The Accountability of Drone Warfare in ISIL Counterterrorism Policy

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Introduction

This document is the work of 24 high school juniors at the School for Ethics and Global Leadership (SEGL). SEGL is a selective, semester-long residential program in Washington, D.C. for students from across the United States. It provides intellectually motivated students with the best possible opportunity to shape themselves into ethical leaders who create positive change in our world. The Spring 2017 semester developed this collaborative policy document to provide comprehensive solutions to the issues that occur when using drone warfare against fighting ISIL. We chose this topic because we believe it to be an urgent issue that requires intuitive and carefully planned solutions. This document does reflect the collective opinion of the students at SEGL, and does not reflect the opinion of the faculty and staff. Our hope is that this document provides a succinct and clear analysis of this issue and will serve as a first step in the implementation of ethical solutions.

We would like to thank Dr. David Ettinger at the Gelman Library of George Washington University as well as other professionals who helped us in our research.

Executive Summary

Islamic State of Iraq and the Levant (ISIL) is an extremist Sunni terrorist organization with territory in Iraq and Syria with a goal of establishing a global caliphate. ISIL has perpetrated and inspired fatal attacks worldwide attracting international attention. In response to the global security threat which ISIL poses and the human rights atrocities which its members commit, the United States has begun a campaign against ISIL, supporting allied forces on the ground and executing air strikes.

Operation Inherent Resolve, the U.S. campaign against ISIL, began in 2014 and relies heavily on drones. These drones use high definition and advanced sensors to target and strike against imminent threats to the United States.[1] Unmanned Aerial Vehicles (UAVs), or drones, have been effective and accurate technological weapons of war in the counterterrorism campaign against ISIL. Advanced technology and precision can limit civilian casualties more than massive ordnance. Drones are a cost-effective method of targeting ISIL personnel.[2] In times of necessary and immediate action, the United States can fly a drone and release a strike over a target within minutes, rather than use unstealthy land based military intervention, which puts U.S. Military personnel at risk.[3] While effective in countering terrorism, the increasing use of drone strikes since the initiation of Operation Inherent Resolve has created pressing concerns that must be addressed as the United States continues its campaign against ISIL. Foremost among these is the issue of collateral damage, which includes the unintended displacement or death of civilians. Vague and expansive drone laws create potential for overuse, excessive collateral damage, and a lack of accountability.[4] The rapid growth in drone strike usage, accompanied by an increase in noncombatant fatalities, has spurred criticism and questions of humans rights violations globally. If left unresolved, these issues may undermine the advantages of drone warfare to the United States.

The authors of this document have determined five considerations concerning United States accountability on drone warfare in ISIL territory in Iraq and Syria, including operational, ethical, humanitarian, legal, and political.

Availability of new effective technology protects Americans with physical separation from conflict overseas. It is crucial that the United States creates more efficient intelligence cycles within the CIA and uses the most advanced technology. The implementation of more informed practices will minimize the loss of civilian life.

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[1] "Operation Inherent Resolve," Inherent Resolve Military, 2017, http://www.inherentresolve.mil/About-Us/.

[2] U.S. Government Department of Defense, "Defense Acquisition Management Information Retrieval: Selected Acquisition Report, F-35," (Washington D.C: 2010), 44, https://fas.org/man/eprint/F-35-SAR.pdf.

[3] John O. Brennan, "The Ethics and Efficacy of the President's Counterterrorism Strategy," Wilson Center, Apr. 30, 2012, https://www.wilsoncenter.org/event/the-efficacy-and-ethics-us-counterterrorism-strategy.

[4] "Operation Inherent Resolve: Targeted Operations Against ISIS," *Department of Defense,* 2017, https://www.defense.gov/News/Special-Reports/0814_Inherent-Resolve/.; The Office of the Director of National Intelligence, "Summary of Information Regarding U.S. Counterterrorism Strikes Outside Areas of Active Hostilities," (2015).; U.S. Department of Defense, "About CJTF-OIR", Operation Inherent Resolve, http://www.inherentresolve.mil/About-Us/.

Additionally, as the United States has become increasingly dependent on drone warfare, it must consider the ethical implications behind this new technology. The principles of Just-War Theory, and more specifically those of *ius ad bellum,* are important to review when considering the ethics of drone warfare. These principles address the necessity of making a distinction between combatants and noncombatants, acknowledge drone strikes' justified violation of the proportionality of means, and determine whether a strike is necessary.[5]

Furthermore, accountability of the U.S. government regarding humanitarian issues such as civilian casualties is critical in the use of drone strikes on ISIL territory. Although casualties are minimized by the use of drones, civilian deaths still occur. The use of these drone strikes do not fully account for the damages done to these civilians' lives and property, nor are there full and complete reports provided by the government stating the number of casualties. This lack of transparency has caused an absence of trust and credibility in the U.S government.

Currently, neither the United States nor the United Nations have specific laws outlining the guidelines for the use of drone strikes. International Humanitarian Law (IHL) occasionally limits the use of force and conflicts with domestic law, and unclear definitions in domestic law create poor guidelines for the use of force. The Authorization for Use of Military Force (AUMF) gives the United States virtually unlimited ability to use force against al-Qaeda and its affiliates, a legal justification subject to immense questioning if left unclarified.

It is imperative that United States' drone strikes are performed taking into account the international and domestic political implications of these actions. The consideration of Iraq, Syria, neighboring actors, and foreign actors, as well as an understanding of U.S. partisan ideologies on drone warfare, must be incorporated into the creation of comprehensive drone warfare policy. Congressional funding and law procedure depend on these factors.

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[5] Alexander Mosely, "Just-War Theory," The University of Tennessee at Martin, last accessed April 14, 2017, http://www.iep.utm.edu/justwar.

History and Current Status

Introduction

The War on Terror witnessed the emergence of drone strikes, a new form of warfare designed to both minimize civilian casualties and reduce potential risk for American troops. Although effective for operations that require precise targeting, drone strikes raise pressing operational, ethical, humanitarian, legal, and political challenges for the U.S. government. While the advanced technology of drones lends itself to precision targeting of enemy forces, it is not immune to the problems that plague conventional warfare. As the United States combats the terrorist group ISIL, potential for criticism rises. The rapid growth in drone strike usage, accompanied by an increase in noncombatant fatalities, underscore the importance of establishing clearly defined standards for drone accountability and usage. If left unresolved, these issues may present serious human rights implications, and undermine the advantages of drone warfare.

History of Drone Strikes In ISIL Territories

Since 2014, the tempo of the U.S.-led coalition campaign against ISIL has steadily increased. In 2014, ISIL controlled large swathes of rural Iraq and Syria. However, U.S. airstrikes used in tandem with local-led ground offensives have curtailed the jihadist presence to a few densely populated urban strongholds, such as Raqqa and Mosul.[6] It follows that air strikes against jihadist targets in these more densely populated areas carry a higher risk of inflicting unintended collateral damage. This is reflected in the uptick of civilian casualties; in March, 2017, an estimated 200 civilians were reportedly killed in a coalition air strike on Mosul.[7] The U.S. military is currently investigating these reports which, if confirmed, would mark one of the highest noncombatant death tolls from a single strike since the 2003 U.S. invasion of Iraq.[8] This coincided with reports of at least 30 civilian deaths from U.S. airstrikes in Syria and has raised concerns from local military officers that the rules of engagement for air strikes (including drone strikes) have been loosened.[9] Furthermore, the growing intensity of the war against ISIL is reflected in the increased number of strikes conducted. On April 11, 2017, the U.S.-led coalition carried out 31 airborne attacks against ISIL targets in Iraq and Syria, and on April 11, 2015, the coalition undertook 17 strikes in the same region.[10] As the operation to retake Mosul, Raqqa, and other ISIL entrenchments continues, it is likely that the use of drone strikes will continue to increase.

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[6] Zenko Micah, "Do Not Believe the U.S. Government's Official Numbers on Drone Strike Civilian Casualties," *Foreign Policy Magazine*, July 5, 2016, http://foreignpolicy.com/2016/07/05/do-not-believe-the-u-s-governments-official-numbers-on-drone-strike-civilian-casualties/.

[7] Ibid.

[8] Ibid.

[9] Tim Arango and Helen Cooper, "U.S. Investigating Mosul Strikes Said to Have Killed Up to 200 Civilians," *New York Times*, March 24, 2017, https://www.nytimes.com/2017/03/24/world/middleeast/us-iraq-mosul-investigation-airstrike-civilian-deaths.html?_r=0.

[10] U.S. Central Command, "April 13: Military airstrikes Continue Against ISIS terrorist in Iraq and Syria," Operation Inherent Resolve, April 11th, 2017, http://www.centcom.mil/MEDIA/PRESS-RELEASES/Press-Release-View/Article/1150573/april-13-military-airstrikes-continue-against-isis-terrorists-in-syria-and-iraq/.

Advantages of Current Drone Strikes

The use of drones, or unmanned aerial vehicles (UAV), has fundamentally improved how the United States approaches and engages in counterinsurgency and counterterrorism. Drones are cheaper, safer, better intelligence gatherers, and more precise than traditional aircraft.

Drones are more cost-effective than manned aircraft as aerial support elements. An MQ-9 Reaper drone, the most commonly deployed U.S. UAV, has a unit price of $6.48 million and and costs $3,250 to operate per hour; the F-35 Joint Strike Fighter, a traditional, manned aircraft, has a unit price of $91 million and costs $16,500 to operate per hour.[11] Despite this large price disparity, both aircrafts are effective at delivering ordnance. Therefore, using UAVs instead of manned aircraft saves taxpayer dollars. UAVs are remotely controlled by a crew of 3 pilots, so no military personnel are required on the scene of the attack. Drone pilots are inherently safer because they are not in direct line of fire, so there is no risk of operatives' being shot down, taken hostage, or succumbing to fatigue.[12] Additionally, drones are used as intelligence assets by military personnel.[13] UAVs can more covertly loiter over targets for longer periods of time and are thus able to gather larger quantities of raw data.[14] UAVs are more accurate in their targeting technologies than manned aircraft. For example, the commonly used Predator Drone can focus on ground level objects, and with the assistance of other specialized drones, can accurately drop bombs from over twenty thousand feet in the air to effectively terminate its target.[15] These capabilities minimize collateral damage, firefights, friendly fire, and military deaths.

Disadvantages of Current Drone Strike Policy

Despite all apparent advantages to U.S. drone strikes, UAV use today still has its flaws.

The fact that ISIL command centers are mainly located in highly populated urban areas dramatically increases the risk of civilian casualties in U.S. drone strikes. A high number of civilian fatalities may negatively impact local and international perceptions of the U.S. war-time conduct, lead to heightened anti-American sentiment, and ultimately produce more potential recruits for terrorist organizations, such as ISIL. As such, the threat of a high number of civilian casualties may deter the military from striking at key jihadist targets and possibly prolonging the War on Terror.[16]

The U.S. government's reluctance to disclose the identities of targeted individuals prevents meaningful public oversight of the drone program. Government also lacks transparency in its reporting of civilian casualties. Increasingly, international Non-Governmental Organizations (NGOs) and monitoring organizations have questioned the credibility of official U.S. government accounts of noncombatant casualties. This credibility of the United States in all areas is vital to the

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[11] U.S Department of Defense, "Selected Acquisition Report (SAR) Summary Tables," 2011.

[12] James Igoe Walsh, "The Effectiveness of Drone Strikes in Counterinsurgency and Counterterrorism Campaigns," *United States Army War College Press* (2013): 5.

[13] Ian G. R. Shaw, "Predator Empire: The Geopolitics of Drone Warfare," *School of Geographical and Earth Sciences.* DOI: 10.1080/14650045.2012.749241

[14] Ibid.

[15] Sqn Ldr Rajesh Kumar, "Tactical Reconnaissance: UAVs Versus Manned Aircraft," ACSC, March, 1997.

[16] Benjamin Runkle, "The Obama Administration's Human Shields," *Foreign Policy,* November 30, 2015. http://foreignpolicy.com/2015/11/30/the-obama-administrations-human-shields/

continued strength of U.S. relations with other nations. In a government report released in 2015, the Office of the Director of National Intelligence (ODNI) estimates the number of non-combatant casualties from airstrikes "outside areas of active hostilities" to be between 64 and 116 civilian deaths.[17] However, independent estimates, such as those from the Bureau of Investigative Journalism, the New America Foundation, and the Long War Journal, place this number at approximately 474 deaths[18]. The significant discrepancy between official accounts and independent reports indicate that it may be necessary to revisit U.S. civilian casualty reporting mechanisms in order maximize transparency and accuracy. Additionally, this report fails to distinguish between manned and unmanned attack aircraft, excludes data from areas of active hostilities (which includes Iraq and Syria). The ODNI has not released an equivalent report that pertains to areas of active hostilities or addresses the other listed shortcomings. Although monthly air strike casualty reports released by Operation Inherent Resolve (OIR) relates exclusively to operations in Syria and Iraq, they suffer from similar shortcomings. Specifically, it is not clear what parameters the OIR is using to evaluate the credibility of civilian casualty reports, and the terms "terrorist" and "civilian" are not clearly defined.

Conclusion

Both the advantages and the drawbacks of drone warfare are manifested in the campaign against ISIL in Iraq and Syria. The technological and budgetary benefits of drones, as opposed to conventional manned aircraft are difficult to deny. However, drones remain an instrument of war that must be used with precision and restraint. Ultimately, it is clear that existing standards governing drone use must be reassessed to address a multitude of ethical and political questions, while maintaining the effectiveness of drone warfare in combatting terrorism in the Middle East.

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[17] Zenko, "Do Not Believe the U.S. Government's Official Numbers on Drone Strike Civilian Casualties."
[18] Ibid.

Operational

Introduction

Drones are effective military weapons and intelligence gathering machines. In order to further disrupt ISIL networks, drone operations needs to be improved. The Central Intelligence Agency's intelligence cycle impedes the possible efficacy and efficiency of drone strikes. The United States relies on drones that cannot be outfitted with the most advanced technologies that are to combat ISIL. Furthermore, missions utilizing manned aircraft and drones together are unnecessary due to drones' ability to carry out missions independently. Drones lack the hardware based security measures needed to eliminate the threat of cyber hijacking. This subsection outlines the steps the United States needs to take in order to strengthen drone-related efforts against ISIL.

Drone Strikes and the Intelligence Cycle

The flaws in the CIA's intelligence cycle adversely affect U.S. drone operations against ISIL. The intelligence cycle is the agency's process of analysis and in its most rudimentary form consists of six phases: planning and direction, collection, processing, analysis and production, and dissemination.[19] The CIA utilizes this cycle in all of its operations, including the targeting and killing of ISIL operatives via drone strikes. Each of these phases is dependent on the previous phase; any mistake in one step will adversely affect all following steps. A notable failure of the intelligence cycle was the United States' decision to go to war against Iraq in 2003 based on the false claim that the Iraqi government possessed weapons of mass destruction. If an image of ISIL held territory is not analyzed properly, the CIA could accidently conduct a drone strike on civilians. If a threat is underestimated by an intelligence report, officials could overlook an imminent ISIL threat. All of these examples can be prevented by fixing the flaws within the intelligence cycle. A 2015 report by The Center for the Study of Intelligence (CSI), a center within the CIA, analyzed the intelligence cycle and recommended a reduction in CIA analysts' workload, further evaluation of the current intelligence cycle, and the use of alternate forms of analysis.[20] Implementing these changes and further improving the intelligence cycle would increase the efficiency, accuracy, and efficacy of intelligence analysis and subsequently drone strikes against ISIL.

Cyber Vulnerabilities

Drones have electronic vulnerabilities that, if unaddressed, could result in the loss of American lives, sensitive information, and property.[21] Although ISIL does not currently possess the capabilities to hijack U.S. drones, the terrorist organization could potentially develop these capabilities. Additionally, Russia and Iran have access to U.S. drones as they also operate in and around Iraq and

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[19] Dr. Rob Johnston, "Analytic Culture in the US Intelligence Community," *Central Intelligence Agency: Center for the Study of Intelligence,* 2015.

[20] Ibid.

[21] Maretta Morovitz, "Security Vullnerabilities in Unmanned Aircraft Systems," http://www.cs.tufts.edu/comp/116/archive/fall2015/mmorovitz.pdf, 1-2.

Syria. Both of these countries are able to abuse the GPS and radio frequency technologies that the United States currently use. Software based security solutions, which the U.S. currently relies on, can only temporarily fix the vulnerabilities within these two technologies.[22] The Defense Advanced Research Projects Agency (DARPA) has stated that hardware based security solutions are more effective at protecting U.S. drones from cyberattacks than software based solutions.[23] In an effort to increase UAV cybersecurity, DARPA created the High-Assurance Cyber Military Systems (HACMS).[24] HACMS has become the primary U.S. UAV cybersecurity development program and has developed many software based security solutions. Hower, HACMS has failed to create effective hardware based solutions, which DARPA itself recognized to be superior.

HACMS has only begun to address hardware based weaknesses as of this year.[25] The Synthesis of Platform-aware Attacks-Resistant Control Systems project (SPARCS) seeks to patch up the hardware weaknesses that HACMS previously neglected. If the hardware based security measures are not further researched and implemented, adversaries of the United States can and will be able to take advantage of U.S. drones in Syria and Iraq.

Drone Development

It is more effective to develop drones specifically designed for military use than to continue outfitting intelligence drones with military technology. The United States primarily uses and augments MQ-1 Predator and MQ-9 Reaper drones to combat ISIL. These two drones were not initially designed to have military capabilities. Therefore, they are incapable of possessing advanced landing and launching technologies. Currently U.S. drones must rely on airstrips near ISIL territory and are susceptible to ISIL rocket attacks. Drones capable of taking off from and landing on an aircraft carrier would not only be more protected, but also possess increased mobility and rapid deployment capabilities. MQ-1 and MQ-9 drones cannot be adapted to use Navy aircraft carriers due to their structural design and incompatibility with the carrier's catapults and arrestor wires. The drones currently in development for military use, such as the Sea Avenger and the X-47B, have these capabilities and consequently will be able to kill ISIL operatives more effectively.[26] Drones that can be refuelled aerially are able to loiter over targets for longer periods of time than drones that can not. Aerial refueling is crucial to improving our ability to locate, analyze, and eliminate ISIL targets. This ability also cannot be added to the MQ-1 and MQ-9 drones, but will be present on the X-47B drone.[27] Rather than continuing the development of MQ-1 and MQ-9 military capabilities, those current funds should be transferred to the expedited development of the Sea Avenger and X-47B drones, which will be carrier capable military and surveillance suited drones. The MQ-1 and MQ-9's inability to adopt the referenced technologies that are required to improve our drone operations against ISIL, suggests that the United States should instead prioritize the funding and development of the X-47B and Sea Avenger drones.

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[22] "Baking Hacking Resistance Directly Into Hardware," http://www.darpa.mil/news-events/2017-04-10.

[23] Ibid.

[24] Raymond Richards, "High-Assurance Cyber Military Systems," http://www.darpa.mil/program/high-assurance-cyber-military-systems.

[25] "SPARCS: Synthesis of Platform-aware Attack-Resistant Control Systems," https://rtg.cis.upenn.edu/HACMS/.

[26] "X-47B UCAS Makes Aviation History…Again!" Northrop Grumman Last modified 2017, http://www.northropgrumman.com/Capabilities/X47BUCAS/Pages/default.aspx.

[27] Ibid.

Drones and Manned Aircraft

The U.S. government does not need to use manned aircraft and UAVs in tandem operations. When a drone carries out a strike without the support of a manned aircraft, the possibility for American casualties significantly decreases and the precision of the strike increases.[28] In its fight against ISIL, the U.S. government currently relies on a combination of manned aircraft and drones. Even though the manned aircraft are only briefly in enemy airspace, they are still vulnerable to attacks.[29] For example, Moaz al-Kasasbeh, a Jordanian pilot, was captured and killed by ISIL in 2015 when his plane came down near Raqqa.[30] Since missiles launched by drones tend to kill less civilians than those launched by manned aircraft, drones are more successful than manned aircraft at saving American and reducing civilian casualties.[31] This is partly because drone pilots are not in the direct line of fire, which allows them to act more rationally than their manned counterparts. This pilot separation along with drone loitering times of over 27 hours, allows strikes to be carried out at the most opportune moment.[32] Although manned aircraft can deliver a larger payload than drones, AGM-114 Hellfire missiles, which MQ-1 and MQ-9 drones are commonly equipped with, are also effective at eliminating targets.[33] The technological advantages drones offer and their future prospects make operations that use manned aircraft and drones together obsolete.

Recommendations:
- Modify the CIA's intelligence cycle, based on the recommendations outlined in the CSI's 2015 report, in order to improve the efficiency, accuracy, and efficacy of drone strikes.
- Expedite the development of the X-47B and Sea Avenger drones with a redirection of funds currently being used to adapt MQ-1 and MQ-9 drones for military use.
- Phase out missions involving both manned aircraft and UAVs.
- Increase development and implementation of anti-hacking hardware technology through increased government support for programs such as DARPA's HACMS and SPARCS programs.

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[28] Hugh Gusterson, "The Appeal of Drones," *Institute for Advanced Study,* 2016, https://www.ias.edu/ideas/2016/gusterson-appeal-of-drones.

[29] David Vergun, "Apache-UAV teaming combines 'best capabilities of man, machine," U.S. Army, May 8, 2014, https://www.army.mil/article/125676/.

[30] "Jordan Pilot Hostage Moask al-Asasbeh 'burned alive'," *BBC*, February 3, 2015, http://www.bbc.com/news/world-middle-east-31121160.

[31] Gusterson, "The Appeal of Drones."

[32] Predator B RPA, 2017, http://www.ga-asi.com/predator-b.

[33] Megan Braun and Daniel R. Brunstetter, "Rethinking the Criterion for Assessing CIA-Targeted Killings: Drones, Proportionality and Jus Ad Vim," *Journal of Military Ethics* (2010).

Ethical

Introduction

Although drone strikes are tactically advantageous, there are ethical considerations the United States must include when deciding how to use drone strikes. The ethical considerations of drone strikes include the morality of the war on terror, at what point and how drone strikes should be used, and how the government demonstrates transparency after the use of drone strikes. Drone strikes come with the dilemma of moral hazard which results in ethically questionable decisions. In this section, these ethical considerations are addressed.

Using Drone Warfare in Ethical Ways?

When discussing the ethics of drone warfare, the United States must first look towards the principles of *jus ad bellum*, a part of Just-War Theory, in order to determine if the United States is currently engaged in a just war with ISIL. Experts suggest that it is. In a speech at the Wilson Center, John O. Brennan, the Assistant to the President For Homeland Security and Counterterrorism under the Obama Administration, stated in regards to drone warfare against terrorist groups, "...we conduct targeted strikes because they are necessary to mitigate an actual ongoing threat, to stop plots, prevent future attacks, and to save American lives."[34] This implies that the United States does conduct drone strikes as part of a just war against ISIL. The principle of *jus ad bellum* requires a just cause to enter war, and in this case, the U.S. cause was self-defense.[35] In addition, a war against ISIL was the last resort. When the War on Terror first began under the Bush administration in 2002, the National Security strategy published by the White House stated, "...deterrence based only upon the threat of retaliation is less likely to work against leaders of rogue states more willing to take risks, gambling with the lives of their people, and the wealth of their nations."[36] Deterrence, in the War on Terror, is not a viable option. In addition, leading war ethicist Michael Walzer commented that negotiating U.N. resolutions or bringing ISIL to an international court is simply not realistic.[37] Using these standards, a War on Terror is the last resort in dealing with ISIL and thus is a just war.

The United States must also use drones strikes in compliance with the principles of *jus in bello*, another part of Just-War Theory which addresses the morality of actions in war. This can best be done by conducting them while making a distinction between combatants and noncombatants, acknowledging the justified violation of the proportionality of means, and determining whether a strike is necessary.[38]

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[34] John Brennan, "The Ethics and Efficacy of the President's Counterterrorism Strategy," Wilson Center, April 30, 2012, https://www.wilsoncenter.org/event/the-efficacy-and-ethics-us-counterterrorism-strategy.

[35] Alexander Mosely, "Just-War Theory," The University of Tennessee at Martin, accessed April 14, 2017, http://www.iep.utm.edu/justwar/.

[36] The White House, "The National Security Strategy of the United States," (Online: 2002).

[37] Michael Walzer (author, *Just and Unjust Wars*), *interview by authors*, Washington, D.C., April 19, 2017.

[38] Mosely, "Just-War Theory."

The first of these criteria, distinction, inherently rejects the doctrine of double effect, first coined by Thomas Aquinas in the late-thirteenth century.[39] The doctrine of double effect justifies an attack's impact on civilian populations solely on the basis that the intention in the attack is a moral one, and the civilian casualties are merely collateral damage.[40] However, the value of the life of a non-combatant does not vary based on intention of an actor in war, and the deaths of civilians must always be minimized. Laurie Calhoun writes in *Peace Review* that "if a 'just war' produced the same ill effects as murder, terrorism, and torture, but in far greater magnitude, this would seem to demonstrate that the traditional framework is sorely confused."[41] Because of the importance of distinction between combatants and noncombatants in waging a just war, accountability and transparency in reporting civilian deaths from drone strikes is critical.

A common criticism of drone strikes is their violation of the second just-war criteria: proportionality of means, which suggests that two actors at war against each other should use only means of attack available to both sides. Nevertheless, in the War on Terror, it is acceptable to adopt war ethicist Bradley Strawser's theory of principle of unnecessary risk, which requires that the United States must use any possible means to minimize preventable casualties on their side of the battlefield. U.S. drone warfare complies with this theory. In addition to Strawser's theory, Michael Walzer claims that there is no moral requirement of proportionality because, as demonstrated in the numerous asymmetric wars that have been fought throughout human history, it is possible for low technology insurgencies to triumph over more technologically advanced actors.[42]

Lastly, a determination must be made about the necessity of military action. Due to the infringement upon a human's right to life and to a fair trial only in peacetime, targeted killing is a violation of International Human Rights Law.[43] However, even during an international conflict, Amnesty International responded to a drone strike targeting terrorist group members in 2002 by stating, "If this was the deliberate killing of suspects in lieu of arrest, in circumstances in which they did not pose an immediate threat, the killings would be extrajudicial executions in violation of International Human Rights Law."[44] Therefore, targeted killings conducted through drone warfare can be necessary, and therefore ethical, in times of international conflict, but UAVs must be used with caution and restraint. These restraints will be discussed in the following section.

How and When to Use Drone Strikes

The Obama Administration did not strictly regulate the U.S. drone program.[45] Instead, it justified drone strikes by ensuring a low ratio of civilians to combatants killed, which does not sufficiently

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[39] Alison McIntyre, "Doctrine of Double Effect," *Stanford Encyclopedia of Philosophy*, September 23, 2014, https://plato.stanford.edu/entries/double-effect/.

[40] Laurie Calhoun, "Drone Killing and the Disastrous Doctrine of the Double Effect," *Peace Review: A Journal of Social Justice* (Online: 2015) 440-447.

[41] Ibid.

[42] Michael Walzer (author, *Just and Unjust Wars*), interview by authors, Washington, D.C., April 12, 2017.

[43] Daniel R. Brunstetter & Arturo Jimenez-Bacardi, "Clashing over drones: the legal and normative gap between the United States and the human rights community," in *The International Journal of Human Rights* (Online, 2015) Vol. 19, Iss. 2.

[44] Ibid., 181-182.

[45] Michael J. Boyle, "The legal and ethical implications of drone warfare," *The International Journal of Human Rights,* 19:2 (2015): 114-116, doi: 10.1080/13642987.2014.991210.

determine proportionality.[46] This rationale was especially important to the United States when executing "signature" drone strikes, carried out "on the basis that the patterns of behaviour… are sufficient to indicate that [targets] intended to engage in combat." Current drones strikes therefore carry a large risk of mistakenly targeting innocents.[47] Without any more specific reasoning, "signature" strikes contradict Michael Walzer's principle that regulations must be very tight on these strikes because "the supposed advantage of the drone is that it can accurately carry out an….attack."[48] The lack of monitoring of "signature" strikes voids the aspects of drone warfare that make it ethically preferable to other forms of warfare. "Personality" strikes in ISIL territory are more clearly ethical, as they target only positively identified combatants with a significant role in the organization. However, the ethical concern of reducing collateral damage as much as possible must still be a principle consideration surrounding "personality" strikes. Therefore, it is important that the United States seek out reliable reports of where civilians are relative to drone strike locations. Peacetime, wartime, and times of trans-state conflict each merit a separate, distinct definition of whether and how it is ethical to use drone warfare. A state of peace is defined simply as the "absence of war" or as a concept that is the mutually exclusive antonym to war.[49] If there is an absence of war, the use of drone warfare, or any type of warfare, is unethical.

The distinction between a state of war and a state of international conflict is slight. A state of war is traditionally defined as "open, long, and often prolonged conflict involving organized violence between nations, states, or parties for political motives."[50] The United State's current conflict with ISIL cannot be categorized under this traditional definition as ISIL is neither a nation nor a legitimate state. The newer category, international conflict, involves multiple parties and includes three types: inter-state, intra-state, and trans-state.[51] The last term, "trans-state conflict", was created specifically to address international terrorism and cyber attacks, according to the Center For Strategic and International Studies in Washington, DC.[52] Michael Walzer suggests that in a state of war, it is legitimate to use drone warfare against combatants, as drones are no different from any other type of modern weaponry.[53] Because international conflict is a newer concept and has a looser definition, Walzer recommends that drone warfare should be used more carefully during a state of international conflict.[54] He expresses that the way to conduct drone warfare the most ethically in such a case is to have a wealth of reliable intelligence, specifically from trusted agents on the ground, in order to minimize the number of civilian casualties.[55] This should be done with agents on the ground who are trained by the US Special Forces and who have US interests at heart.[56] This way, the intelligence gathered is reliable. Without this intelligence, drone warfare cannot be considered ethical during a state of international conflict.

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[46] Ibid.

[47] Ibid.

[48] Walzer, *interview by authors.*

[49] "Warfare," Watson Institute, accessed April 14, 2017, http://www.watsoninstitute.org/gs/Security_Matrix/warfare.htm.

[50] Ibid.

[51] Janusjki Bugaski, "Early warning, conflict presentation, crisis management, conflict resolution, and post-conflict rehabilitation: lessons learned and way ahead," Center For Strategic and International Studies, 2011.

[52] Ibid.

[53] Walzer, *interview by authors.*

[54] Ibid.

[55] Ibid.

[56] Ibid.

Accountability in the form of Transparency

It is important to note that the inexpensive nature of drones and remote nature of drone operators in relation to their targets dramatically shifted the nature of lethal attacks. Historically, a precise and effective attack required soldiers on the ground as well as ample resources. As a result, drone operators run into a morally hazardous scenario where a person or group does not have to face the repercussions of their decision and are therefore is subject to morally questionable decision making. This applies to drone operators in the United States, because they are able to conduct drone strikes from thousands of miles away, without any risk of injury to themselves or to any American lives. With the knowledge that drone operators are subject to moral hazard, it is important to invent areas of accountability.

One of the most controversial aspects of drone strikes is whether or not to categorize drone warfare as a conventional warfare tactic. According to the Journal of Strategic Security, "Once you blur the line of this basic fundamental categorization then nearly everything else becomes open to interpretation..."[57] The U.S. government carried out drone strikes using this blurred line effect as an ethical standard. As a result, President Obama released an executive order in July 2016 addressing the U.S. practices pre- and post-strike, which requires the Director of National Intelligence to release a report by May 2017, documenting the number of combatant and noncombatant deaths resulting from strikes against terrorist targets in 2016.[58] It also states that this must occur every year moving forward. The U.S. government is making progress to define the ethics of how drone strikes are used, and need to continue to move in this direction of unblurring the ethical standards of drone strikes. By holding the United States accountable for its actions, government officials will not run into moral hazard. Therefore, accountability for drone strikes fosters the development of ethical uses of drones.

Recommendations
- The decisions to conduct "signature" strikes should be made on a basis of intelligence from these agents to confirm the status of targeted groups and to report on civilian presence in targeted locations.
- There should be agents trained by the U.S. Special Forces stationed in the Middle East who provide reliable intelligence on the identities of each combatant targeted in a "personality" strike as well as the absence or near absence of civilians during the planning of all drone strikes.
- The current administration should abide by the executive order signed by President Obama and publish an annual report documenting the number of deaths resulting from drone strikes in the past year.

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[57] Matthew Crosston, "Pandora's Presumption: Drones and the Problematic Ethics of Techno-War," *Journal of Strategic Security* 7, no. 4 (2014): 4, http://scholarcommonc.usf.edu/jss/vol7/isse/3.

[58] Exec. Order. No. 13732, 81 Fed. Reg. 44485 (July 7, 2016), https://www.archives.gov/federal-register/executive-orders/2016.html.

Humanitarian

Introduction

While drones effectively minimize civilian casualties, there are a number of humanitarian issues to address. In the past, the definition of combatant versus civilian has been unclear or absent. When present, reports have included varying numbers of civilian deaths for a single drone strike. There is more to drone strikes than the target and the drone, there are the civilians in the area and the drone pilots to consider. The affected civilians do not have the proper support to deal with the aftermath of the strike.

The Civilian Benefit of Drone Strikes

The U.S. military uses drones because they are accurate for eliminating targeted enemies, and replace air-strikes or on land troops to carry these missions out.[59] Drones kill fewer civilians than other methods such as airstrikes, missiles, and ground operations. In Yemen, a country where the United States has been carrying out drone strikes since 2006, 239 strikes have been reported in total.[60] From these, an estimated 866-1191 people were killed, of which 156-365 were civilians.[61] Compared to these numbers, the non-drone warfare casualty numbers in Yemen were 156-365 dead, with 68-99 being civilians.[62] This is a 27% to 44% civilian casualty rate from non-drone warfare, compared to the much smaller 16% to 18% civilian casualty rates of drone warfare.[63] High definition imagery, advanced sensors, and precision firing decreases the civilian casualty compared to non-drone warfare, thus making them more humanitarian.[64]

Civilian Casualty Counts

The Geneva Convention classified a civilian as "persons who are not members of the armed forces. The civilian population comprises all persons who are civilians."[65] Although the U.S. has released reports on the number of civilian casualties (since 2014), that have occurred due to drone warfare, this number is highly disputed within various international media, military, and activist organizations, undermining the legitimacy of the United States reports. The Department of Defense reports they have conducted 15,530 strikes in Iraq and Syria (7,689 Iraq/7,661 Syria) with 64 to 116 civilians killed.[66] However, various organizations contest this number due to a lack of transparency with the

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[59] William Saleton, "Don't Blame Drones," *Slate*, April 24, 2015,
http://www.slate.com/articles/news_and_politics/foreigners/2015/04/u_s_drone_strikes_civilian_casualties_would_be_much_higher_without_them.html.
[60] "Drone Strikes in Yemen," *The Bureau of Investigative Journalism*, April 7, 2017
https://www.thebureauinvestigates.com/projects/drone-war/yemen.
[61] Ibid.
[62] "Drone Strikes in Yemen."
[63] Saleton, "Don't Blame Drones."
[64] "MQ-9 Reaper," *U.S. Air Force*, September 23, 2015, http://www.af.mil/About-Us/Fact-Sheets/Display/Article/104470/mq-9-reaper/.
[65] "Customary International Humanitarian Law," International Committee of the Red Cross, 2017.
[66] "Operation Inherent Resolve: Targeted Operations Against ISIS," *Department of Defense,* 2017,
https://www.defense.gov/News/Special-Reports/0814_Inherent-Resolve/.; The Office of the Director of National

U.S. government and conflicting reports on the ground. For example, the U.K. based Air Wars, a nonprofit that uses official military reports and ground sources to track international air war against ISIL in Iraq and Syria, says a minimum of 3,061 civilians have been killed by U.S. airstrikes.[67] The Syrian Network of Human Rights, an independent nonpartisan nonprofit based in the UK which documents violations committed by all conflict parties against the Syrian people using witnesses, military reports and on ground sources, reports 945 civilians killed.[68] This disparity of information calls into question the legitimacy of the information being reported by the Defense Department. These variations are occurring because a lack of transparency and an unclear, rarely used definition of combatant. The Obama administration defined "'all military-aged males [killed] in a strike zone' as 'combatants,' absent 'explicit evidence posthumously proving them innocent'".[69] Additionally, the methodology which the United States uses when determining whether someone is a civilian or combatant is unclear. The U.S. government loses legitimacy because it does not have a clear definition of combatant and lacks transparency about the method of counting civilian deaths.

In addition, the lack of a clear definition can lead to anti-American propaganda which convinces both civilians and combatants that the U.S. government does not care about civilian deaths.[70] Such was the case in a strike in the Logar Province of Afghanistan in 2012. The International Security Assistance Force (ISAF) received intelligence giving the location of a Taliban commander. They tried non-lethal capture, but they ended up resorting to a drone strike. After the incident, ISAF released a report saying the strike killed no civilians, but a news organization simultaneously released pictures of dead women and children. This discrepancy caused Afghanis to show their displeasure by chanting "death to America" at the Logar Province capital.[71] The lack of transparency in these operations, as well as the unclear classification of civilians, often results in anti-American propaganda which poses a threat to the fight against ISIL, because it alienates people on the ground who are crucial to the success of the U.S. campaign, as well as giving reasons for the American public to distrust the U.S. Government.[72]

Policy Regarding Aid in the Levant

United States has provided more than $6 billion in humanitarian assistance to organizations working in Syria (including assisting civilians injured by drone strikes).[73] Reportedly, 50 to 3,000 civilians have

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Intelligence, "Summary of Information Regarding U.S. Counterterrorism Strikes Outside Areas of Active Hostilities," 2015.; U.S. Department of Defense, "About CJTF-OIR", Operation Inherent Resolve, http://www.inherentresolve.mil/About-Us/.

[67] "Civilian and 'Friendly Fire' Casualties," Air Wars, April 12, 2017, https://airwars.org/civilian-casualty-claims/.

[68] "207,000 Civilians Have Been Killed Including 24,000 Children and 23,000 Females; 94% of the Victims were Killed by the Syrian-Iranian-Russian Alliance," Syrian Network for Human Rights, March 18, 2017, http://sn4hr.org/blog/2017/03/18/35726/.

[69] Jane Stack, "Not if Machines Think, but if Men do," *UCLA Law Review* (2015): 764.

[70] Letta Tayler, "Between a Drone and Al-Qaeda: The Civilian Cost of U.S. Targeted Killings in Yemen," ed. Andrea Prasow and Joe Stork and Joseph Saunders, Human Rights Watch, October 22, 2013, https://www.hrw.org/report/2013/10/22/between-drone-and-al-qaeda/civilian-cost-us-targeted-killings-yemen.

[71] Stack, "Not if Machines Think," 760.

[72] Charles P. Trumbull IV, "Re-thinking Proportionality Outside of Hot Battlefields," *Virginia Journal of International Law*, (2015): 553.

[73] "The Syrian Crisis: U.S. Assistance and Support for the Transition," U.S. Department of State, March 17, 2014, https://2009-2017.state.gov/r/pa/prs/ps/2014/03/223955.htm.; "Syria," USAID, March 18, 2017, https://www.usaid.gov/syria.

been killed in the Levant from U.S. air strikes and thousands more are in mortal danger by the surrounding conflict.[74] There are over 13.5 million people in need of aid in Syria: more than 5 million refugees are externally displaced in countries including Turkey, Jordan, and the United States, and there are 6.3 million internally displaced refugees within Syria.[75] It is challenging for the United States to directly assist civilians in ISIL territory because it is difficult to gain access without putting U.S. citizens in danger. Additionally, the Syrian government has to approve of this aid. Even with these limiting parameters, United States humanitarian assistance has helped more than 4.3 million people by providing aid such as medical facilities and aliment.[76] Some of this aid does support civilians injured (psychologically and physically) by drone strikes, but it is almost impossible to directly allocate aid to civilians because drone strikes often occur in ISIL held territory.

Humanitarian aid given by the United States, in amounts of approximately $400 million annually, is appropriated by the State Department and the United Nations.[77] Under the Obama administration the United States policy was to "maintain channels for engagement with the International Committee of the Red Cross and other nongovernmental organizations that operate in conflict zones and encourage such organizations to assist in efforts to distinguish between military objectives and civilians".[78] The United States' assistance supports United Nation's High Commission for Refugees (UNHCR), World Food Program (WFP), the United Nations Children's Fund (UNICEF) and many other organizations both in Syria and neighboring countries.[79] Organizations such these have been the most effective when providing relief to areas in and outside Syria seeking help.[80] It is currently United States policy to provide aid to Syrian civilians in mortal danger, including those injured by drone strikes.[81] Under the Obama administration, the Syrian refugee crisis, which has been perpetrated by ISIL warfare, was labeled, "the largest humanitarian crisis in our time," and, the United States "remains the largest humanitarian donor."[82] The United States has the ability to maintain their efforts to provide aid to support nongovernmental organizations which continue to save thousands of lives every year including those injured by drone strikes.

Impacts of Drone Strikes on Pilots

Pilots operate drones from Ground Control Stations (GCS) in which all controls are set up similar to an airplane cockpit.[83] Most pilots are "Deployed in Garrison," meaning they go home at the end of the day, and one pilot said "I'll go meet my wife for lunch. I'll step out from doing a mission and

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[74]Scott Shane, "Drone Strike Statistics Answer Few Questions, and Raise Many," *New York Times*, July 4, 2016, https://www.nytimes.com/2016/07/04/world/middleeast/drone-strike-statistics-answer-few-questions-and-raise-many.html.

[75]"Syria Emergency," United Nations High Commission for Refugees, February 16, 2017, http://www.unhcr.org/en-us/syria-emergency.html.

[76]"The Syrian Crisis: U.S. Assistance and Support for the Transition," U.S. Department of State, March 17, 2014,

[77] Ibid.; Carol Morello, "U.S. gives $419 million more to aid Syrian refugees," *The Washington Post,* 2015.

[78] Barack Obama, "United States Policy on Pre- and Post-Strike Measures to Address Civilian Casualties In U.S. Operations Involving the Use of Force," *The White House: Executive Order,* July 1, 2016.

[79] Ibid.; "The Syrian Crisis," U.S. Department of State.

[80] Ibid.

[81] Ibid.

[82]Josh Earnest, "Daily Press Briefing by the Press Secretary," *The White House Office of the Press Secretary,* September 2015.

[83]Thomas E. Ricks, "Interview With a U.S. Air Force Drone Pilot: It is Oddly War at a Very Intimate Level," *Foreign Policy*, November 6, 2014, http://foreignpolicy.com/2014/11/06/interview-with-a-u-s-air-force-drone-pilot-it-is-oddly-war-at-a-very-intimate-level/.

go off to my child's soccer game," putting no separation in time between work and family.[84] Within the GCSs, pilots watch high-definition imagery of their targets, learning their schedules, and after killing the targets they sort through the rubble to make sure the targets have been killed.[85] The high-definition imagery shows the smallest details of the strikes, including the bodies and gory carnage afterwards. Along with this, operators must kill a person who they have carefully observed for an extended period of time. These are very different experiences from pilots flying planes who do not physically see the wreckage they caused by dropping a bomb. Because of this, drone operators are at equal risk to PTSD and other mental health disorders as manned aircraft pilots are.[86] In addition, pilots have inflexible shifts, which can last up to twelve hours at a time, adding to the high stress levels.[87]

All of this leads to drone pilots having unique stresses, different from plane pilots or any other military employees but without the comradery that most deployed troops benefit from.[88] Drone operators face stress due to social isolation at work, which makes them more susceptible to PTSD.[89] An Oxford University study reports that soldiers often deal with stress from war by relying on the comradery and friendship of their fellow soldiers; drone operators do not have the ability to do so because they often work alone without a "band of brothers".[90] Around 20% of drone operators were found to suffer from high levels of stress, which puts drone operators within the top nine stressed officer career fields[91]. This stress reportedly elevates the pilot's risk for the "human factor contributions in USAF drone mishaps," which is when a mistake results in an accidental loss in human life.[92] Currently drone operators in the military are considered part of the Air Force and therefore receive Veteran benefits such as availability to counseling and centers that support mental health for soldiers and veterans, though they do not focus on the unique stresses for drone operators.[93]

Recommendations
- The government should continue to use drone strikes over manned airstrikes, missiles, ground operations, or other non-drone techniques because of their advanced accurate targeting which leads to a low civilian fatality rate.
- The U.S. government should release a report defining what they consider a "civilian" verses

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[84] Armour and Ross, "The Health," 83-98.; Ricks, "Interview with a U.S. Air Force Drone Pilot."

[85] Ricks, "Interview with a U.S. Air Force Drone Pilot."

[86] Jean L. Otto and Bryant J. Webber, "Mental Health Diagnoses and Counseling Among Pilots of Remotely Piloted Aircraft in the United States Air Force," *Time Military Files,* 2013.

[87] Dao, "Drone Pilots."; Pilkington, "Life as a drone operator."

[88] Center for the Study of the Drone, "Burdens of War: PTSD and Drone Crews," *Bard College,* April 21, 2014, http://dronecenter.bard.edu/burdens-war-crews-drone-aircraft/.

[89] Ibid.

[90] Edward Shils and Morris Janowitz, "Unit Cohesion and Disintegration in the Wehrmacht in World War II," *Oxford University Press/The Public Opinion Quarterly,* 1948.

[91] Wayne L. Chappelle, Col Kent D. McDonald, Lillian Prince, Tanya Goodman, Bobbie N. Ray-Sannerud, William Thompson, "Symptoms of Psychological Distress and Post-Traumatic Stress Disorder in United States Air Force Drone Operators," *Military Medicine,* 2014.; Jeff Schogol, "8 Enlisted, 9 Officer Career Fields are on "Stressed" list," *Air Force Times*, February 10, 2015.

[92] Chappelle and McDonald and Prince and Goodman and Ray-Sannerud and Thompson, "Symptoms of psychological Distress."

[93] "Remote Piloted Aircraft (RPA) Sensor Operator," *Air Force,* 2017, https://www.airforce.com/careers/detail/remote-piloted-aircraft-rpa-sensor-operator.

a "militant," and a report describing how they count the number of civilian casualtie, and The Department of Defense Operation Inherent Resolve should, in its daily Combined Task Force reporting, keep reporting the civilians lives lost as a result of drone strikes .

- The U.S. government should continue to provide aid to civilians in ISIL territory. The United States should provide 400 million dollars annually to grassroots organizations, non-governmental organizations, governmental organizations and nonprofits based both in and outside the ISIL-held territory until the end of the conflict. This money would be allocated by the State Department who has previously been in charge of this.
- Drone Operators should have access to group therapy sessions as part of the veteran health care they receive. They should also have shorter shifts to minimize stress and fatigue while working.

Legal

Introduction

The legal framework for the United States' employment of drone strikes in warfare is lacking in specific clarity and in measures to ensure institutional and personal accountability.[94] The necessity of this emerging type of force in military combat is evident since "they dramatically reduce the danger to U.S. personnel... and they dramatically reduce the danger to innocent civilians."[95] Due to the increased usage of drone strikes, abuse is inevitable.[96] Therefore, clear limitations of when and how to use drone strikes are requisite to engender accountability within the hierarchy of decision-making in the U.S. Military and government. Since the United States is in a state of armed conflict with ISIL, the U.S. military also retains the right to self-defense and proportionality in warfare.

Domestic and International Law

Regarding the justification of drone-based intervention in countries, a Status of Forces Agreement (SOFA) establishes multilateral or bilateral agreements between a host country and an organization (i.e. NATO) or an acting country, otherwise known as the intervening force.[97] SOFAs serve to outline the specific measures by which the acting country or body may operate in a host country by defining the appropriate action that an organization or an acting country may carry out but do not directly address drone warfare.[98] As these pertain to domestic accountability, SOFAs set key legal parameters for activities in negotiated regions:

> They define the legal status of U.S. Department of Defense (DoD) personnel, activities, and property in the territory of another nation and set forth rights and responsibilities between the United States and the host government.[99]

In addition, the United States may also rely on good diplomatic standing with a country and/or past treaties as reason to intervene without the creation of a SOFA.[100] Furthermore, although International Humanitarian Law (IHL) deals specifically with the establishment of legal and ethical parameters for intervention and uses of force, the authorization of action through global bodies, such as NATO or the UN, serves to stagnate operations and to limit U.S. military sovereignty. IHL further has the ability to legitimize action against ISIL by defining combatants in an international

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[94] Harold Hongju Koh, "Address at the Annual Meeting of the American Society of International Law: The Obama Administration and International Law," *Digest of United States Practice in International Law,* (2010):715, 718-19

[95] Brennan, "The Ethics and Efficacy of the President's Counterterrorism Strategy."

[96] Office of General Council of Department of Defense, Department of Defense Law of War Manual (Washington, D.C.: Department of Defense, 2015), 328.

[97] USAF Academy Legal Office, "SOFA," Status of Forces Agreement (SOFA) booklet, http://www.usafa.af.mil/Portals/21/documents/Leadership/JudgeAdvocate/SOFA.pdf?ver=2015-10-30-115236-060.

[98] Office of General Council of Department of Defense, Department of Defense Law of War Manual (Washington, D.C.: Department of Defense, 2015), 328. and Office of General Council of Department of Defense, *Department of Defense Law of War Manual* (Washington, D.C.: Department of Defense, 2015), 328.

[99] Ibid.

[100] Ibid.

conflict as not necessarily being part of a state but rather fulfilling a "continuous combat function."[101] However, the U.S. government is in the process of devising its own qualification and definition of international conflict. While the executive branch does not officially define "international conflict," there is a proposed bill to define this issue. Introduced in the House at the end of January of 2017, this bill instructs the president to identify a "country of conflict concern" if foreign countries allow terrorist organizations to engage in armed conflict if the country poses a national security travel restriction. This bill specifically "deems Syria to be a country of conflict concern,"[102] which serves to justify a reasonable interest in engaging ISIL within Syrian territory.

Presidential Authority

In the wake of the September 11, 2001, attacks on the United States, the U.S. Congress permitted the president of the United States, through the Authorization for Use of Military Force (AUMF), "to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed or aided" the attacks.[103] The United States protects itself from accusations of violating international law by claiming that current drone strikes are in response to the 9/11 attacks and a defensive reaction against Al-Qaeda, the Taliban, and associated forces.[104] Additionally, under the War Powers Resolution, the president may only exercise military force "pursuant to (1) a declaration of war, (2) specific statutory authorization, or (3) a national emergency created by attack upon the United States."[105] The abilities of the president put forth in the War Powers Resolution directly pertain to deploying American military personnel with the requirement of obtaining congressional approval after a 90-day period.[106] Due to the ambiguity of the definition of "force" in the War Powers Resolution and the AUMF, specified, categorized approbation of "force" in the form of drone strikes is necessary to make clear the legal basis for presidential authority in this matter. Though the Obama Administration sought to repeal the AUMF and to create an ISIL-specific variant of it, no such action occurred on a congressional level, and the Administration continued to utilize power derived from the AUMF to pursue military action against ISIL.[107] If left with a dubious degree of legal authority, presidential abuse of power, whether advertent or inadvertent, will occur. Any legislation seeking to grant the president authority to utilize drone strikes against ISIL ought to specifically and clearly limit the president's powers to non-committal force.

U.S. Personnel Accountability

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[101] Craig Martin, "A means-methods paradox and the legality of drone strikes in armed conflict," *The International Journal of Human Rights* 19:2, 142-175, doi: 10.1080/13642987.2014.998864.

[102] The House of Representatives of the United States of America, *International Conflicts of Concern Act (H.R.779)*, 2017.

[103] The Senate and the House of Representatives of the United States of America. *Public Law 107–40* (S.J. Res. 23), 2001.

[104] Ibid., 329.; John Brennan, "Speech at the Wilson Center: The Ethics and Efficacy of the President's Counterterrorism Strategy."

[105] The Senate and the House of Representatives of the United States of America, *Joint Resolution Concerning the War Powers of Congress and the President (H. J. Res. 542)*, 1973.

[106] Ibid.

[107] Michael Boyle, "The legal and ethical implications of drone warfare," *The International Journal of Human Rights* 19, no. 2 (2015): 105-126. doi: 10.1080/13642987.2014.991210.

While the United States currently holds the military personnel accountable for military actions by making the drone strikes released on a given day public, certain discrepancies and omissions exist within the system that may create a lack of accountability. Currently, the Department of Defense Operation Inherent Resolve releases an Annual Civilian Casualty Credibility Assessment, which details the number of civilians killed each year and the number of strikes the Coalition releases, estimating over 188 civilian deaths in Iraq and Syria since the beginning of Operation Inherent Resolve in 2014.[108] However, many discrepancies exist within the data provided by the Department of Defense on drone strikes and civilian casualties. In cases in which the Coalition releases strikes with numerous civilian deaths, often times, the daily report by the Combined Joint Task Force omits information on civilian deaths-- even when known casualties have occurred.[109] If this continues to happen, individual military personnel directly responsible for drone strikes on a targeted area will not be held accountable, as annual reports do not address individual strikes and therefore imply a collective accountability rather than individual accountability.

Additionally, while the ability of the United States to act against terrorists within ISIL territory in Syria and Iraq is a right that should be protected in order to prevent a threat to American lives, loose guidelines have the potential to create a lost sense of accountability amongst military personnel. The current assessment of whether a particular action of a commander complies with the LOAC principle of military necessity is judged based on the "Rendulic Rule."[110] The rule states that a commander's "liability is based on the information reasonably available at the time of the commander's decision."[111] This rule is supposed to hold U.S. personnel accountable and to make sure they are following protocol. However, "the fog of war [makes] accurate factual determinations difficult, creating a certain leeway in decision-making. The Rendulic Rule undoubtedly supports this leeway for commanders planning or authorizing military action."[112] If the United States continues this loose policy on breaching the Rendulic Rule, accurate determinations of necessity will be blurred without consequence, additional protocols may be rejected, and the United States will remain unaccountable for drone strikes, which could lead to use without necessity.[113] Making the penalty and standard for breaking the Rendulic Rule more rigorous is necessary. There should be some warning, for example prohibition or temporary suspension, unless it is undoubtedly clear that the U.S. personnel complied with all LOAC principles.

[108] U.S. Department of Defense, "CJTF-OIR Announces Civilian Casualty Assessment for November: From a Combined Joint Task Force Operation Inherent Resolve News Release", Washington, D.C., 2017, https://www.defense.gov/News/Article/Article/1040266/cjtf-oir-announces-civilian-casualty-assessment-for-november/.

[109] U.S. Government Department of Defense,"Combined Joint Task Force; Operation Inherent Resolve." 20170412 Strike Release. April 12, 2017. http://www.inherentresolve.mil/Portals/14/Documents/Strike%20Releases/2017/04April/20170412%20Strike%20Release%20-%20Final.pdf?ver=2017-04-12-045917-563.

[110] Ryan Dowdy, "Law of Armed Conflict Deskbook." Charlottesville, Virginia: International and Operational Law Department, The Judge Advocate General's Legal Center and School, (2015): 135. http://www.loc.gov/rr/frd/Military_Law/pdf/LOAC-Deskbook-2015.pdf.

[111] Ibid., 136.

[112] Mathew Milikowsky, "'There are No Enemies After Victory': The Laws Against Killing the Wounded," *Georgetown Journal of International Law* 47, (2016): 1231-1232.

[113] Ibid.

Recommendations

- Domestic law that governs U.S. military involvement internationally should take priority over international law. The United States should not adhere to international law when it conflicts with domestic law.
- Congress should grant the president specific statutory authorization to execute attacks upon ISIL. However, this legislative action should specify the scope of force to those actions, including but not limited to drone strikes and ICBMs, which do not involve direct and lasting commitment of US military personnel to combat.
- In order to increase accountability for military personnel, in addition to the report suggested by the Humanitarian group, the government should release individual drone strike statistics for more precise accountability of individual U.S. personnel.
- Unless it is undoubtedly clear that the U.S. personnel complied with all LOAC principles, these personnel should be held accountable with the penalty of the Rendulic Rule.

Political

Introduction

Consideration of the potential political implications of U.S. drone strikes in Iraq and Syria is crucial in developing effective U.S. Drone Policy. Key players in the conflict are local— e.g. Iraq, Syria, and Iran— as well as geographically removed, e.g. Russia. Drone strikes are also a political issue at the domestic level; Congress allocates funding for drone strikes, and therefore their support is integral.

Political Implications of U.S. Drone Strikes on Iraq and Syria

In Syria, the United States executes drone strikes without the authorization of Bashar al-Assad because the Assad regime is not recognized as legitimate. Our ability to execute military action without the authorization of these conflicting actors enables the United States government to act with increased authority. The Iraqi government supports U.S. drone strikes. The Prime Minister of Iraq suggested the United States conduct air strikes on ISIL in collaboration with Russia. However, cooperation with Russia in Iraq is problematic, considering that in Syria, the Russian government is allied with the Assad regime. Unlike the US government, Russia views Assad as legitimate. The political conflict between Iraq and Iran is another issue yet to be resolved. While the Iraqi government welcomes United States military action against ISIL in their country, it is also working with the Iranian government, which is connected to the Assad regime. This connection is a possible threat to United States interest.[114]

Political Implications of United States Drone Strikes- International Coalition

The Iraqi government joined the international coalition against ISIL and invited the United States and other coalition partners to orchestrate drone strikes against ISIL.[115] Terrorist attacks carried out by radicalized militants and operations by ISIL affect the international community as a whole, thus, an international partnership is vital in eliminating ISIL. These 60 countries participate in a "line of effort" in combatting ISIL, which includes: supporting military operations, building capacity, training personnel (led by the United States and Iraq), preventing terrorist fighters from traveling and operating in non-ISIL territory (led by The Netherlands and Turkey), and eliminating access to financial support (led by Italy, the Kingdom of Saudi Arabia, and the United States).[116] If the administration under Trump continues Obama's campaign against ISIL with drone strike operations and military support of the coalition, the "line of effort" will continue to be successful in diminishing ISIL territory towards Mosul in Iraq and Raqqa in Syria.[117]

Domestic Policy: Democratic and Republican Policy on Drone Strikes

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[114] Ghassan Adnan and Matt Bradley, "Iraqi Shiite Politicians Call for Russian air strikes on Islamic State," *Wall Street Journal,* last modified October 6, 2015, https://www.wsj.com/articles/iraqis-urge-russia-to-strike-isis-1444152440.

[115] Priyanki Boghani and Anjali Tsui, "Who's Who in the Fight Against ISIS?," *Public Broadcasting Service*, October 11, 2016, http://www.pbs.org/wgbh/frontline/article/whos-who-in-the-fight-against-isis/.

[116] Kathleen McInnis, "Coalition Contributions to Countering the Islamic State," *Congressional Research Service*, August 24, 2016, https://fas.org/sgp/crs/natsec/R44135.pdf.

[117] U.S Department of Defense, "Opening Remarks at Counter-ISIL Defense Minister Meeting," July 10, 2016, https://www.defense.gov/News/Speeches/Speech-View/Article/850519/opening-remarks-at-counter-isil-defenseminister-meeting/.

The Obama Administration was both criticized and praised by Congress for its drone strikes operations in Iraq and Syria. The administration's use of drone strikes proved very effective in seizing territory in Iraq and Syria back from ISIL control.[118] However, members of Congress in both Democratic and Republican Parties also condemned the dramatic increase in drone strikes, concerned that the actions lacked caution or care. In Obama's second term, Democrats and Republicans questioned the strikes' secrecy.[119] Currently, airstrikes against ISIL in Iraq are not authorized by Congress and concern for the president's unchecked power on drone strikes exists on both sides of the political aisle.[120] Notable members of Congress expressed support for providing a check on the president's power over the issue. As of 2017, there are no common partisan ideologies on drone strikes.[121] This discrepancy is due to the fact that "There is no real political constituency for military matters."[122] Republican policy on drone strikes varies considerably. Some prominent Republicans generally believe in expanding targeted drone strikes, and some believe in a troops on the ground effort. Some prominent Democrats generally support the use of drone strikes sensibly and carefully.[123]

Congressional Budget for Drone Strikes

Along with the rest of the national budget, the funding for all military operations is allocated by the House Appropriations Committee.[124] For the Fiscal Year 2017, the Department of Defense (DoD) was granted $598 billion, and President Donald Trump seeks to add an additional $54 billion to the budget of the DoD.[125] The Air Force, which is the primary operator of drones in the United States, has an annual budget of $170 billion.[126] The Central Intelligence Agency (CIA) also consistently uses drones, and the organization has a $15 billion budget, but does not release specific details on its drone expenses.[127]

For the Air Force, the portion of the budget allocated to Predator and Reaper Drones is $1.9 billion, and an additional $1.5 billion is allocated to the use of Global Hawk Drones. Congress lacks oversight and control over drone strikes. Because the Department of Defense and the Central Intelligence Agency are both part of the executive branch, "Congress has no authority to dictate actions or policy, especially with the CIA, whose operations have the ability to act covertly".[128]

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[118] "ISIS Lost 40 Percent of Territory in Iraq, 20 Percent in Syria: Coalition Spokesman," *Reuters*, January 5, 2016, http://www.nbcnews.com/storyline/isis-terror/isis-lost-40-percent-territory-iraq-20-percent-syria-coalition-n490426.

[119] Michael Crowley, "So, Who Can We Kill?" *Time* 181, no. 12 (April 2013): 20. Academic Search Complete, EBSCOhost.

[120] Alessandra Grace, "Targeting U.S. Citizens In The Fight Against The Islamic State," *Houston Law Review* 53, no. 5 (2016): Academic Search Complete, EBSCOhost.

[121] John "Jay" Rockefeller (Former Chairman of the Senate Select Committee on Intelligence), in discussion with the authors, April 2017.

[122] Mary L Dudziak, "How War Lost Its Politics," *Dissent* 63, no. 3 (2016): 114-120, Academic Search Complete, EBSCOhost, Accessed April 5, 2017.

[123] Arthur Holland Michel, "The Presidential Primary Candidates on Drones," Center for the Study of the Drone, Bard College, October 16, 2015, http://dronecenter.bard.edu/presidential-candidates-on-drones/.

[124] U.S. House of Representatives Committee on Appropriations, Accessed April 8, 2017, http://appropriations.house.gov/.

[125] "2015 Discretionary Spending," National Priorities Project, Accessed April 8, 2017, https://www.nationalpriorities.org/.; Zachary Cohen, "Trump Proposes $54 Billion Defense Spending Hike," *CNN*, March 16, 2017, http://www.cnn.com/2017/03/16/politics/donald-trump-defense-budget-blueprint/.

[126] "2015 Discretionary Spending," National Priorities Project.

[127] "US Intelligence Agencies 'Black Budget' Detailed," *BBC*, August 30, 2013, http://www.bbc.com/news/world-us-canada-23903310.

[128] John "Jay" Rockefeller in discussion with the authors of political.

Therefore, the sole purpose of the Intelligence and Armed Services committees, which are responsible for overseeing the CIA and the DoD, is to make sure that these organizations are not acting against the interests of the United States. The power of the Intelligence and Armed Services Committees is limited and gives them little ability to take action.

There is, however, one way in which Congress can take substantive action: if either the DoD or the CIA are operating in ways that the Intelligence or Armed Services Committees deem detrimental to the security or interests of the U.S.— Congress' power over the budget allows it to allocate funds, but also allows it to block their spending[129]

<u>Recommendations</u>
- The United States should continue to execute drone strikes against ISIL without the authorization of the Assad regime, but with the authorization of the Iraqi government.
- Congress should possess emergency powers to withdraw funding from the Drone programs of the DoD and CIA in case of any violation of Human Rights Laws or the Rules of Engagement
- Definitively put into law the current voluntary precedent of intelligence agencies disclosing information to the Intelligence Committee: requirement for the Central Intelligence Agency to provide in-depth briefings and intelligence on their drone strikes and other operations to the Senate Intelligence Committee.

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[129]Ibid.

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