually repair our damaged credibility among strategically important states. At a 2013 Brookings Institution conference, local experts expressed that "the leaders of at least one regional country believe the region would be in better shape if the United States were more forthcoming in its long-term regional strategy."⁴⁹⁵ Partners such as Saudi Arabia,⁴⁹⁶ have begun to hedge against a perceived U.S. pivot away from the Middle East.⁴⁹⁷ The United States needs to communicate these policies to the world as transparently as possible through public

⁴⁹⁴Hamid, Shadi, and Peter Mandaville. 2013. "Bringing the United States Back into the Middle East". *The Washington Quarterly*. 36 (4): 95-105. 101

⁴⁹⁵Brookings Institution, and United States. 2013. *The United States and the Middle East: avoiding miscalculation and preparing for conflict*. 12

⁴⁹⁶Bakr, Amena, and Warren Strobel. "Saudi Arabia Warns of Shift Away from U.S. over Syria, Iran." Reuters. October 22, 2013. <http://www.reuters.com/article/2013/10/22/us-saudi-usa-idUSBRE99L0K120131022>.

⁴⁹⁷Kahl, Colin H., and Jacob Stokes. "Overcoming the Gulf in the Gulf." *Defense One*. October 31, 2013. <http://www.defenseone.com/ideas/2013/10/overcoming-gulf-gulf/72983/?oref=d-interstitial-continue>.

speeches and documents, such as National Security Strategies, as well through dialogue with partners.

The Obama administration's most recent policy proclamations have made steps forward in this regard, illustrating a set of realistic policy objectives toward the Middle East. In his speech to the U.N. in September of 2013, President Obama outlined four core interests toward the Middle East and North Africa, which the United States is willing to use all components of its power, including its military, to protect. They are as follows: to "confront external aggression against our allies and partners," "ensure the free flow of energy from the region to the world," "dismantle terrorist networks that threaten our people" and finally to "not tolerate the development or use of weapons of mass destruction."⁴⁹⁸ While not described as a core interest, he emphasized the promotion of "democracy and human rights and open markets," with the corollary that unilateral U.S. force can seldom accomplish these goals alone, rather multilateral cooperation is critical.⁴⁹⁹ This speech was tempered by the administration's previous rhetorical failures, such as the "redline" approach toward the use of chemical weapons in Syria and its various declarations toward Egypt.⁵⁰⁰ Instead of a broad range of policy goals for the rest of his administration, the speech outlined only negotiations with Iran and the Israeli-Palestinian peace process in the short-term.

U.S. messaging moving forward should build off this template. An effective message clearly defines our interests and goals, while acknowledging the limitations of our capability and willpower. It must affirm the United States's long-term commitment toward the region, allaying fears of disengagement. Realistic and actionable principles must be the hallmark of the United States' message, rather than obliging the nation toward lofty aims. Ineffective messaging in the past tended to embrace ideas without acknowledging contradictions and limitations in policy. Bush's National Security Strategy and Freedom Agenda were characterized by a lack of critical self-analysis,

⁴⁹⁸ The White House. *Remarks by President Obama in Address to the United Nations General Assembly*. September 24, 2013. <http://www.whitehouse.gov/the-press-office/2013/09/24/remarks-president-obama-address-united-nations-general-assembly>.

⁴⁹⁹ The White House. *Remarks by President Obama in Address to the United Nations General Assembly*.

⁵⁰⁰ Judis, John B. "Obama Just Gave His Most Significant Foreign Policy Speech." *New Republic*, September 24, 2013. <http://www.newrepublic.com/article/114839/obamas-united-nations-speech-was-his-most-significant>.

defining the United States as an unflinching defender and promoter of democracy and human rights.⁵⁰¹ In reality, his Middle Eastern audience was fully aware of the administration's incongruous policies. The United States must not make pledges toward things it knowingly cannot fulfill, or it will further damage its credibility. Communicating goals transparently facilitates cooperation with our partners, who can act based on assurances rather than assumptions of our policies.

This is not to say that the United States' message must divorce itself from the promotion of human rights and democracy; moving forward, it must respect Middle Eastern democratic aspirations. The United States' message has been hampered by the perception that our actions are unilateral, pursuing narrow self-interest at the expense of foreign regimes and peoples.⁵⁰² As of 2012, a significant majority of those polled in Middle Eastern states believed that democracy is the best form of government, with a sizable percentage believing Islam must play a role in politics.⁵⁰³ Previous U.S. policy has often been skeptical of Islamic political movements, as in the case of the Bush administration's reaction toward Hamas's electoral success. While the effects of the Cairo Speech have largely subsided, its message illustrates an effective model for discourse with the Middle East. The message that the United States sought a relationship built on mutual respect and interests with Islam resonated with Muslim audiences, from policymakers to average citizens.⁵⁰⁴ The United States must express that the Islamic world is a vital partner, predicated on the mutual interest of democracy, regardless of its religious nature.

While transparency and consistency may alleviate our gap in credibility, and enable cooperation, it also inhibits freedom of action. Committing ourselves to specific strategies and principles constrains our ability to act against certain threats. Committing ourselves to democratic principles hinders cooperating with authoritarian rulers.

⁵⁰¹ Joint Congressional Committee on Inaugural Ceremonies. *Fifty-Seventh Inaugural Ceremonies to Swear-In the President of the United States*. January 20, 2005.

<http://www.inaugural.senate.gov/swearing-in/address/address-by-george-w-bush-2005>.

⁵⁰² "Arab Spring Fails to Improve U.S. Image." Pew Research Centers Global Attitudes Project RSS. May 17, 2011. <http://www.pewglobal.org/2011/05/17/arab-spring-fails-to-improve-us-image/>.

⁵⁰³ "Most Muslims Want Democracy, Personal Freedoms, and Islam in Political Life." Pew Research Centers Global Attitudes Project RSS. July 10, 2012. <http://www.pewglobal.org/2012/07/10/most-muslims-want-democracy-personal-freedoms-and-islam-in-political-life/>.

⁵⁰⁴ "Arab World Sees Positive Shift in Obama Speech." NBC News. June 4, 2009. http://www.nbcnews.com/id/31105705/#.UwrA4_IdWSp.

Adhering to human rights limits practices such as torture and drone strikes. The foreign policy of countries such as Russia and China follow a logic in which they “decry anything that they see as infringing on their national sovereignty and assert their prerogative to pursue their interests at will.”⁵⁰⁵ Unlike Russia and China, the United States stands to lose far more as a world leader of a nominally liberal world order. Liberal democracies across the world may then rethink their relationship with the United States if it adopts a more cynical and self-interested foreign policy.

Re-shaping the United States’ Policy

The United States’ message can only be effective if it is consistent with its actions. The tumult of the Arab Spring has settled into a more static environment. At this point, we can assess our priorities in a less pressurized situation. Our overall strategy for the Middle East must balance interests such as ensuring the stability of friendly nations, promoting greater freedoms, and containing the threat of al Qaeda and affiliated extremism. All three of these points are deeply related, but policymakers often look at each in a vacuum. The United States in the past—under Bush and Obama—has publicly put emphasis on all of these points. In practice, U.S. policy has selectively prioritized them; supporting undemocratic allies against terrorism, while pressuring unfriendly regimes to democratize.

Our selectivity stems from the difficult prospect of balancing short-term tactical priorities, with long-term goals. The United States has committed itself toward the promotion of ideals such as human rights and individual freedoms and democracy, both of which can ultimately only be achieved over time. In the short-term, the United States must respond to terrorist threats, and prevent destabilization in the region. Ideally, U.S. policy would simultaneously pursue all of these concerns. Recent history shows that short-term priorities often trump the United States’ long-term goals. The priority of Egyptian or Bahraini stability arguably won out over that of democratization and respect for human rights. The use of Guantanamo Bay and rendition for terrorist suspects continues despite humanitarian concerns.

⁵⁰⁵ "The End of Hypocrisy." *Foreign Affairs*. October 15, 2013.
<http://www.foreignaffairs.com/articles/140155/henry-farrell-and-martha-finnemore/the-end-of-hypocrisy?nocache=1>.

The benefits of promoting human rights, greater freedoms and democracy are far less tangible than containing terrorism or preventing the collapse of an ally, but are nonetheless essential for a long-term strategy. During the Arab Spring, despite significant U.S. support toward a number of Arab regimes, ultimately their undemocratic nature led to their demise, and the subsequent growth of al Qaeda affiliates exploiting the chaos. Terrorist groups have exploited the turmoil created by democratic struggles in Yemen, Syria and Egypt. While the Gulf Arab states weathered through the political turmoil, their lack of many basic freedoms will ultimately lead to unrest. While the freedom of expression is stifled, radical ideologies become one of few ways to express political grievances. Authoritarian and undemocratic governments may not be the primary targets of terrorism, but they are major sources of terrorist recruitment.⁵⁰⁶ Recruits from non-democratic regimes such as Jordan and Saudi Arabia continue to be at the forefront of the global jihad, with both currently providing the most foreign fighters in the Syrian conflict.⁵⁰⁷

Pressuring the remaining non-democratic states to liberalize is a tempting but difficult prospect. Monarchic regimes including Jordan, Morocco and Kuwait introduced reforms following popular unrest, but so far, no monarchy has collapsed following the Arab Spring. Others, such as Saudi Arabia, “do not want to hear American advice about domestic political reform,” which would come at the expense of royal rule.⁵⁰⁸ Pushing for reform runs the risk of alienating partners in the War on Terror. Other transitions to democracy have shown that unrest is more than likely to follow, leading to unintended consequences. Forcing policies onto Middle Eastern states strengthens the perception of U.S. unilateralism. While ultimately democratic and liberal policies may be beneficial to these states, the United States appears to act in a demeaning fashion in telling Arabs what is best for them. Many view these efforts with skepticism, as tools to spread U.S. control and influence, rather than to better their livelihood.

⁵⁰⁶ Hamid, Shadi, and Steven Brooke. "Promoting Democracy to Stop Terror, Revisited." *Policy Review* no. 159 (February 2010): 45-57. *Academic Search Complete*, EBSCOhost (accessed February 23, 2014).

⁵⁰⁷ ICSR Insight: Up to 11,000 Foreign Fighters in Syria; Steep Rise among Western Europeans." ICSR RSS. December 17, 2013. <http://icsr.info/2013/12/icsr-insight-11000-foreign-fighters-syria-steep-rise-among-western-europeans/>.

⁵⁰⁸ Gause, III, F. Gregory. "Kings for All Seasons: How the Middle East's Monarchies Survived the Arab Spring." The Brookings Institution. September 24, 2013. <http://www.brookings.edu/research/papers/2013/09/24-resilience-arab-monarchies-gause>. 31

The United States must tread carefully when using its various forms of leverage over states, such as diplomatic and economic leverage, as they reinforce our unilateral perception. Previous administrations, in particular that of President Bush, viewed diplomatic sanctions as a cheap way to punish state sponsors of terrorism.⁵⁰⁹ This approach has many drawbacks, though. The lack of dialogue between sides contributes to misinterpreted intentions, diminishes our intelligence-gathering capabilities. Our diplomats project the United States' message, garner influence, build relations with local officials, and inform policymakers of happenings in their countries. Ending a diplomatic presence risks a repeat of the situation similar to the 2009 Iranian election protests, where lack of diplomatic presence challenged our basic awareness of the situation. In turn, informal sources, allied diplomats and social media informed our response.⁵¹⁰

The United States must create mechanisms that incentivize liberal and democratic reforms, to bring consistency toward its message and counter causes of terrorism. The State Department has presented a recommendation for the creation of a Middle East and North Africa incentive fund in its 2014 budget request.⁵¹¹ Such policy would create an annual fund that incentivizes "Effective, democratic governance and vibrant civil societies" and "inclusive, market-based economic growth."⁵¹² In creating a distinct budget toward this specific purpose, it replaces the various fragmentary programs currently in existence, facilitating U.S. cooperation with other large-scale multilateral funds such as G-8 Deauville Partnership. This would curtail the need to reallocate funds periodically from other budgets, and the political costs that entails. This creates a long-term instrument to encourage reform within the Middle East, relatively insulated from short-term objectives. It clarifies our platform toward the region, alleviating some of the confusion to which regional states have taken their own partisan initiatives.

The United States' promotion and resultant inability to resolve the Israeli-Palestinian peace process is a major point of contention for both the Middle East's rulers

⁵⁰⁹Maller, Tara. 2010. "Diplomacy Derailed: The Consequences of Diplomatic Sanctions." *Washington Quarterly* 33, no. 3: 61-79. *Military & Government Collection*, EBSCOhost (accessed February 23, 2014), 70

⁵¹⁰Landler, Mark, and Mark Mazzetti. "U.S. Scrambles for Information on Iran." *The New York Times*. June 22, 2009. http://www.nytimes.com/2009/06/23/world/middleeast/23diplo.html?_r=0.

⁵¹¹U.S. Department of State. *Executive Budget Summary*. 2014. <http://www.state.gov/documents/organization/207305.pdf>, 97

⁵¹²U.S. Department of State. *Executive Budget Summary*, 98

and populace. President's Obama and Bush each pursued strategies meant to address this longstanding issue, but to no avail. Because of its centrality in Middle Eastern discourse, resolving this issue could go a long way in improving relations with Arab states, as well as the Middle Eastern perception of the United States. In 2011, Turkish president Abdullah Gul went as far to say that, "whether these uprisings lead to democracy and peace or to tyranny and conflict will depend on forging a lasting Israeli–Palestinian peace agreement."⁵¹³

Resolving the issue of the Israeli-Palestinian peace process is a daunting task that has failed many times before. Strong domestic opposition exists toward forcing Israel to compromise, and both Israel and the Palestinian Authority have resisted efforts many times in the past. The United States holds a tremendous amount of leverage over both Israel and the Palestinian Authority, due to its considerable aid and diplomatic influence. Many in Israel and the Palestinian territories do support the creation of a two-state solution.⁵¹⁴ A concerted push toward a resolution, backed by the warning of withdrawing aid or diplomatic support would leave both sides with few options than to move forward.

Discrediting al Qaeda Ideology

In seeking to improve our credibility in the Middle East, we are also removing some of the ideological motivation for recruitment to al Qaeda or its affiliates. Al Qaeda gains legitimacy from its stance as a defender against Western encroachment. When the United States is encroaching less, this point becomes harder to make. The majority of al Qaeda's victims are Muslim, supposedly killed because of their support for "un-Islamic" and Western-backed regimes. In Muslim states affected by al Qaeda, or likeminded groups, public opinion often sours toward them. These developments can progress to the point of outright resistance toward the perpetrators of violence. The United States' image and credibility in the Middle East may not be positive for quite some time, but in the short term, U.S. efforts can further delegitimize al Qaeda's brand. Doing so will go a ways toward convincing the populace of the Middle East of the mutual interest of fighting against al Qaeda.

⁵¹³ Gul, Abdullah. "The Revolution's Missing Peace." *The New York Times*. April 20, 2011. <http://www.nytimes.com/2011/04/21/opinion/21gul.html>.

⁵¹⁴ "Joint Israeli Palestinian Poll, December 2013." The Hebrew University of Jerusalem Harry S. Truman Research Institute, Konrad Adenauer Stiftung, Palestinian Center for Policy and Survey Research. December 31, 2013. http://media.huji.ac.il/new/docs/hu131231_JointPoll_Dec2013.pdf.

In several notable cases, al Qaeda's excesses prompted large negative responses from locals. The flagship example comes from Iraq, where the violence of the local al Qaeda affiliate led to the creation of a Sunni counter-insurgency militia, known as the Awakening movement in 2006. By 2009, "100,000 Sunni tribesmen and former insurgents were on the U.S. payroll and fighting against AQI."⁵¹⁵ The Awakening Movement, with U.S. and Iraqi support, degraded AQI's capabilities significantly. In Afghanistan, tribes have periodically rebelled against Taliban control, due to excessive violence.⁵¹⁶ In Yemen, "although anti-Americanism is a widely shared sentiment, support for violence in general, and that which is likely to cause Yemeni casualties in particular, is not."⁵¹⁷ The negative feedback from killing of fellow Muslims was such a major issue for al Qaeda that documents seized in the Abbottabad raid showed frequent correspondence "about the need to minimize civilian (Muslim) casualties" and the consequent "damage to the al Qaeda brand."⁵¹⁸

The Voice of America, and other U.S.-controlled media, can only prove somewhat helpful in this regard. While they are widely broadcasted around the world, their association with the United States is something Middle-Easterners perceive as an inherent source of bias. For the message to reach a more receptive audience, local sources must be the purveyors as well. In Pakistan, a successful example of an U.S.-backed radio station occurred in the volatile FATA region. The radio station espoused pro-Pakistan sentiments, while denouncing Taliban attempts to destroy the state. The Pro-Pakistani message gained ground "amid frequent beheadings of tribal leaders and local journalists" by the Taliban.⁵¹⁹ The approval rating of the Pakistani Frontier Corps grew from 33

⁵¹⁵Kirdar, M. J. 2011. *Al Qaeda in Iraq*. Washington, DC: Center for Strategic and International Studies. http://csis.org/files/publication/110614_Kirdar_AlQaedaIraq_Web.pdf, 5

⁵¹⁶Burns, Robert. "U.S. Sees Potential for Wider Anti-Taliban Uprising in Afghanistan." *Washington Times*. October 18, 2012. <http://www.washingtontimes.com/news/2012/oct/18/us-sees-potential-wider-anti-taliban-uprising-afgh/?page=all>.

⁵¹⁷Hellmich, Christina. 2012. "Fighting Al Qaeda in Yemen? Rethinking the Nature of the Islamist Threat and the Effectiveness of U.S. Counterterrorism Strategy." *Studies In Conflict & Terrorism* 35, no. 9: 618-633. *Military & Government Collection*, EBSCOhost (accessed January 20, 2014), 627

⁵¹⁸Basil, Yousuf, Atika Shubert, and Mohammed Jamjoom. "Al Qaeda: We're Sorry about Yemen Hospital Attack." *CNN*. December 22, 2013. <http://www.cnn.com/2013/12/22/world/meast/yemen-al-qaeda-apology/>.

⁵¹⁹Mullick H.A.H. 2012. "Recalibrating U.S.-Pakistan relations". *Washington Quarterly*. 35 (3): 93-107.

percent in 2009 to 60 percent in 2010, while the audience for pro-Taliban radio stations decreased.⁵²⁰

Recommendations

The following recommendations are offered to improve the effectiveness of our overall strategy. These recommendations can improve U.S. relations with vital states in the War on Terror, encouraging bilateral and multilateral cooperation. Previous policies have lacked clarity, which the following recommendations seek to redress, through the coordination of the United States' message and actions toward the Middle East, as well as its counter-message against al Qaeda.

- 1) **Consolidate the United States' public message toward the Middle East, outlining the core interests of U.S. foreign policy in the region, while refraining from untenable declarations.** The model for this will come from President Obama's 2013 declaration to the United Nations. A key component of this message will be the mutually held interest of democratization and greater freedoms of both the United States and the Arab world.
- 2) **Implement a long-term strategy in the Middle East, based on our stated core interests and objectives, that is insulated from detrimental effects of short-term tactical goals.** 1) Promote the rule of law and better governance to counter the root causes of extremism. A facet of this strategy will be the creation of the State Department's proposed MENA incentive fund, which will be prescribed an annual budget, aimed at incentivizing liberal reforms. 2) Push for a resolution of the Israeli-Palestinian peace process, employ necessary leverage to encourage progress. In the immediate term supporting the initiative led by Secretary of State John Kerry.
- 3) **Work to discredit al Qaeda's ideology.** Spread the message of al Qaeda atrocities toward Muslims throughout the Middle East. Utilize U.S. owned media, such as the Voice of America, and provide assistance to local sources, based on the model of Pakistan's FATA region.

⁵²⁰ Mullick H.A.H. 2012. "Recalibrating U.S.-Pakistan relations", 101

Development – Addressing the Structural Roots of Violent Extremism

By Chonlawit Sirikupt

*“You must know something about strategy and tactics and logistics, but also economics and politics and diplomacy and history. You must know everything you can know about military power, and you must also understand the limits of military power. You must understand that few of the important problems of our time have, in the final analysis, been finally solved by military power alone.”*⁵²¹

—President John F. Kennedy

The string of terrorist and insurgent attacks besetting Afghanistan provides a lucid example of how violent extremist groups can exploit the grievances of local populations marred by poor governance and stagnant economic development. The Karzai administration, regrettably, has proven itself inadequate in better providing for its citizens. Furthermore, the United States continues to exacerbate these grievances through the use of lethal force that yields unwarranted collateral damage. Thus, nowhere is JFK’s insight more relevant than in the 2010 National Security Strategy’s (NSS) “3Ds” initiative and Presidential Policy Directive on Global Development (PPD-6), which aim to integrate development into the “whole of government,” alongside defense and diplomacy, to address the structural roots of violent extremism. Even earlier in 2004, the 9/11 Commission had concluded that U.S. counterterrorism strategy “must include economic policies that encourage development and opportunities for people to improve the lives of their families.”⁵²² To empower our 3Ds initiative, the United States should institute reforms that elevate the role of development to an equal footing with defense and diplomacy. Renewed investments in context-specific programs that adopt good governance and sustainable development as the goal, and relegating capture and kill missions to a second-tier priority, would make it increasingly difficult for al Qaeda, its associate forces, and other violent extremist groups to “win the hearts and minds” of disaffected Muslim populations in the developing world.

⁵²¹ John F. Kennedy, "Remarks to graduating class, U.S. Naval Academy, Annapolis, Maryland, 7 June 1961," *The John F. Kennedy Presidential Library and Museum*. June 7, 1961. <http://www.jfklibrary.org/AssetViewer/Archives/JFKPOF-035-013.aspx> (accessed January 13, 2014).

⁵²² National Commission on Terrorist Attacks upon the United States. *The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks Upon the United States* (New York: W.W. Norton & Company, 2004), 379.

The Need to Elevate Development in Countering Violent Extremism

A cohesive development strategy linked to defense and diplomacy is an extremely lucrative tool U.S. policymakers cannot afford to neglect. To leverage development assets more effectively abroad, a first step should be a domestic overhaul to our highly incoherent and outdated foreign assistance apparatus. It is fully within the United States' interest to undertake this endeavor, as the capacity of our civilian-led development agencies has atrophied, while global challenges requiring such capacity have multiplied. Instead of streamlining agency coordination and communication, foreign assistance objectives have been accommodated through the introduction of new programs and institutions, without the proper reorganization or reform of the existing apparatus. Furthermore, despite a significant increase in total U.S. foreign assistance since 9/11, most funding has gone toward a needless expansion to the Department of Defense (DoD), leaving gaps in under-resourced civilian efforts. A large portion of our Foreign Assistance Budget has been bent toward military-related development programs in areas of instability, including direct humanitarian relief, law enforcement assistance, and post-conflict stabilization or reconstruction. Shortchanging those components of U.S. national security apparatus that are best equipped to address weak governance, insecurity, and abject poverty – all of which are structural roots primed for exploitation by al Qaeda and other violent extremist groups – undermines the broader counterterrorism (CT) and counterinsurgency (COIN) efforts across the globe. Left ill attended, this is apt to generate discord and negate progress in long-term strategic visions, and expose serious vulnerabilities within our aggregate national security apparatus.

A “unity of effort”⁵²³ to address the structural roots of violent extremism cannot be sustained unless there is a tremendous degree of coherence visible at every echelon of the “whole of government” approach in accordance to policy effectiveness and human needs. A more effective U.S. development strategy that best supports defense and diplomacy requires four critical amendments. The first of these recalibrations require the U.S. to adopt a policy that focuses on multilaterally engaging with the host nation to

⁵²³ Lamb, Christopher J., and Martin Cinnamond. *Unity of Effort: Key to Success in Afghanistan*. No. 248. DIANE Publishing, 2009.

advance bottom-up development programs while simultaneously maintaining relative anonymity. Second, the U.S. should establish a civilian-led command. Additional investments to bolster civilian capacity for COIN's *Hold and Build* operations, which are essential for advancing security and development in areas of instability in the short-term and long-term. Third, the U.S. should consolidate all relevant conflict-prevention and peace-building entities, including the DoS Office of the Coordinator for Reconstruction and Stabilization (S/CRS) under the purview of a newly created joint DoS/USAID Conflict Prevention and Peace Building Committee. Finally, concrete steps to elevate USAID to a cabinet-level agency, with leading authority, budget, and policy, should be pursued to truly and coherently formulate a "whole of government" response to meet the objectives envisioned in the NSS, PPD-6, and 9/11 Commission's recommendations.

Development Relegates the Use of Lethal Force to a Second-Tier Priority

Development limits the use of enemy-centric approaches – be they conventional aerial strikes, drone strikes, or special operations raids – that needlessly impose excessive costs on the local civilian population that can upset the status quo the U.S. has with the Muslim population in the developing world. While such operations may be practical in the short-term, they pale in comparison to population-centric approaches that elevate the expansion of economic and social development in preventing the linkages between income inequalities, tribal antagonism, and the absence of civil society to increased capabilities of violent extremist groups from spawning in the first place.

Enemy-centric approaches have historically proven to be far less effective and ultimately backfire.⁵²⁴ Even David Petraeus' *FM 3-24* counterinsurgency manual conveys the belief that "sometimes, the more force is used, the less effective it is."⁵²⁵ Bystander casualties and destruction of property undermine the neutrality of aid agencies on the ground, fuel domestic political opposition, complicate the reintegration of experienced ex-combatants, and alienate non-combatants who just happen to reside in terrorist and insurgent-controlled communities the U.S. targets. To prevent local populations from sympathizing with violent extremists' grand rhetoric that the U.S. is an "invader," the

⁵²⁴ Kalev I. Sepp, "Best Practices in Counterinsurgency," *Military Review*, May/June 2005: 8-12.

⁵²⁵ David Petraeus, "FM 3-24 Counterinsurgency," December 15, 2006.

<http://www.fas.org/irp/doddir/army/fm3-24.pdf> (accessed January 17, 2014), 26.

U.S. government would be well advised to commit to meaningful steps that prioritize development over lethal force.

Development Enhances State Capacity to Address the Practical Grievances of its Citizens

Development offers a direct response to the “underlying political and economic deficits.”⁵²⁶ If the impoverished populace, even those that do not actively support violent extremist groups, continue to inadequately receive adequate education, health care, nutrition, and shelter from the state, they may be more inclined in the future to seek out these movements that are able to provide them with a variety of welfare and charitable services. The existence of a large pool of impoverished and marginalized population, in particular the pending “youth bulges” across the Middle East to the Horn of Africa, the Sahel-Sahara that experience festering armed conflicts, high unemployment, and cultural ostracism are prime targets for radicalization.⁵²⁷ In Eastleigh, Nairobi in particular where immigrant Somali youths are impoverished, discriminated and alienated by the Kenyan society, the attraction of financial rewards, coupled with the ideological cause becomes an impetus for joining al Shabaab.⁵²⁸

While evidence indicate that al Qaeda operatives – such as Mohammed Atta and the other hijackers during the 9/11 attacks – come from educated and middle-class backgrounds, the politicization of poverty and ubiquity of perceived injustice is equally important.⁵²⁹ Underdevelopment allows radical elites who claim to speak for underrepresented populations to renegotiate power and justify why the current order needs to be violently overturned. In circumstances where governments and economies function poorly, al Qaeda and its associate forces have been adept at exploiting the practical grievances of the marginalized populations that are wounded by, in the

⁵²⁶ The White House. "National Security Strategy," May 2010.

http://www.whitehouse.gov/sites/default/files/rss_viewer/national_security_strategy.pdf (accessed January 18, 2014), 26.

⁵²⁷ National Intelligence Council, "Mapping the Global Future: Report of the National Intelligence Council's 2020 Project," December 2004. <http://www.futurebrief.com/project2020.pdf> (accessed February 15, 2014), 81.

⁵²⁸ Frank Langfitt, "Somalia's Al-Shabab Spreads Its Message In Kenya," *NPR*. October 6, 2010. <http://www.npr.org/templates/story/story.php?storyId=130353001> (accessed February 22, 2014).

⁵²⁹ Yosri Fouda and Nick Fielding, *Masterminds of Terror: The Truth Behind the Most Devastating Terrorist Attack the World Has Ever Seen* (Edinburgh: Mainstream Publishing, 2003), 78.

ubiquitous message of Osama bin Laden's 1996 *fatwa*, "severe oppression, suffering, excessive antiquity, humiliation, and poverty."⁵³⁰

As highlighted in previous sections, violent extremist groups like al Qaeda, initially built upon populist foundations, have been quick to leverage failings in the public and private sectors to present themselves as an alternative to provide for its citizens. Similarly, Islamist insurgent groups such as the Taliban have also been particularly successful in the development of this dimension of their activities. Suicide bombers in Afghanistan, for example, have been enticed disproportionately from the ranks of the impoverished with the promise of financial reward, religious education, and martyrdom that becomes a "win-win scenario for himself, his family, his faith and his God."⁵³¹ The U.N. Assistance Mission in Afghanistan's (UNAMA) study of suicide attacks from 2001 to 2007 has indeed concluded that the youths susceptible to recruitment are mainly uneducated, ignorant, impressionable, and seeking to finance their families.⁵³² Perhaps the most troubling development, though – and one that requires a serious focus on progressively strengthening state capacity – the functions and legitimacy of their humanitarian work enable certain groups to form partnership with the state to fill in the vacuum, as in the case of Pakistani-based group Lashkar-e-Taiba.⁵³³ This vacuum in turn increases the attractiveness for wealthy radical elites to fund such groups, which further erodes the state's capacity to withstand attacks and external radical influences.⁵³⁴

Reframing development strategies to focus on extending programs to the peripheries where basic services are underprovided can assuage sub-national grievances. They also give disaffected groups a more powerful voice with which to mobilize political support and financial means necessary to prevent terrorists and insurgents from using

⁵³⁰ Osama Bin Laden, "Declaration of War against the Americans Occupying the Land of the Two Holy Places." *Public Broadcasting Service (PBS)*. August 23, 1996. http://www.pbs.org/newshour/updates/military/july-dec96/fatwa_1996.html (accessed January 13, 2014).

⁵³¹ "Suicide Bombers Follow Quran, Concludes Pentagon Briefing." *WND*. September 9, 2006. <http://www.wnd.com/2006/09/38120/> (accessed February 23, 2014).

⁵³² United Nations Assistance Mission to Afghanistan. "Suicide Attacks in Afghanistan (2001-2007)." September 1, 2007. <http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Afgh%202007SuicideAttacks.pdf> (accessed February 17, 2014), 89.

⁵³³ Danish Institute for International Studies, "Pakistan: Regional Rivalries, Local Impacts," ed. Mona Kanwal Sheik et al., 2012. http://subweb.diiis.dk/graphics/Publications/Reports2012/RP2012-12-Pakistan-regional-rivalries-local-impacts_web.pdf (accessed February 23, 2014), 21.

⁵³⁴ Danish Institute for International Studies, "Pakistan: Regional Rivalries, Local Impacts," 41.

“shadow governors” to fill in the vacuum.⁵³⁵ Furthermore, accelerating the size and diversity of economic opportunities and political openness in states that have weak or nonexistent central institution demonstrates the host nation’s ability to restore its legitimacy in the eyes of the indigenous population and the “fence sitters” as the credible provider for its citizens. Integrating the broader citizenry into the mainstream society through the expansion of state-granted local ownership of land, homes, and businesses would effectively drive a wedge between violent extremist groups and the disaffected population and constrain the resources they need to plan and coordinate attacks as well as to recruit and train operatives. In the longer-term, intensifying development initiatives can give unstable economies better monetary and fiscal capabilities needed to cushion the macroeconomic impacts of terrorist and insurgent attacks as they become more integrated into the global market.⁵³⁶

Current Major Foreign Assistance Platform: Background, Authorization, and Responsibility

Foreign Assistance Act of 1961 (P.L. 87-195)

The Foreign Assistance Act (FAA) of 1961, as amended, serves as the statutory foundation for the U.S. commitment to long-range economic and security assistance to friendly nations and enacting freestanding laws to reflect specific U.S. foreign policy interests.⁵³⁷ Since 9/11, the Bush and Obama administrations, including Republican and Democratic Members of Congress, have expressed a renewed interest in the merits of diplomacy and development working on par with defense toward achieving U.S. national security goals. The proliferation of U.S. foreign assistance programs have been primarily directed at reforming state capacity of allied countries in the Middle East and Africa as part of the anti-terrorism effort.

Under the FAA, the DoS and USAID have been the lead agencies in administering a bulk of these programs. Both entities are funded in the annual DoS and Foreign Operations appropriations bill. In FY 2007, the DoS controlled about 64% of

⁵³⁵ Dexter Filkins, "Afghan Offensive Is New War Model." *The New York Times*. February 12, 2010. http://www.nytimes.com/2010/02/13/world/asia/13kabul.html?_r=0 (accessed February 6, 2014).

⁵³⁶ S. Brock Blomberg and Gregory D. Hess, "From (No) Butter to Guns? Understanding the Economic Role in Transnational Terrorism," In *Terrorism, Economic Development, and Political Openness*, edited by Keefer Loayza and Philip Keefer (New York: Cambridge University Press, 2008), 87.

⁵³⁷ The Foreign Assistance Act of 1961, Pub. L. No. 91-175

bilateral and multilateral assistance, while USAID accounted for approximately 20%.⁵³⁸ The DoS and USAID co-manages some of the funds, although DoS often retains major policy decisions.⁵³⁹ After 9/11, there have been several new smaller independent agencies administering foreign assistance outside the jurisdiction of DoS and USAID that are also funded in the annual Foreign Operations Appropriations bills. These include the Millennium Challenge Corporation (MCC) and the Overseas Private Investment Corporation (OPIC) that develop their own budgets. In addition to these entities, the largest portfolio belongs to the DoD, which manages programs providing training and equipping of foreign militaries through initiatives such as the Coalition Support Fund, and providing non-security assistance programs such as humanitarian relief and assistance, stabilization and reconstruction.⁵⁴⁰ These programs remain outside of the jurisdiction of foreign operations appropriations subcommittees and foreign affairs authorizing committees that have oversight of foreign assistance.⁵⁴¹

Foreign Operations

Millennium Challenge Corporation

The Millennium Challenge Corporation (MCC) was established in 2004 with a mandate to sustainably reduce global poverty through economic growth. Using evidence-based indicators, countries are selected to receive assistance based on their performance in governing justly, investing in their citizens, and encouraging economic freedom.⁵⁴² MCC programs contribute to country-led, results-focused, and reform-driven development through five-year compact assistance programs designed to maximize poverty reduction and economic growth through investments in areas such as transportation networks, water and sanitation infrastructure, agriculture productivity, and private sector development.⁵⁴³ Additionally, MCC's small-scale "Threshold Program" grants are designed to assist countries that are on the threshold of compact eligibility.

⁵³⁸ Connie Veillette, "Foreign Aid Reform: Issues for Congress and Policy Options," *Congressional Research Service*, November 7, 2007. <https://www.fas.org/sgp/crs/row/RL34243.pdf> (accessed February 1, 2014), 3.

⁵³⁹ Veillette, "Foreign Aid Reform: Issues for Congress and Policy Options," 4.

⁵⁴⁰ *Ibid.*, 25.

⁵⁴¹ *Ibid.*, 4.

⁵⁴² Millennium Challenge Corporation. *About MCC*. <http://www.mcc.gov/pages/about> (accessed February 12, 2014).

⁵⁴³ Curt Tarnoff, "Millennium Challenge Corporation." *Congressional Research Service*. January 13, 2014. <http://www.fas.org/sgp/crs/row/RL32427.pdf> (accessed February 19, 2014).

These programs provide specialized assistance to countries where policy improvements are needed, focusing largely on mitigating corruption and improving governance.⁵⁴⁴ MCC programs are concrete examples of constructive U.S. engagement with its strategic partners in Africa and the Middle East, where economic progress and policy improvements are most exigent.

Economic Support Fund

The Economic Support Fund (ESF) is recognized as a bilateral economic assistance account co-implemented by DoS and USAID in concert with the Overseas Contingency Operation (OCO) to flexibly provide strategic partners with grants to meet short-term and long-term political, economic, and security needs. The strategic priorities of ESF are divided into “Partners in the Global War on Terror,” “At-Risk States,” and “Democracy Issues in States of Concern.”⁵⁴⁵ ESF has also pledged to maintain funding for Iraq, Afghanistan, and Pakistan – countries that are specially designated as “frontline states” in the struggle against violent extremist groups.⁵⁴⁶ The chart on the following page displays the funding levels for several partner countries for the upcoming budgetary year.

⁵⁴⁴ U.S. State Department. "MCC Fact Sheet on Threshold Program." February 5, 2013. <http://iipdigital.usembassy.gov/st/english/texttrans/2013/02/20130205142073.html#axzz2tSOizbzZ> (accessed February 14, 2014).

⁵⁴⁵ U.S. Department of State, "FY 2009 Congressional Budget Justification for Foreign Operations," 2009. <http://www.state.gov/documents/organization/101368.pdf> (accessed January 22, 2014), 39-42.

⁵⁴⁶ U.S. Department of State, "FY 2014 Congressional Budget Justification Volume 2 Foreign Operations," 124.

<i>Countries</i>	<i>FY 2014 Budget Requests</i>	<i>Examples of Initiatives</i>
Afghanistan	\$535.3 million ⁵⁴⁷	Supporting development programs focused on eliminating the nexus between the narcotics industry and the Taliban insurgency through the expansion of alternative livelihood programs for farmers in southern and eastern Afghanistan. ⁵⁴⁸
Pakistan	\$513.5 million ⁵⁴⁹	Supporting Pakistan's Sustainable Development for FATA that improves vocational training, health and education, service delivery, and business development efforts to integrate FATA into the mainstream of Pakistan. ⁵⁵⁰
Yemen	\$45 million ⁵⁵¹	Supporting USAID's Community Livelihood Project (CLP) and the Responsive Governance Project (RGP). The CLP seeks to work with NGOs in local communities in Yemen's rural governorates in order to expand access to freshwater, healthcare, and education. ⁵⁵² The RGP seeks to work with key Yemeni ministries to address related but broader government policy, institutional, and capacity issues that will help the government be more responsive to the needs of its citizens. ⁵⁵³

⁵⁴⁷ U.S. Department of State, "FY 2014 Congressional Budget Justification Volume 2 Foreign Operations," 2014. <http://www.state.gov/documents/organization/208290.pdf> (accessed February 17, 2014), 124.

⁵⁴⁸ Christopher M. Blanchard, "Afghanistan: Narcotics and U.S. Policy." *Congressional Research Service*, August 12, 2009. <http://www.fas.org/sgp/crs/row/RL32686.pdf> (accessed February 20, 2014), 8.

⁵⁴⁹ U.S. Department of State. "FY 2014 Congressional Budget Justification Volume 2 Foreign Operations," 124.

⁵⁵⁰ U.S. Government Accountability Office. "Securing, Stabilizing, and Developing Pakistan's Border Area with Afghanistan," February 2009. <http://www.gao.gov/new.items/d09263sp.pdf> (accessed January 29, 2014), 39.

⁵⁵¹ U.S. Department of State, "FY 2014 Congressional Budget Justification Volume 2 Foreign Operations," 124.

⁵⁵² Jeremy M. Sharp, "Yemen: Background and U.S. Relations." *Congressional Research Service*. November 1, 2012. <https://www.fas.org/sgp/crs/mideast/RL34170.pdf> (accessed January 29, 2013), 18.

⁵⁵³ Sharp, "Yemen: Background and U.S. Relations." 18.

Overseas Private Investment Corporation

The FAA directs the Overseas Private Investment Corporation (OPIC) to “mobilize and facilitate the participation of U.S. private capital and skills in the economic and social development of less developed countries and areas, and countries in transition from nonmarket to market economies...under the policy guidance of the Secretary of State.”⁵⁵⁴ OPIC independently operates three main programs – insurance, finance, and investment funds – that are intended to promote U.S. firms making qualified investments in less developed countries.⁵⁵⁵ For example in 2012, OPIC agreed to partner with the Afghan government and USAID to finance up to \$225 million and provide political risk insurance to eligible investors for development of a gas-fired power plant in Sherbergan.⁵⁵⁶ The mobilization private capital across the development world to high-priority countries demonstrates how private sectors can be critical in stabilizing economies following political turmoil as well as laying the groundwork for growth, jobs, and opportunities.

Complex Foreign Crises Fund

The Complex Foreign Crises Fund (CFCF) account is a proposed modification of the previous Complex Crises Fund (CCF) designed to rapidly respond to “emerging or unforeseen crises through support for reconstruction, security, or stabilization needs.”⁵⁵⁷ The CCF provided much-needed, flexible un-programmed funding for DoS and USAID to focus on countries or regions that demonstrated a high or escalating risk of conflict, instability, or an unanticipated opportunity for progress in a newly emerging or fragile democracy.⁵⁵⁸ However, the State, Foreign Operations, and Related Programs Appropriations Bill for FY 2014 has recommended that CFCF would only be available to DoS for the “extraordinary costs of responding to humanitarian and security crises and

⁵⁵⁴ The Foreign Assistance Act of 1961, Pub. L. No. 91–175, 22 U.S.C. §2191 (1961)

⁵⁵⁵ Shayerah Ilias Akhtar, "The Overseas Private Investment Corporation: Background and Legislative Issues," *Congressional Research Service*. September 25, 2013. <https://www.fas.org/sgp/crs/misc/98-567.pdf> (accessed January 25, 2014), 1.

⁵⁵⁶ Overseas Private Investment Corporation, "OPIC, USAID & Afghan Government Partner to Develop Landmark Natural Gas Project," September 22, 2011. <http://www.opic.gov/press-releases/2011/opic-usaid-afghan-government-partner-develop-landmark-natural-gas-project> (accessed January 17, 2014).

⁵⁵⁷ U.S. Department of State, "FY 2011 Executive Budget Summary: Function 150 and Other International Programs," 2011. <http://www.state.gov/documents/organization/135888.pdf> (accessed February 1, 2014), 66.

⁵⁵⁸ U.S. Department of State, "FY 2011 Executive Budget Summary: Function 150 and Other International Programs," 66.

political transitions globally, including in the Middle East and North Africa.⁵⁵⁹ The CFCF has also been recommended to support United Nation's peacekeeping missions Contributions for International Peace Keeping Activities.⁵⁶⁰

Development Initiatives in Active Combat Zones

Provincial Reconstruction Teams

The National Security Presidential Directive 44 (NSPD-44) explicitly tasked the DoS to coordinate with the DoD to ensure harmonization with relevant capabilities, to prepare, plan for, and conduct stabilization and reconstruction activities in regions, especially those at risk of, in, or transition from conflict or civil strife.⁵⁶¹ The Provincial Reconstruction Teams (PRTs) is an integral stabilization and instrument in active combat zones that hold promising conduit for promoting the development of civic, economic, and governance capacities beyond secure zones to establish a sustainable path toward a peaceful society. While military-led, the civil component of the PRTs contains representatives primarily from DoS, USAID, DoD, Department of Agriculture (USDA), and the host nation's government officials.⁵⁶² Additionally, some PRTs also include four to five Afghan citizens, who may serve as interpreters, liaisons with key ministries or additional USAID staff.⁵⁶³

As envisioned in *FM 3-24*, PRTs are the primary civil-military operations unit that help "extend the reach and enhance the legitimacy of the central government" to provinces beyond the capitol."⁵⁶⁴ In the more permissive areas, PRTs are to keep a lower profile, but in non-permissive and semi-permissive areas they are to design strategically integrated program activities that correspond to COIN's *Shape, Clear, Hold, Build* stability continuum.⁵⁶⁵ PRTs may also coordinate with or provide advice to other U.S.-

⁵⁵⁹ Department of State, Foreign Operations, and Related Programs Appropriations Bill, S. 1372, 113th Cong. (2014).

⁵⁶⁰ Department of State, Foreign Operations, and Related Programs Appropriations Bill, S. 1372, 113th Cong. (2014).

⁵⁶¹ The White House. "National Security Presidential Directive 44: Management of Interagency Efforts Concerning Reconstruction and Stabilization." December 7, 2005. <http://www.fas.org/irp/offdocs/nspd/nspd-44.html> (accessed January 29, 2014).

⁵⁶² Joseph A. Christoff, "Provincial Reconstruction Teams in Afghanistan and Iraq." *U.S. Government Accountability Office*. October 1, 2008. <http://www.gao.gov/assets/100/95824.pdf> (accessed January 27, 2014), 1.

⁵⁶³ Christoff, "Provincial Reconstruction Teams in Afghanistan and Iraq." 8.

⁵⁶⁴ Petraeus, "FM 3-24 Counterinsurgency," 41.

⁵⁶⁵ *Ibid*, 91.

funded programs, including the DoD's Commander's Emergency Response Program (CERP) and other USAID programs targeted at reducing the incentives for individuals to participate in sectarian violence and insurgent activities.⁵⁶⁶

In Afghanistan, PRTs undertake development, reconstruction, and governance activities, and serve a monitoring and reporting function. To help satisfy the host nation's significant needs, PRT projects include schools, health clinics, and roads; efforts to build provincial governments' capacity by helping provincial officials develop basic management skills; and facilitating communication between the provincial and central governments.⁵⁶⁷ For instance, according to the *ISAF PRT Handbook*, the PRT in Zabul province helped arrange a visit to Qalat by the Minister of Health, which was the first time any minister in the current national government had visited the province.⁵⁶⁸

Prior to U.S. departure in December 2011, PRTs in Iraq had been involved in numerous reconstruction and development projects. They collaborated with the Provincial Reconstruction and Development Committees (PRDCs), deliberative bodies comprised of U.S. and Iraqi officials, to identify, prioritize, and select provincial development projects that best satisfied the needs of the local population.⁵⁶⁹ Selected projects were forwarded to the Iraq Transition Assistance Office and the National Embassy Team (NET) in Baghdad for review, approval, and funding obligations.⁵⁷⁰ PRDCs projects, primarily executed by Iraqi contractors and vendors include the development of water and electric plants, roads, bridges, schools, health clinics, and airports.⁵⁷¹

Commander Emergency Response Program

As part of the National Defense Authorization Act (NDAA) for FY 2006, the Commander's Emergency Response Program (CERP) is designed to specifically enable

⁵⁶⁶ Christoff, "Provincial Reconstruction Teams in Afghanistan and Iraq." 11-15.

⁵⁶⁷ *Ibid.*, 8.

⁵⁶⁸ International Security Assistance Force. "ISAF PRT Handbook," 2010.

<https://www.cimicweb.org/Documents/PRT%20CONFERENCE%202010/PRT%20Handbook%20Edition%204.pdf> (accessed February 17, 2014), 156.

⁵⁶⁹ United States Government Accountability Office, "Rebuilding Iraq: Improved Management Controls and Iraqi Commitment Needed for Key State and USAID Capacity-Building Programs." June 3, 2009. <http://www.gao.gov/assets/300/290499.pdf> (accessed February 21, 2014), 7.

⁵⁷⁰ United States Government Accountability Office, "Rebuilding Iraq: Improved Management Controls and Iraqi Commitment Needed for Key State and USAID Capacity-Building Programs." 8.

⁵⁷¹ *Ibid.*, 8.

military commanders in Afghanistan to respond to urgent humanitarian relief and reconstruction requirements within their areas of responsibility that immediately assist the indigenous population.⁵⁷² In addition, CERP is intended to independently pursue or help PRTs' small-scale projects that, optimally, can be sustained by the local population. A Special Inspector General for Afghanistan Reconstruction's (SIGAR) October 2013 Audit indicated that the Consolidated and Further Continuing Appropriations Act appropriated \$200 million for CERP for FY 2013, increasing the total cumulative funding to nearly \$3.64 billion.⁵⁷³ Funds have been used to supplant civilian agency efforts particularly in non-permissive environments.⁵⁷⁴ CERP continues to be funded under the NDAA for FY 2014.⁵⁷⁵

Significant Challenges to U.S. Foreign Assistance – Proportionality, Ownership and the Implementation of Top-down Reforms and Bottom-up Development Initiatives

Intensive top-down development reforms like the “government in a box, ready to roll in” description of the Afghan governor, administrators, and 19,000 police officer brought into Marja to take control, should not be the final goal.⁵⁷⁶ While the pursuit of systematic civil reform or massive construction projects promote participation, the host nations lack a robust central planning apparatus to sustain the requisite inter-ministerial planning, coordination, and management that would meaningfully bind the corridors of power to local-level development initiatives.⁵⁷⁷ McChrystal's *COMISAF Initial Assessment* has indicated that the “top-down approach [in Afghanistan] to developing

⁵⁷² National Defense Authorization Act for Fiscal Year 2006, Pub. L. No. 109-163, (2006)

⁵⁷³ Office of the Special Inspector General for Afghanistan Reconstruction, "Quarterly Report to the United States Congress," October 30, 2013. <http://www.sigar.mil/pdf/quarterlyreports/2013-10-30qr.pdf> (accessed January 18, 2014), 72.

⁵⁷⁴ Kristen E. Boon et al., *United States Approaches to Global Security Challenges*. (New York: Oxford University Press, 2012), 325.

⁵⁷⁵ Pat Towell and Amy Belasco, *Defense: FY 2014 Authorization and Appropriations*. January 8, 2014. <http://www.fas.org/sgp/crs/natsec/R43323.pdf> (accessed February 24, 2014), 28.

⁵⁷⁶ Dexter Filkins, "Afghan Offensive Is New War Model." *The New York Times*. February 12, 2010. http://www.nytimes.com/2010/02/13/world/asia/13kabul.html?_r=0 (accessed February 6, 2014).

⁵⁷⁷ Bodo Ellmers, "How to Spend it Smart: Procurement for More Effective aid." *European Network on Debt and Development*. September 2011. http://www.un.org/en/ecosoc/newfunct/pdf/luxembourg_eurodad-how_to_spend_it.pdf (accessed February 25, 2014), 5.

government capacity has failed to provide services that reach local communities, leaving them vulnerable to insurgent groups and powerbrokers.”⁵⁷⁸

Indeed, experiences in Afghanistan, Iraq, and the Philippines actually suggest that “bottom-up, civil society-based programs that focus on the connection of legitimate local non-state governance structures may have greater chance of success than traditional top-down programs that focus on building the national-level institutions of the state.”⁵⁷⁹ However, strictly and overtly imposing Western ideals for bottom-up initiatives that ignore the reality of the host nation’s fragile government structures is precarious. Evidence shows that ongoing efforts in implementing U.S. bottom-up development programs in weak states have resulted in an awkward “parallel structure” where aid agencies assume basic state functions that lead to financially unsustainable and unaccountable practices.⁵⁸⁰ The widespread school building projects in Pakistan regrettably produced low community impact due to delays and incompletions.⁵⁸¹ These endeavors greatly dwarf and undermine the role of the host nation’s state institutions or that of local leaders’ credibility in consolidation zones.

Disproportionate Civil-Military Ratio in Delivering Development Programs in Active Combat Zones

Although PRTs in Afghanistan and Iraq are remarkable means for civil-military interagency coordination, the ownership and funding ratio tend to disproportionately empower the military to dominate the decision-making process. In smaller cases, which happen to be large countries with small number of provinces would require a much larger U.S. civilian presence.⁵⁸² To deal with larger cases such as Pakistan or Afghanistan, PRTs would require tremendous amount of civilian personnel.

⁵⁷⁸ Stanley A. McChrystal, "COMISAF Initial Assessment (Unclassified)." *The Washington Post*. August 30, 2009. http://media.washingtonpost.com/wp-srv/politics/documents/Assessment_Redacted_092109.pdf (accessed January 14, 2014).

⁵⁷⁹ David Kilcullen, *Counterinsurgency*. (New York: Oxford University Press, 2010), 156.

⁵⁸⁰ Bodo Ellmers, "How to Spend it Smart: Procurement for More Effective aid." *European Network on Debt and Development*," 5.

⁵⁸¹ Jane Perlez, "U.S. Aid Plan for Pakistan Is Foundering." *The New York Times*. May 1, 2011. http://www.nytimes.com/2011/05/02/world/asia/02pakistan.html?_r=0 (accessed February 19, 2014).

⁵⁸² David C. Gompert and John Gordon, *War by Other Means: Building Complete and Balanced Capabilities for Counterinsurgency*. (Santa Monica: Rand Corporation, 2008), 112.

This disproportionate civil-military ratio has produced serious inconsistencies during the implementation of development projects. While certain military-led CERP projects supplanted civilian agency efforts in certain areas, military commanders lacked the expertise, technical capacity, and an appropriate time frame to properly assess, prioritize, and implement programs that met the specific needs of the local population they intended to help.⁵⁸³ Findings in SIGAR's January 2011 Audit has indicated that of the 69 CERP infrastructure projects reviewed in Laghman Province, 27 were at risk and \$3 million in obligations were at risk for buildings that were completed were not used as intended.⁵⁸⁴ Furthermore, funds have been inappropriately used to bribe certain local populations to refrain from inciting violence, resulting in a culture of "cash-for-loyalty" and fraudulent activities.⁵⁸⁵

While CERP funded projects may be effective at the tactical level, these results demonstrate that because they are designed to start with temporary economic injections and foster short-term cash-for-work programs, projects face high probability of collapse as funds taper off. These ramifications cast doubt that severely weaken the legitimacy of the U.S. and the host nation's government ability deliver quality projects and services.

Lack of Strategic Focus on Conflict Prevention

The U.S. and the international community's delayed intervention in Somalia, Rwanda, Bosnia, and Kosovo serve as stark reminders that it is the nature of conflicts that the longer they persist the more intractable they become, and the more costly. As al Qaeda continues to metastasize across the turbulent Middle Eastern and African region, it is becoming ever more necessary to shift toward improving conflict prevention and response capacities. For all our rhetorical attention stressing that, "proactively investing in stronger societies and human welfare is far more effective and efficient than responding after state collapse,"⁵⁸⁶ actual implementation toward enhance conflict-prone

⁵⁸³ Andy Brosnan, "The Commander's Emergency Response Program in Counterinsurgency Warfare: Identifying Problems and Interagency Solutions." (Master's Thesis, Harvard University, 2008).

⁵⁸⁴ Office of the Special Inspector General for Afghanistan Reconstruction, "Commander's Emergency Response Program in Laghman Province Provided Some Benefits, but Oversight Weaknesses and Sustainment Concerns Led to Questionable Outcomes and Potential Waste." January 27, 2011. <http://www.sigar.mil/pdf/audits/2011-01-27audit-11-07.pdf> (accessed January 18, 2014), ii.

⁵⁸⁵ David Finkel, *The Good Soldiers* (New York: Farrar, Straus and Giroux, 2009), 89-91.

⁵⁸⁶ The White House, "National Security Strategy," 27.

states' ability to manage their internal strife without resorting to violence, has remained reactive, fragmented, militarized, under-resourced, and self-contained.⁵⁸⁷

Many of the problems pertain to a fragmented structure. There are various duplicative offices, and bureaus such as the USAID's Office of Conflict Management and Mitigation (CMM) and Office of Transition Initiatives (OTI); the DoS's S/CRS, Bureau of Democracy, Human Rights, and Labor (DRL), that are tasked with overseeing the extensive range of conflict prevention and peace building activities. This dissonance in resource allocation and delineations of authority and responsibilities complicates our ability to effectively turn viable information, monitoring, and early warning efforts into meaningful action.

Other problems include the lack of human and technical capacity. Since crises are addressed in an ad hoc manner, there is no system for retaining experienced personnel, integrating lessons learned and successful planning for unforeseen contingencies.⁵⁸⁸ Furthermore, to remove USAID from the pool of flexible funding for complex crises would hamper the extent to which "civilian agencies can work together cooperatively and efficiently to maximize our collective impact" in strengthening essential firebreaks necessary to respond to unforeseen contingencies in a proactive and preventative way.⁵⁸⁹ The joint DoS-USAID Complex Crises Fund had proven extremely advantageous in situations requiring rapid response to unfolding crises in violence-affected communities. Even it was not projected to support sustainable development, Complex Crises Funds effectively stymied the escalation of conflict in Tunisia after fall of President Zine El Abidine Ben Ali in 2011, by encouraging local groups to participate in the democratic process and build confidence in the transitional government.⁵⁹⁰

⁵⁸⁷ Stewart M. Patrick, *Weak Links: Fragile States, Global Threats, and International Security*. (New York: Oxford University Press, 2011), 248.

⁵⁸⁸ House Committee on Foreign Affairs and Senate Committee on Foreign Relations Majority, "Discussion Paper on Peacebuilding," April 8, 2010.
<http://democrats.foreignaffairs.house.gov/112/DraftDiscussion/SFRC-HCFA%20Discussion%20Paper%20on%20Peacebuilding%204-8-10.PDF> (accessed February 25, 2014), 2.

⁵⁸⁹ U.S. Department of State, "Quadrennial Diplomacy and Development Review." 2010.
<http://www.state.gov/documents/organization/153108.pdf> (accessed January 20, 2014), 4.

⁵⁹⁰ Uri Dadush, and Michele Dunne. "American and European Responses to the Arab Spring: What's the Big Idea?" *The Washington Quarterly* (Center for Strategic and International Studies), Fall 2011: 131-145.

To the extent that the administration lacks a system to ensure that response funds will be used with great response, transparency, and accountability there is little desire for Congress to provide such flexible funding.⁵⁹¹ However, it is equally problematic to meet those conditions without having proportionate resources readily to assess and plan viable prevention programs.

An Outdated National Foreign Assistance Apparatus

As previously demonstrated, the U.S. government operates within a fragmented foreign assistance framework to which new priorities and directives have been appended piecemeal to the original act. There are approximately over “20 largely uncoordinated departments, agencies initiatives, and programs manage U.S. assistance.”⁵⁹² Not surprisingly, this cacophony of actors under the “whole of government” has led to serious “duplication, cross-purposes, loss of scale, inefficient use of resources, and other unnecessary administrative burdens on host countries.”⁵⁹³

USAID, which has traditionally directed U.S. foreign assistance efforts, administers less than half of U.S. foreign aid while the share administered by DoD has grown from 3.5 in 1998 to 18 percent in 2006.⁵⁹⁴ The declining expertise and staff levels from 15,000 officers during the Vietnam War to a mere of 2,000 officers⁵⁹⁵ today has made the agency more like a “hollowed-out organization more preoccupied with administration and management than the substance of its development work.”⁵⁹⁶ Instead of rebuilding its capacity, additional departments and agencies, including the Treasury

⁵⁹¹ House Committee on Foreign Affairs and Senate Committee on Foreign Relations Majority, "Discussion Paper on Peacebuilding," 3.

⁵⁹² United States Commission on Helping to Enhance the Livelihood of People Around the World (HELP), "Beyond Assistance: The HELP Commission Report on Foreign Assistance Reform." December 7, 2007. http://www.americanprogress.org/issues/2007/12/pdf/beyond_assistance.pdf (accessed January 18, 2014), 69.

⁵⁹³ Marian Leonardo Lawson, "Foreign Aid: International Donor Coordination of Development Assistance." *Congressional Research Service*. February 5, 2013. <http://www.fas.org/sgp/crs/row/R41185.pdf> (accessed February 16, 2014).

⁵⁹⁴ Monitoring and Evaluation for Foreign Assistance Results." *U.S. Agency for International Development*. May 2009. http://www.usaid.gov/sites/default/files/documents/1868/060909_beyond_success_stories.pdf (accessed February 13, 2014), 2.

⁵⁹⁵ Henrietta Holsman Fore, "Aligning “Soft” with “Hard” Power." *Parameters* 38 (July 2008): 22.

⁵⁹⁶ Thomas Carothers, "Revitalizing U.S. Democracy Assistance: The Challenge of USAID." *Carnegie Endowment for International Peace*. 2009. http://carnegieendowment.org/files/revitalizing_democracy_assistance.pdf (accessed February 18, 2014), 20-21.

and the Center for Disease and Control have been erroneously added into the apparatus, tasked with smaller and less publicized programs.

Until the U.S. fully reforms its current outdated apparatus to meet the realities of emerging problems in the post-9/11 environment, it will continue to remain fastened with a foreign assistance apparatus that lacks an overarching strategy to effectively produce any great coherence, expertise, and institutional learning alleviating dire socioeconomic conditions that allow violent extremist sects to capitalize on.

Recommendations

- 1) Focus on community-driven development approaches while using country procurement systems.** It is imperative that the U.S. government reformulates a development strategy that engages the host nation in advancing community-driven development approaches. Using country procurement systems targeted at mutually reinforcing state and local function over form reduces needless investments on expensive and redundant parallel structures set up by aid agencies. This relative anonymity of international donors is crucial, as it will demonstrate that the *host nation* possesses the capability to integrate rural communities in the national economy and to prepare human capital necessary to take advantage of the emerging political and economic opportunities. Afghanistan's National Solidarity Program (NSP) represents a remarkable approach for connecting the country system to the community-driven development strategy the United States should seek to advance. Implemented by the Afghan Ministry of Rural Rehabilitation and Development, and funded with a large pool of international donors including the World Bank, USAID, DFID, and the Canadian International Development Agency (CIDA), the NSP allocates block grants to elected members of the Community Development Councils (CDCs) that are used to fulfill the community's identified needs. Community-driven projects have been implemented in 32,000 villages across 361 of Afghanistan's 398 districts.⁵⁹⁷ Astonishingly, programs have already reached 13 million rural people,

⁵⁹⁷ Andrew Beath et al., "Randomized Impact Evaluation of Afghanistan's National Solidarity Programme." *The World Bank*. July 1, 2013. <http://www->

who have benefitted from critical services, including access to an improved water source, new roads, and numerous other small infrastructure projects.⁵⁹⁸ The relative anonymity of international donors behind the NSP, coupled with bottom-up processes made it possible for the government to be seen as not only a capable, but also a credible provider of services to establish the order and predictability the local population require in the uncertain environment of the Taliban insurgency.⁵⁹⁹ The election process of the CDCs is crucial for the emergence of self-governing process from below that establishes more legitimate leadership and strengthens long-term perspective of self-reliance and autonomy in the aftermath of the U.S.' departure.

This is a bolder approach that hands over decision-making power to the recipient countries that are viable toward creating of ownership and improving of the likelihood for local firms to secure contracts. Even though state functions and locally attuned engagement programs may take a long time to bear fruit, it is not a bona fide reason for U.S. development agencies to forego long-term emancipatory and transformative promotion of self-governance in favor of achieving measurable outputs. Winning the hearts and minds of the local population requires the U.S. government to faithfully and timely devote resources consistent with country systems to fully ensure that respective citizens across the spectrum have the ability to *lead* his or her own healthy, creative life, and to enjoy decent standards of living, dignity, and freedom.

- 2) **Establish a Civilian-led command in COIN's Hold and Build operations.** To fully endow the civilian sector with the capacity needed to properly identify and manage the delivery of development programs in *Hold and Build* environments, it is vital that the U.S. government establishes a leading civilian command with appropriate numbers of personnel and access to funding. The alignment of human

wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2013/09/19/000356161_20130919142509/Rendered/PDF/811070WP0P11600Box0379828B00PUBLIC0.pdf (accessed February 18, 2014), 2.

⁵⁹⁸The World Bank, "Afghanistan National Solidarity Program." April 13, 2009. <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTARD/EXTRURLIV/0,,contentMDK:22138469~menuPK:5120069~pagePK:64168445~piPK:64168309~theSitePK:5097010~isCURL:Y,00.html> (accessed February 15, 2014).

⁵⁹⁹ Kilcullen, *The Accidental Guerrilla: Fighting Small Wars in the Midst of a Big One*, 68.

and financial resources ensures that the development aspect of COIN is managed by the civilian agency specifically created for this purpose. The successes of (a) Civil Operations and Revolutionary Development Support (CORDS) during the Vietnam War and (b) Plan Colombia Initiative, are indicative of the extent to which civil-military partnerships function more effectively with a civilian-led command during *Hold and Build* operations.

CORDS: By placing military personnel under the direct command of civilians, CORDS effectively established a unified civilian-military organization in all 250 districts and 44 provinces in helping the South Vietnamese government combat the Viet Cong (VC) rebels.⁶⁰⁰ The budget for pacification and economic programs had tripled between 1966 and 1970, from \$582 million to \$1.5 billion while conventional U.S. units were withdrawing.⁶⁰¹ This increased spending allowed a large increase in personnel. By 1969, there were 7,600 personnel assigned to pacification in which 1,200 were civilians.⁶⁰² Today, there are only 50 civilian personnel in Afghanistan. Improvements in rural administration, economic conditions, land reform, health, and infrastructure bolstered the local government credibility in the eyes of the population. These efforts provided adequate security and effective services that displaced the shadow VC regime, which had subverted the state in much of the countryside. Sapped of popular support, the VC presence declined dramatically between 1967 and 1971.⁶⁰³

Plan Colombia Initiative: The relatively modest military footprint the United States undertook in Colombia has been effective in allowing the Colombian government to extend its control to the eastern savannahs and southern jungles hospitable to the FARC movement. U.S. military presence was restricted mostly to special operations advisors and civilian officials, among them from USAID and Justice Department. The DoJ's initiative to strengthen the judicial sector helped

⁶⁰⁰ Ross Coffey, "Revisiting CORDS: The Need for Unity of Effort to Secure Victory in Iraq." *Military Review*, March/April 2006, 28.

⁶⁰¹ Henry Nuzum, *Shades of CORDS in the Kush: The False Hope of "Unity of Effort" in American Counterinsurgency* (Carlisle: Strategic Studies Institute, 2010), 59.

⁶⁰² Dale Andrade and H. James Willbanks, "CORDS/Phoenix: Counterinsurgency Lessons from Vietnam for the Future." *Military Review*, March/April 2006, 16.

⁶⁰³ Ross, "Revisiting CORDS: The Need for Unity of Effort to Secure Victory in Iraq," 33.

create more professional prosecutors and forensic investigators; where there was a significant increase in prosecutions, which made the system more transparent.⁶⁰⁴ USAID changed its programs to synchronize its efforts with the Colombian government's National Consolidation Plan to strengthen state institutions to provide housing and helping generate employment for the internally displaced and vulnerable groups,⁶⁰⁵ as well as supporting demobilization and integration of ex-FARC combatants.⁶⁰⁶ An external evaluation of USAID Program in Colombia indicated that the "relative anonymity of the Office of the Transition Initiatives programs made it possible for the government to be seen as a credible provider of services."⁶⁰⁷ Although absolute victory in Colombia is not yet assured and FARC's threat is still present, the group's capabilities of overturning the political system have tapered off.⁶⁰⁸

The 9/11 attacks had brought a new type of enemy, but not necessarily a new doctrine. The success behind dispatching a light-medium military footprint to support civilian-led development programs during *Hold and Build* operations presents a viable alternative to the kind of massed, U.S. military-driven operations currently deployed in Afghanistan. Copious investment in civilian capacities should be made in order to remove the militarized face of our civilian assistance programs, which increases the risk the United States will be perceived as an invader in the developing world.

3) Consolidate all Relevant Conflict Prevention and Response Entities Under a Newly-created Joint USAID-DoS Conflict Prevention and Peace Building

⁶⁰⁴ United States Government Accountability Office, "Plan Colombia: Drug Reduction Goals Were Not Fully Met, but Security Has Improved; U.S. Agencies Need More Detailed Plans for Reducing Assistance." October 2008. <http://www.gao.gov/new.items/d0971.pdf> (accessed February 23, 2014), 59.

⁶⁰⁵ United States Government Accountability Office, "Plan Colombia: Drug Reduction Goals Were Not Fully Met, but Security Has Improved; U.S. Agencies Need More Detailed Plans for Reducing Assistance." 52.

⁶⁰⁶ *Ibid.*, 7.

⁶⁰⁷ Caroline Hartzell et al., "USAID/OTI's Initial Governance Response Program in Colombia: A Final Evaluation," *Center for Strategic and International Studies*. April 2011. http://csis.org/files/publication/110701_Colombia_Evaluation.pdf (accessed February 23, 2014), 35.

⁶⁰⁸ United States Government Accountability Office, "Plan Colombia: Drug Reduction Goals Were Not Fully Met, but Security Has Improved; U.S. Agencies Need More Detailed Plans for Reducing Assistance," 25.

Committee. To sustain a uniform approach to resolving the core underlying issues that spawn conflicts that are susceptible to hosting violent extremist groups, the U.S. government would better be served by issuing a directive that consolidates all relevant conflict prevention and peace building offices and bureaus such as under the purview of a newly created joint USAID-DoS Conflict Prevention and Peace Building Committee. Unifying all our tools for conflict prevention and response is vital to coherently and effectively marshal targeted resources toward crises assessment and management, contingency operations, and long-term peace building.

The modified conflict prevention and response apparatus requires the establishment of a Conflict Prevention and Peace Building Committee granted with considerable authority over the new account, a development to the proposal made by the House of Foreign Affairs and Senate Foreign Relations Committees in their Discussion Paper on Peace-building.⁶⁰⁹ This new committee, already recommended in the Discussion Paper on Peace-building would be staffed by civil and foreign service experts from DoS and USAID, and would be given the authority to commission outside experts, whose responsibilities would be to subsume the perspective of their home offices to further the Committee's tasks.⁶¹⁰ Additionally, they are to serve as essential mediators and conduits for oversight, intelligence, planning, and coordination of relevant programs.⁶¹¹ However, to augment the House of Foreign Affairs and the Senate Foreign Relations Committees' innovative proposal in order to truly achieve the goal of a unified civilian structure, a dual reporting mechanism to both the Secretary of State and USAID Administrator should be established. It is highly recommended that the committee develop a platform to multilaterally engage with partner nations, NGOs, private sectors, international organizations outside the sphere of DoS, USAID, and DoD that are sometimes best positioned to understand local dynamics in order to fully develop

⁶⁰⁹ House Committee on Foreign Affairs and Senate Committee on Foreign Relations Majority, "Discussion Paper on Peacebuilding," 3.

⁶¹⁰ House Committee on Foreign Affairs and Senate Committee on Foreign Relations Majority, "Discussion Paper on Peacebuilding," 4.

⁶¹¹ *Ibid.*, 4.

early action and preventative measures. Other activities this new account should be entitled to and expanded include but not limited to:

- Improving early warning systems indispensable for conducting the identification and assessment of low, medium, and high-risk countries, regions, and localities; and accordingly formulate strategies appropriate for each different dimensions.
- Extending the pool of foreign assistance programs to cover “non-best performing” conflict-prone countries.

This assertive and well-resourced model offers the best hope for truly bolstering peace building and prevention capacities, coordinating diplomatic and development functions, establishing accountability, and building a unified purpose and approach that would limit our penchant to intervene later and to stumble from one post-conflict stabilization and reconstruction to another in a piecemeal fashion. Furthermore, given the exit of U.S. troops from Afghanistan by the end of 2014, a strategic shift from reaction to prevention would be most pertinent as it would restrain the U.S. military from becoming overly engaged in future small-scale contingencies that undermine the aura of neutrality in conflict-prone areas.

- 4) **Elevate USAID to cabinet-level agency.** If the U.S. is seriously committed to reworking development into a principal apparatus alongside defense and diplomacy, and addressing the structural roots of violent extremism, concrete steps must be taken to elevate USAID to a cabinet-level agency. The U.K.’s Department for International Development (DFID) is an exemplary model for interagency coordination that the U.S. government should seek to develop. As a cabinet-level status outside the jurisdiction of the Foreign and Commonwealth Office (FCO), DFID has been able to lead the charge in development issues that represented the interests of developing countries without relying on the kindness of competing bureaucracies.⁶¹² Given the alignment of the interagency coordination within the British government, DFID has been able to stick to its targeted long-term focus on

⁶¹² Lael Brainard, "Organizing U.S. Foreign Assistance to Meet Twenty-First Century Challenges," in *Security by Other Means*, ed. Lael Brainard (Washington, D.C.: Brookings Institution Press, 2007), 43.

poverty reduction and eschewing the use of aid for commercial or strategic objectives.⁶¹³ It is imperative that the U.S. government houses all relevant foreign assistance programs under the aegis of USAID and take concrete steps to entrust the agency with leading authority, budget, and policy to ensure that the “whole of the government” works coherently under one overarching strategy to effectively alleviate poverty, and advance global commitments to the basic welfare and dignity of all human kind.⁶¹⁴

Leading authority: An autonomous cabinet-level agency with its distinct management system and organizational culture would greatly represent the reinvigorated development mission with a particular salience. Even if the development rationale may not always triumph within the National Security Council, its requisite stature would not be overshadowed or subverted to DoD or DoS interests and their “disinclination to plan, bureaucratic dysfunction, and passive-aggressive culture.”⁶¹⁵ Furthermore, an independent authority would enable USAID to effectively plan, oversee, and evaluate performance of in-house and country-owned programs.

Budget: Effective development is contingent on the strategic deployment of resources that advance particular programs consistent with overall policy goals. MCC monies have not been earmarked by Congress, leaving the corporation considerable flexibility for their use.⁶¹⁶ The same needs to be done for USAID. The agency’s heavily earmarked and regulated budget badly inhibits the distribution of

⁶¹³ Owen Barder, “Reforming Development Assistance: Lessons from the U.K. Experience,” in *Security by Other Means*, ed. Lael Brainard (Washington, D.C.: Brookings Institution Press, 2007), 301.

⁶¹⁴ The White House, “Fact Sheet: U.S. Global Development Policy,” September 22, 2010. <http://www.whitehouse.gov/the-press-office/2010/09/22/fact-sheet-us-global-development-policy> (accessed February 18, 2014).

⁶¹⁵ Frederick Barton and Noam Unger, “Civil-Military Relations, Fostering Development, and Expanding Civilian Capacity,” April 2009. http://www.brookings.edu/~media/research/files/reports/2009/4/development%20unger/04_development_unger.pdf (accessed February 2, 2014), 7.

⁶¹⁶ The Millennium Challenge Corporation’s Global Impact: *Hearing Before The Committee on Foreign Relations, United States Senate, 109th Cong. 2005.* <http://www.gpo.gov/fdsys/pkg/CHRG109shrg24705/html/CHRG-109shrg24705.htm>

aid; contribute to decline in staffing levels, and inability to competently participate in inter-agency coordination.⁶¹⁷

Policy: Restoring policy capacity to USAID would effectively refocus its overarching policy on poverty reduction that is consistent with the recommendations of the NSS, PPD-6, and the 9/11 Commission. This is fundamental toward reducing the agency's inclination to outsource the substantive side of its development work to irresponsible and for-profit contracting companies.⁶¹⁸ Furthermore, it would eliminate needlessly extravagant and naïve programs that are used as simple deliverables for winning the short-term diplomatic gains that often come at the expense of sustainably addressing the social and economic needs of weak states.⁶¹⁹

Implementing the merits of the U.K.'s model undoubtedly warrants substantial skepticism and political capital that may not be amenable to Congress. The imbalance of DoD budget compared to that of USAID, and the ongoing fiscal meltdown, would add to the challenge, but these circumstances do not create a reason *not* to pursue changes. Given President Obama's pledge in the 2010 Quadrennial Diplomacy and Development Review to rebuild USAID "as the U.S. government's lead development agency," an elevated role for USAID would be a logical step.⁶²⁰ Ultimately, a new and empowered department would improve bilateral and multilateral aid channels that engage with local and international partners such as the United Nations, World Bank, and Regional Development Banks that frequently wind up on the ground. Most importantly, an elevated USAID could recruit, foster, and integrate the individuals and groups who could provide the

⁶¹⁷ Amy B Frumin, "Equipping USAID for Success: A Field Perspective ." *Center for Strategic and International Studies* . June 2009. http://csis.org/files/publication/090709_pcr_briefing_usaid.pdf (accessed February 23, 2014), 13.

⁶¹⁸ Alissa J. Rubin and James Risen, "Costly Afghanistan Road Project Is Marred by Unsavory Alliances," *The New York Times*. May 1, 2011. http://www.nytimes.com/2011/05/01/world/asia/01road.html?pagewanted=all&_r=0 (accessed January 29, 2014).

⁶¹⁹ Perlez, "U.S. Aid Plan for Pakistan Is Foundering."

⁶²⁰ U.S. Department of State, "Quadrennial Diplomacy and Development Review," 76.

necessary expertise to enable the United States to respond to the growing challenges of the post-9/11 environment with maximum speed, experience, and flexibility.⁶²¹

⁶²¹ Larry Diamond, *Squandered Victory: The American Occupation and the Bungled Effort to Bring Democracy to Iraq* (New York: Macmillan, 2008), 309.