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## **American Military Drone Strikes in Light of The Just War Theory**

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# **American Military Drone Strikes in Light of The Just War Theory**

By

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## Acknowledgement

I want to thank the professor who guided me through this research and process.  
and Leiden University for granting me this opportunity.

For the innocents who lost their lives in the war on terror,  
And the service-members who gave the ultimate sacrifice.

## Abstract

In the aftermath of the terrorist attacks on September 11, 2001, the CIA carried out a substantial amount of missile strikes on suspected terrorists using remotely piloted aircraft (RPA) as part of their targeted killing program in the United States' war on terror. The CIA employed various disputed practices during the program, aimed at suspected terrorists in non-combat zones outside of the conventional battlefields, which tested the boundaries of the just war theory, the law of war. This research set out to address whether the CIA's RPA's targeted killings were justified taking the just war theory into account. It set out to achieve its goal by taking a comparative approach to the problem at hand, the carried-out RPA strikes in non-combat zones, which were allegedly authorized by the United States Congress' *Authorization For The Use of Military Force*, and their relationship with the principles of the just war theory. The just war theory consists of two important principles, *jus ad bellum*, which dictates when it is lawful to employ military action and *jus in bello*, which dictates how that military action should be executed. In doing so, this research has provided a historical background of the RPA and collected data on the carried-out RPA strikes in non-combat-zones, namely Pakistan, Yemen and Somalia, which were the case studies for this research. This research argues that the CIA's disputed practices such as 'signature strikes' which often failed to discriminate, 'second strikes' and 'MIM's' which were disproportionate military action, have been violations of the principles of the just war theory. Whilst the United States argued to be at war with Al-Qaida and its affiliates and their actions to be legal and in accord with the laws of war, the covert nature of the CIA's targeted killing program made it impossible to provide a rock-solid proof of ties between the targeted suspected terrorists and the laid-out enemy in the AUMF 2001 that would justify the RPA strikes or a war on terror that would be in any case subordinate to the law of war.

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## Introduction: RPA's 'Remotely Piloted Aircraft'

On July 31, 2022, a United States Air Force RPA, a Remotely Piloted Aircraft, armed with hellfire-missiles, more commonly known as an armed drone, killed Ayman Al-Zawahiri inside his villa in Kabul's city centre in what is known as a 'personal strike'. Al-Zawahiri had been living under the new Taliban's rule, close to where the western embassies used to be before the Taliban take-over in August 2021. Al-Zawahiri had been Bin Laden's brother-in-arms and just as Bin Laden, so was he a mastermind behind the terrorist attacks on September 11, 2001. The strike on Al-Zawahiri came almost a year since the United States ended its war in Afghanistan, after roughly twenty years of difficult combat in the mountainous regions of landlocked Afghanistan. The following day after the strike, on August 1<sup>st</sup> the United States' Secretary of State declared that President Biden had committed to the American people, after the withdrawal of troops from Afghanistan, that the United States would continue to protect the country and act against terrorist threats emanating out of Afghanistan.<sup>1</sup> Indeed, Al-Zawahiri had been on the FBI's most wanted list for over two decades. He had been Al-Qaida's second-in-command at the time of the terrorist attacks on 9/11. The attacks on September 11, 2001, amounted to an armed attack on the United States under international law and were criminal and terrorist in nature according to the United States. Nevertheless, the RPA's missile that killed Al-Zawahiri was the latest in a string of attacks undertaken by the CIA in non-combat zones. First of all, the United States' RPA carried out a strike inside Afghanistan, a nation led by a group that the United States was not in conflict with any longer, not since the withdrawal of the last American troops on August 30, 2021. Second, is the matter of international law, to put it more precisely the International Humanitarian law, commonly known as the law of war, which dictates when and how military action should be executed. After the withdrawal of the United States from Afghanistan, critics would point out that the United States would not be able to operate effectively in the region. The RPA's strike on Al-Zawahiri proved that the United States would still be able to operate over the horizon against terror assets. The strike on Al-Zawahiri was supposedly the result of great workmanship in the intelligence community and of American operational capability. Moreover, the Al-Zawahiri strike resulted in no civilian casualties, this was in stark contrast with an RPA's strike in August 29, 2021 during the withdrawal from Afghanistan. On August 29, 2021 an *MQ-9 Reaper*<sup>2</sup>, a heavy RPA designed for combat purposes killed ten civilians near Kabul's Hamid Karzai International Airport in what is known as a 'signature strike'.<sup>3</sup>

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<sup>1</sup> Antony J. Blinken, Secretary of State, "The Death of Ayman al-Zawahiri" U.S. Department of State, last modified August 1, 2022, accessed September 15, 2024, <https://www.state.gov/the-death-of-ayman-al-zawahiri/>

<sup>2</sup> "MQ-9 Reaper," U.S. Air Force, accessed September 15, 2024, <https://www.af.mil/About-Us/Fact-Sheets/Display/Article/104470/mq-9-reaper/>

<sup>3</sup> C. Todd Lopez "DoD: August 29 Strike in Kabul 'Tragic Mistake, 'Kills 10 Civilians'", U.S. Department of Defense, September 17, 2021, <https://www.defense.gov/News/News-Stories/Article/Article/2780257/dod-august-29-strike-in-kabul-tragic-mistake-kills-10-civilians/>

For more than two decades, armed drones or RPA's as I will refer to them in this research, just as the United States Armed Forces does so officially, have proven to be a critical asset in the fight against terrorist and/or militant organizations across the globe. Their advantages are mostly known to the public; like a predator they stalk their prey, they observe from afar, suiting the name of the first RPA, the *MQ-1 Predator*<sup>4</sup>. If the opportunity arises, the RPA can strike the target without putting the pilot at risk. RPA's have allowed the United States Armed Forces and the Intelligence Community to eliminate terrorists and militant organizations such as Al-Qaida and its leadership. However, the use of RPA's around the globe has its downside, especially when it comes to the targeted killings. In the beginning of the RPA's combat history there were the 'personal strikes' and later on, especially during the Obama administration there were the 'signature strikes' which would blur the legitimacy of a target. The question arises about the legitimacy of a target and the circumstances under which a strike is acceptable under International Humanitarian Law<sup>5</sup>, commonly known also as *Jus In Bello*. *Jus In Bello* governs the way that warfare is conducted, seeking to limit the suffering through proportionate actions in combat. *Jus In Bello* is distinct from *Jus Ad Bellum*, which constitutes the permissibility of going to war or defending a country. Taking these two together into account, *Jus In Bello* and *Jus ad Bellum* constitute the core principles of the just war theory, or to simply state; what constitutes a just war or military action. The objective of the United States counterterrorism operations had been to destroy terrorist organizations such as Al-Qaida and clear their footholds in places such as Afghanistan, Pakistan, Yemen and Somalia to name a few. This thesis will study the relationship between the RPA strikes in non-combat zones and aim to answer the main research question: Why were the American military drone strikes in the post 9/11 era justified taking the Just War Theory into account? This research will indulge into whether the RPA strikes in non-combat zones were justified in light of the core principles of the just war theory.

To be clear, this research will narrow it down to RPA strikes in Pakistan, Yemen and Somalia during the George W. Bush and the Obama administrations, since this research is focused on RPA strikes in non-combat zones. The researched non-combat zones are Pakistan, Yemen and Somalia and nations such as Afghanistan and Iraq do not fit that criterion. All three of these sovereign states have in common that they have witnessed strikes from American RPA's on their soil, even though they are defined as nations outside of the combat designated area. To put it more simply just for now, these three nations, Pakistan, Yemen and Somalia were not in conflict with the United States during the George W. Bush and Obama administrations. The 'personal strike' against Al-Zawahiri falls well within the category of strikes outside of designated combat zones which this research will focus on by looking into their permissibility and legality under international law, however the Al-Zawahiri strike will not be delved

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<sup>4</sup> "MQ-1 Predator," U.S. Air Force. accessed September 18, 2024, <https://www.af.mil/About-Us/Fact-Sheets/Display/Article/104469/mq-1b-predator/>

<sup>5</sup> "International Humanitarian Law Databases," International Committee of the Red Cross, accessed September 18, 2024, <https://ihl-databases.icrc.org/en>

more deeply into, but surely whole other likewise cases of ‘personal strikes’ and ‘signature strikes’ in non-combat zones with various outcomes will be researched thoroughly.

In 2009, Leon Panetta, who was the director of the Central Intelligence Agency (CIA) at that time, argued that drones were ‘the only game in town in terms of confronting or trying to disrupt the al-Qaeda leadership’<sup>6</sup> Even Presidents, especially President Obama, under whose administration RPA’s ‘really went to town’ have boasted about the success rate of RPA strikes and how they have eliminated the majority of Al-Qaida leadership figures. However, the discussion about whether the strikes have proven to be successful or perhaps more importantly; sustainable, especially under international law remains. Some officials even argue that the United States has grown to customary to RPA’s at the expense of a long-term foreign policy strategy. One important blowback of RPA strikes has been the number of civilian casualties, especially in Pakistan, Yemen and Somalia as this research will show. While targeted killings using RPA’s initially began under the Bush administration under the banner of ‘personal strikes’, close the end of the Bush administration ‘signature strikes’ came into being which were expanded by the incoming Obama administration. The toll on civilians grew as the lines between combatant and non-combatant became somewhat blurred in contrast to international humanitarian law. While the number of civilian casualties due to RPA strikes may be overwhelming unintentional, the data provided by officials tends to be usually lower than the reality. In the aftermath of the RPA strike in Kabul in August 2021, the Pentagon did what it often does when the media brings up civilian casualties, it denied that civilians were killed, arguing that the RPA strike was permissible and directed towards an legitimate target which was supposed to be an suspected ISIS bomber.<sup>7</sup> The RPA, a *MQ-9 Reaper* armed with *Hellfire* missiles had stalked the target that day for hours and suiting of a ‘signature strike’ the target was deemed to be legitimate. More in-depth background on signature strikes will be given in the following chapters of this research. It would take days before the Pentagon began to call the airstrike a mistake when evidence of civilian casualties stacked up for all to witness. The erroneous airstrike resulted in the usual classified investigation cycle by the Pentagon as it has done so in the last two decades and found no service members at fault, nor would any American soul be held accountable. Airstrikes are as good as the intelligence backing the RPA operations, which were probably erroneous on that fateful day.<sup>8</sup> Yet, faulty intelligence aside, estimates, made available by public news platforms and journalist assets provide a bigger picture of the number of civilian casualties, using a different methodology than the controversial ‘bug-splat’ employed by the United States military and the CIA, a methodology which will be clarified later on.

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<sup>6</sup> “Rise of the Drones: Unmanned Systems and the Future of War”, Congress.gov, accessed September 18, 2024, <https://www.govinfo.gov/content/pkg/CHRG-111hhrg64921/html/CHRG-111hhrg64921.htm>

<sup>7</sup> David Vergun, “Force Protection Measures at Kabul Airport Thwart Attack, General Says” U.S. Department of Defense, August 30, 2021, accessed September 13, 2024, <https://www.defense.gov/News-Stories/Article/Article/2756863/force-protection-measures-at-kabul-airport-thwart-attacks-general-says/>

<sup>8</sup> David Vergun, “Air Force Official Briefs Media on Deadly Drone Strike in Kabul” U.S. Department of Defense November 3, 2021, accessed September 13, 2024, <https://www.defense.gov/News/News-Stories/Article/Article/2831896/air-force-official-briefs-media-on-deadly-drone-strike-in-kabul/>



Why did this this research come into being, because the United States has carried out a minimum of four-hundred-and-thirty RPA airstrikes in Pakistan between 2004 and present. The number of RPA strikes in Yemen total at-least three-hundred-and-thirty-six and two-hundred-and-two in Somalia over the last two decades. For this research, a number of RPA strikes in each of these three nations will be examined in light of the two core principles of the just war theory. The RPA strikes that this research will focus on have met criteria such as being afflicted on sovereign nations, moreover they have been ‘personal’ and ‘signature’ airstrikes outside a designated combat zone, they have ended human lives without due process and conflicted harm and death on citizens.

The targeted killings by RPA’s in these three sovereign nations are defended by United States’ officials as they argue that the strikes are consistent with domestic and international law. Seven days after 9/11 the United States Congress passed the AUMF 2001, to put it more bluntly: the Authorization for the Use of Military Force.<sup>9</sup> It states that the President of the United States would “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 9/11, 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”. The AUMF 2001 has been interpreted differently by various administration in the White House resulting in RPA strikes outside of the designated battlefields. As long as there is the case of an imminent threat against the United States and its assets abroad, the target is deemed legitimate. This legal rationale is argued to apply to all counter-terrorism actions abroad, whether the client of the RPA’s are the CIA, the military or the Joint Special Operations Command (JSOC). This research will delve deeper into the AUMF 2001 and its interpretation by the administrations in the White House in the coming chapters. Various administrations have also defended the targeted killings by offering legal international justification. Often it will be argued by officials in the White House that the United States is in a continues state of global conflict with terrorist groups and their assets. Thus, the law of war should apply, but to what extent should *Jus In Bello* and *Jus Ad Bellum* apply to the RPA strikes abroad. Various United States officials have argued that they are more complementary than not. This research will delve into the core principles of the just war theory and their applicability on American RPA strikes in Pakistan, Yemen and Somalia. It will look at the RPA program from inside out, its operational background and the reasonings. Various administrations in the White House have played an expanding role in the RPA counterterrorism efforts. This research will take into account the Bush administration and the Obama administration and its relations with the RPA.

Various scholars have debated the use of RPA by the United States from different perspectives. Authors such as Chris Woods have offered a historical perspective on the RPA and laid out the operational history of the program. Woods discusses in his work the breadth and depth of the

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<sup>9</sup> “S.J.Res.23 - Authorization for Use of Military Force”, Congress.gov, last modified September 18, 2001, accessed September 14, 2024, <https://www.congress.gov/bill/107th-congress/senate-joint-resolution/23/text>

counterterrorism operations. His book *Sudden Justice* shows the secretive history of the United States' and especially the CIA's use of RPA's and their key role in today's battlefields, but also in the covert targeted killing program which has led to thousands of deaths. Woods argues that the CIA's key role in the counter-terrorism program had been no accident and argues that the CIA had been experimenting on RPA's for a decade before 9/11. Since, 9/11, Woods argues that the RPA's have played a crucial role in the United States' global war on terror in conventional wars such as Afghanistan and Iraq. However, Woods argues that the RPA's have also played a central role in another war, a covert war on terror which has been fought in non-combat zones by the CIA and parts of the DoD. According to Woods, the United States argues that its covert war on terror is legal and Woods offers insight in the thoughts of the decision makers behind the scenes. Woods describes the reality of the covert war on terror and the long-term hurdles it may come with. Woods offers an extensive study on the evolution of the RPA program, yet a debate on the legal and moral implications of RPA strikes remains.

Others such as Andrew Cockburn have detailed extensively the political strategy and motivation behind RPA warfare. More focused on the national security state, Cockburn has provided insight on the lobbying for security after 9/11. Cockburn argues that RPA's are not autonomous computer systems and are flown by moral human beings. Cockburn has provided through his work *Kill Chain: The Rise of The Hightech Assassins* a thorough history of American high end technological warfare and targeted killings which he traces all the way back to the Vietnam War. Cockburn argues that more often than not decision makers on Capitol Hill have been under the illusion that, more sophisticated technology and weaponry could aid them defeat their foes with less American casualties, limiting a political cost to war. Cockburn argues however that their effort has caused a blowback in the form of endless wars and bankruptcy. Cockburn traces the roots of RPA warfare to the Secretary of Defense Robert S. McNamara's concept of the electronic battlefield in Vietnam which he argues was a failure. Cockburn proceeds to argue that the war in the Balkan set an important precedent in the practice of RPA warfare as the United States became more lenient towards carrying out targeted killings. Eventually Cockburn addresses the post 9/11 era in which the CIA was given, what he refers to as a *carte blanche* and a crucial role in the war in terror. Cockburn's work is a testimony to the revolution in military affairs and its setback. Cockburn emphasizes the human cost and the strategic failure bred by the illusion of policymakers on Capitol Hill who think, Cockburn argues, they can defeat an enemy they barely know, absent any cost to Americans. Cockburn's work is an insight into the dehumanization of modern warfare and the seismic shift of war that has evolved into a technological feature run by pilots, and analysts detached from the human costs of war. The result of this detachment is to be addressed in debate.

Other Scholars such as Michael Walzer have debated the constraints on RPA warfare and especially the targeted killings. Walzer has discussed the topic of moral and legal rules of engagement in RPA warfare. Walzer has argued that the constraints don't necessarily change or have to endure transforming due to a selective weapon of choice in combat. However, Walzer argues that the easiness

of RPA warfare has posed a risk in relaxing the constraints set on warfare. Such constraints are the discussed just war theory and the laws it entails.

Scholars such as Isaac Taylor argued whether the just war theory needs a transformation in order to be more adaptable in the war on terror. Taylor argues that the goals of just war theory will be better promoted if the principles of the just war theory are to be reinterpreted in some cases. Others, such as Seumas Miller argue against a transformative just war theory and argue that targeted killings would be morally impermissible. Daniel Restrepo has argued that the central part of the war on terror is the use of remotely piloted aircrafts, the RPA's that kill terrorists abroad in various regions across the globe. Restrepo touches upon the subject of the discrimination between targets and the identification thereof. Restrepo addresses the epistemological issue regarding the certainty of knowing who a terrorist is actually and whether the threat justifies the means of combat. Restrepo argues that RPA warfare has been unaccountable and deadlier than expected giving the United States a level of impunity.

This research will add to the debate by looking into the whole applicability of the just war theory to the United States counterterrorism actions using RPA's. This research will take into account that the core principles of the just war theory are up for debate. *Jus In Bello* constitutes the discrimination between combatants and non-combatants and the proportionality of military action. One, in the current climate on the (non)battlefield it is more difficult to discriminate due to the fluidity between civilian and combatants. Second, this has implications for the proportionality of counterterrorism actions such as in the form of RPA strikes. Discrimination already implies that in combat, leaving civilian lives unharmed is a near-impossible goal to attain.

This research takes a comparative approach and is comprised of first getting the proper data on the RPA strikes in Pakistan, Yemen and Somalia. The data and the reporting on various RPA strikes will be then analyzed by looking into their relationship with United States counterterrorism operations and its domestic legal backing. United States laws and Congressional Approvals such as the AUMF 2001 are a key to this effort. Moreover, a distinction between the Bush administration and the Obama administration will be made while doing this. The operational history of RPA's and the reasoning behind it will be discussed in this manner. Finally, the core principles of the just war theory will be analyzed and their applicability to the United States' RPA strikes backed by United States domestic law will be debated. This effort asks for an analysis of International Humanitarian Law.

The research will start by looking at how the RPA came into being in the late twentieth century onwards and its relationship with the Bush administration in the wake of 9/11. The first chapter of this research will be dedicated to this effort. The first chapter will begin by introducing what a targeted killing by an RPA is all about and formulate a sub-question. Then it will address the historical background of the RPA and the technological advances of how the RPA came to be a weapon of choice by decision makers in Washington. The chapter will address the subquestion in a conclusion. The primary sources that I will utilize for this effort are United States government sources such as domestic laws and Authorizations passed by Congress such as the AUMF 2001. These sources are reliable for

this research since they have been written in law and are well documented. Moreover, various official statements by President George W. Bush, government officials from the Bush administration and service-members will be analyzed. Secondary sources include articles by journalists that touch upon the RPA program and journalist bred databases which offer the data on the RPA strikes. Scholarly works used will include books written on the history of American RPA warfare and the debate surrounding its use on the battlefield and its relation to international law. The second chapter will introduce the rise of RPA strikes, especially under the Obama administration and start off with a subquestion. The chapter will then proceed to address the war on terror and its scope in three non-combat-zones, namely the chosen case studies of this research, Pakistan, Yemen and Somalia. The official reasonings and legal backings of the RPA strikes by two administrations following 9/11 will be addressed using primary sources such as official statements by President Bush and Obama and domestic laws such as the AUMF 2001, U.S.C. Code Title 50, U.S.C. Code Title 10, Executive Orders and Executive Memorandums. Moreover, the results of the CIA's targeted killings program initiated by decision makers on Capitol Hill will be addressed using collected data from scholars who have written on the CIA's targeted killing and journalists who have collected the data after the strikes. The chapter will end with a conclusion and answer to the chapter's subquestion. The final chapter of this research will introduce the subject of international law of war by first addressing the AUMF 2001, which was the cornerstone of the war on terror and start off with a final sub-question. Then the chapter will address what the international law of war is all about before touching upon the subject of the just war theory and its core principles that derive from international humanitarian law. Sources that I will utilize for this effort are the domestic laws of the United States, the 1949 Geneva Conventions, the laws of the United Nations on warfare and insights from the *International Committee of the Red Cross*. Thereafter, I will analyze the debate surrounding the relationship between the just war theory and the targeted killings by the CIA in non-combat zones, backed by the AUMF 2001, by addressing the works on the topic by various scholars. I will end the final chapter with a conclusion and an answer to the final sub-question. I will end this research with a conclusion after the third chapter in which I will state my findings of the previous done research and come up with an answer to the main research question of this thesis.

## Chapter 1: The *MQ-1 Predator* And The War on Terror

In December 2001, former President George W. Bush spoke at the Military College of South Carolina, otherwise known as the Citadel. President Bush argued that the threat of terrorism, that the United States had faced before, had revealed itself. President Bush argued that the United States armed forces faced a challenge of transformation to deal with the threat. President Bush showed his commitment to victory on the battlefield and boasted the recent success that the military had with the new technology. Bush boasted that the combination of real-time intelligence, local allied forces, special forces, and precision air power on the battlefield was never used before, but that the armed *MQ-1 Predator* was able to stalk the enemy, gather intelligence, transmit information and then fire on target. “Before the war, the *MQ-1 Predator* had skeptics, because it did not fit the old ways. Now it is clear the military does not have enough unmanned vehicles. We’re entering an era in which unmanned vehicles of all kinds will take on greater importance”<sup>10</sup>The first chapter of this research will indulge in the coming to be of the RPA. It will address the background history of the program and the promise of the invention. This chapter will try to answer the first sub-question of this research; why did the RPA come to be the weapon of choice in the United States after 9/11? I will argue in this chapter that the RPA became the preferred weapon in the war on terror, due to its capability to stalk its prey while it gathered real-time intelligence and simultaneously be able to strike a missile at the target with ‘alleged’ precision.

The *MQ-1 Predator* had an unconventional coming to be in the early ‘80’s. Rather than being made on the drawing board inside one of the prestigious American arms manufacturers such as Lockheed Martin or Boeing, the RPA was designed as part of a garage project by an Israeli immigrant, Abraham Karem. Described by one senior Pentagon official as the “Moses of modern drones”, Karem had served as an aeronautical engineer in the Israeli Air Force. In the aftermath of the Yom Kippur War in 1973, the state of Israel deemed real-time intelligence an operational necessity on the battlefield. The need for reconnaissance paved the way for the young designer Karem, who eventually chose to break through with his new developed company *Leading Systems* in the United States after having setbacks in Israel. Thus, Karem moved to California with his family and built the early model of the *MQ-1 Predator* RPA in the garage of his Los Angeles’ home. It wouldn’t be long until his design would gain the attention of the CIA and other State agencies. In the wake of the terrorist attacks on barracks of the United States military in Beirut, Lebanon in 1983, which resulted in the death of more than three-hundred servicemen, the CIA came to the conclusion that it needed to keep close surveillance of the valley where hostile insurgents and radicals remained. Karem’s company *Leading Systems* had been by this time contracted by the Pentagon making it approachable to the CIA. The Pentagon required an RPA that would operate at between fifteen-thousand and twenty-five-thousand feet, it would carry cameras and other sensor

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<sup>10</sup> “President Speaks on War Effort to Citadel Cadets,” The White House, President George W. Bush, accessed October 17, 2024, <https://georgewbush-whitehouse.archives.gov/news/releases/2001/12/20011211-6.html>

equipment and in doing so, be able to fulfill its mission; stalk a target and provide the ‘persistent visible intelligence’ that the military and intelligence community required. What was missing in the list of requirements was the option of armaments on board. The developed prototype, codenamed; *Amber*, included the famous inverted V-tail that would be installed on the *MQ-1 Predator* RPA in the future to come. After *Leading Systems* went bankrupt in the ‘90’s after the U.S. Navy cancelled its order of torpedo tube–launched *Amber* drones. The Pentagon, still in need of reconnaissance RPA’s, turned to arms manufacturer *General Atomics* and wished for them to pick up where *Leading Systems* left off on the reconnaissance RPA project. *General Atomics* would go on to acquire *Leading Systems* and the project on reconnaissance RPA’s for the Pentagon and the CIA was saved.<sup>11</sup>

Seven years before the United States would announce its War on Terror, the General Atomics prototype RPA designed for Reconnaissance missions flew for the first time in the Balkan region after approval from Washington. The CIA dispatched their new Recon RPA’s first before anyone else, as they would do seven years later in Afghanistan in the wake of the September 11, 2001 terror attacks. The model that the CIA used were *Gnat*’s, a predecessor to the *MQ-1 Predator* RPA. In ‘98’, the Pentagon would dispatch its newly christened ‘*RQ-1 Predator*’ RPA to the Balkan, a modified version of the *Gnat*’s for the use of the United States military. The early *RQ-1 Predator* RPA’s had their limitations, such as being easy prey to anti-air batteries, ice forming on wings, not be able to take off or land in bad weather, including rain, snow or fog and finally, slow transmission of video feed.<sup>12</sup> Yet the Pentagon saw an opportunity for the *RQ-1 Predator* since it could fly over a target area for nearly a whole day. It used to be the case that the enemy would wait for the fighter pilots to leave the area, but with the *RQ-1 Predators*, leaving the battlefield was not an issue anymore for the United States military. The new sensors on board of the *RQ-1 Predator*, such as night vision and infrared sensors would lay bare the enemy’s doings in the Balkan for the United States military and the world to see. It is argued that the *RQ-1 Predator* aided in determining the course of the Bosnia Conflict by laying the foundation of arguments for a bombing run by NATO, eventually leading to a peace accord. However, the closer someone looked at the muddy pictures, the less they would reveal, yet this did not keep the Supreme Allied Commander Europe of NATO, General Wesley Clark away from his monitor. For the Pentagon, the yet to be armed *RQ-1 Predator* had already proven its worth on the battlefield and control over the *RQ-1 Predator* RPA was given to the United States Air Force.<sup>13</sup>

To keep the *RQ-1 Predator* out of the hands of United States’ adversaries U.S. Air Force General Ronald Fogleman, who served as the fifteenth Chief of Staff of the United States Air Force, reactivated the *11<sup>th</sup> Attack Squadron* of the U.S. Air Force ‘so the U.S. Army wouldn’t screw up the Predator RPA program’. The ‘11<sup>th</sup> ACC’ had provided aerial photographic intelligence during the Vietnam War and

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<sup>11</sup> Andrew Cockburn, *Kill Chain: The Rise of The High-tech Assassins* (Picador, 2016) 46-63

<sup>12</sup> Katharine Hall Kindervater, “The Emergence of Lethal Surveillance,” *Security Dialogue* 47, no. 3 (2016): 223-238

<sup>13</sup> *Ibid.*

flew the first Air Force RPA's during trials in the '70's. Indian Springs Air Force Base in Nevada was designated as the home of the *MQ-1 Predator* RPA. The base was renamed to Creech Air Force base in 2005 in honor General Wilbur L. 'Bill' Creech who as the commander of Tactical Air Command had shaped the Air Force with a call for new weapons and tactics.<sup>14</sup> 'Creech', how I will be referring to Indiana Springs Air Base going forward, as it is known to the U.S. Air Force today would go on to become the hub of Air Force RPA's that it is today. After the war in Balkan, a major improvement was made in the *Predator* program. From then on forward, both pilots and analysts did not need to be stationed near the battlefield. This was due to the fact that the U.S. Air Force would be using the new remote satellite technology of the CIA. Ever since this development in the RPA program, the *MQ-1*



An *MQ-1 Predator* assigned to the 163rd Reconnaissance Wing in flight over the Southern California Logistics Airport (formerly George Air Force Base) in Victorville, Calif., Jan. 7, 2012.

The sensor ball beneath the bulbous nose is visible along with the inverted V-tail and short wingspan. United States Air Force, <https://www.af.mil/About-Us/Fact-Sheets/Display/Article/104469/mq-1b-predator/>

*Predator* RPA has a noticeable bulbous nose that houses the transmission equipment that would relay the recon images across military satellites. The *RQ-1 Predator* RPA would gain a GPS mapping overlay in the late '90's in order for the analysts to spot where the *RQ-1 Predator* precisely was transmitting images from.<sup>15</sup> And before the turn of the century the DoD decided to attach a laser designator with a sensor ball, which it still carries today. This allowed the *RQ-1 Predator* to laser tag a target for a fighter plane to take out. The first target that was marked by the *RQ-1 Predator* was a hut that was destroyed successfully by an A-10 fighter plane, designed for close air support and anti-tank missions.<sup>16</sup> The *RQ-*

<sup>14</sup> Chris Woods, *Sudden Justice: America's Secret Drone Wars* (Oxford University Press, 2015) 23-45

<sup>15</sup> Katharine Hall Kindervater, "The Emergence of Lethal Surveillance," *Security Dialogue* 47, no. 3 (2016): 223-238

<sup>16</sup> Chris Woods, *Sudden Justice: America's Secret Drone Wars* (Oxford University Press, 2015) 23-45



*I Predator* then still relied on other fighter planes to deliver the finishing blow to the target. With the *RQ-1 Predator* up and running successfully from Creech, the question that arose was, whether the *RQ-1 Predator* itself should be armed.

In September 1999, Presidential candidate George W. Bush, introduced his future defense program at the Military College in Charleston, South Carolina, the 'Citadel'. Bush argued that "the forces in the next century must be agile, lethal, readily deployable." Bush pledged to "begin creating the military of the next century." "Our military", Bush went on, "must be able to identify targets by a variety of means, then be able to destroy those targets almost instantly. We must be able to strike from across the world with pinpoint accuracy, with unmanned systems." Bush argued that this would be possible due to the breakthroughs in the arms technology. Bush claimed that "Power is increasingly defined, not by mass or size, but by mobility and swiftness. Influence is measured in information, safety is gained in stealth, and force is projected on the long arc of precision-guided weapons."<sup>17</sup> Indeed, the conflict in the Balkan in the '90's proved that the *RQ-1 Predator* RPA could be more useful and have more missions and roles on the battlefield than earlier thought. In the late '90's, when President Clinton led NATO forces into an air campaign and humanitarian intervention against Serbia on behalf of the insurgency in Kosovo, an ethnically distinct province of Serbia, the *RQ-1 Predator* played its part. However, the *RQ-1 Predators* in the Balkan were purely concerned with reconnaissance and it was only toward the end of the conflict that the RPA would gain a laser designator to pinpoint targets for fighter planes.

Around a year before the terrorist attacks on September 11, 2001, the CIA set one goal in mind: to find Osama Bin Laden, a leading figure inside the terrorist group Al-Qaida. As a high value target, Bin Laden was wanted for his role in the Beirut bombings, the bombings at the embassies of the United States in Tanzania and Kenya in 1998, and the attack on the USS Cole in October 2000 while it was refueling in the port of Aden, Yemen. The U.S. Air Force secretly flew the *RQ-1 Predator* from a base in Uzbekistan over the eastern and southern provinces of Afghanistan on behalf of the CIA in late September, early October 2001. Secret work on arming the *RQ-1 Predator* was being done back in Nevada and the CIA urged the U.S. Air Force to make haste in the development process. On one particular day in September 2000, U.S. Air Force Airmen Scott Swanson was behind the controls of a *RQ-1 Predator*, flying a reconnaissance mission for the CIA over Tarnak Farms, an old compound and training site of Al-Qaida, just outside of Kandahar, Afghanistan. Swanson would go on to become the first pilot to fire a Hellfire missile, an anti-tank ordinance, at a target from a *MQ-1 Predator* RPA in 2001. But in September 2000, Swanson and CIA analysts spotted a strikingly tall man in white robes being treated differently by a group of men in dark robes. Swanson and his sensor operator Master Sergeant Jeff Guay were sure that they had Bin Laden in their sight, but unfortunately for the CIA and the Airmen the *RQ-1 Predator* was not armed. However just as it was the case in the Balkan in the '90's,

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<sup>17</sup> "Bush Campaign speech," CSPAN, September 23, 1999, accessed October 20, 2024 <https://www.c-span.org/program/public-affairs-event/bush-campaign-speech/171978>



the images relayed from the *RQ-1 Predator*, were muddy and the tall man in white robes was actually a white dot surrounded by black dots. At the CIA headquarters in Langley, Virginia, analysis interpreted the white dot as the six-foot-five Bin Laden walking towards a mosque whilst surrounded by his bodyguards. This interpretation had a similar effect on the director of the CIA, George Tenet as it had on General Wesley Clark. Before the *RQ-1 Predator* images of the white dot, George Tenet had little interest in the *RQ-1 Predator* program but became an instant convert afterwards and brought the images to the Oval Office for the President and his National Security Advisor to see. Tenet became an RPA enthusiast, boasting its capabilities to the Intelligence Committees in Congress.<sup>18</sup>

The *RQ-1 Predator* that was supposed to have spotted Bin Laden in Kandahar was carrying a variety of sensors or cameras per se. One of the sensors, the '*TV Continues Zoom*' could spot within 270 meters wide ground area at 4,5 km height but made it impossible to spot the difference between a tank or a garbage truck. Another sensor, the '*Day TV Spotter*' was able to see in greater detail, however within a ground area of roughly 50 meters only which made it difficult to tell where the targets were. The sensors of the *RQ-1 Predator* could spot a target a little smaller than a Boeing 737 clearly at a range of roughly 10 km. Even though the *RQ-1 Predator* was supposed to be able to clearly identify a vehicle at that distance, the reality was that the *RQ-1 Predator's* feed was less analyzed and more imagined to be something that analysts and policy makers in Washington and Langley wanted to see. If only the *RQ-1 Predator* carried a missile, the mastermind behind the attacks on United States embassies, the USS Cole and Marine barracks in Beirut would have been dealt with using a single strike, or so policy makers thought on Capitol Hill. The pressure to arm the *RQ-1 Predator* grew and early tests with the anti-tank *Hellfire* missile were successful in Spring 2001. Three days into the Bush presidency, a *MQ-1 Predator* with tail-fin number 3034 carried out a test with an *AGM-114 Hellfire* missile. The *Hellfire* missile was



An Hellfire missile being fixed on a U.S. Navy helicopter wing. At the nose of the missile is the seeker system, or laser seeker. Behind it are the warhead, the fuze, guidance, gyro, propulsion and control. Military.com, <https://www.military.com/equipment/agm-114-hellfire>

<sup>18</sup> Andrew Cockburn, *Kill Chain: The Rise of The High-tech Assassins* (Picador, 2016) 59-61

an air-to-air and air-to-surface missile which could be laser guided to its target by the *MQ-1 Predator's* electronics or by an operator on the ground.<sup>19</sup>

Early 2001 a U.S. Air Force Airmen was capable to control a *MQ-1 Predator* from Nevada, while it hovered thousands of kilometers away and strike a target 'accurately' with a missile.<sup>20</sup> In the aftermath of the attacks on 9/11, George Tenet told the 9/11 Commission on Capitol Hill that "the leadership of the CIA reasoned that if we could develop the capability to reliably hit a target with a Hellfire missile and could develop the enabling policy and legal framework, we would have a capability to accurately and promptly respond to future sightings of high value targets."<sup>21</sup> However, three weeks after the September 11 attacks, the Pentagon's director of operational test and evaluation Tom Christie, presented the final report on the *MQ-1 Predator's* tests, arguing that it was not operationally effective.<sup>22</sup> But the demand for a machine that could deliver what the CIA director wanted was unstoppable in the wake of the 9/11 attacks that left a smoldering Pentagon and enraged policy makers in the DoD.

With the scenes of the falling World Trade Center and smoldering Pentagon on September 11, 2001, showing continuously on television, many in the CIA feared that they would the consequences for failing to protect the nation. Indeed, the CIA had upfront information, through gathered intelligence, before the attacks on two of the would be 9/11 high jackers whereabouts in the United States. The CIA had acquired intelligence which argued that suspected Al-Qaida members Al-Midhar and Al-Hazmi had been living in San Diego since 2000 and even made calls to Al-Qaida in Yemen. However, this intelligence was not shared within the agency as it should, and also not with the FBI which should have been involved. It was due to the bureaucratic rivalry between the CIA's Counterterrorism Center and the FBI's National Security Division in New York that vital information about suspected Al-Qaida members was withhold from the FBI.<sup>23</sup> The CIA felt it had to prove themselves after 9/11 since eyes were focused on them as the 9/11 commission took place in the aftermath of the attacks, laying bare the wrongdoings of the CIA and the inter-agency faulty work. Instead of sanctions for having neglected its vital role, the CIA had a gloriously future ahead, before 9/11 it suffered from low budgets and outcast counterterrorists but on September 12, 2001, it became the most powerful agency in the United States.

The CIA's super-powered position in Washington was formalized when President George W. Bush signed a covert action *Memorandum of Notification* which would grant the CIA a carte blanche to

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<sup>19</sup> "Hellfire," Missile Threat, CSIS Missile Defense Project, last updated April 23, 2004, accessed October 21 <https://missilethreat.csis.org/missile/agm-114-hellfire/>

<sup>20</sup> Lily Hamourtziadou and Jonathan Jackson, "Winning Wars: The Triumphs And Myths of Technology," *Journal of Global Faultlines* 6, no.2 (2019/2020): 129-135

<sup>21</sup> 9/11 Commission Report," National Commission on Terrorist Attacks Upon The United States accessed October 22, 2024, <https://9-11commission.gov/report/>

<sup>22</sup> Andrew Cockburn, *Kill Chain: The Rise of The High-tech Assassins* (Picador, 2016) 60-61

<sup>23</sup> "9/11 Commission Report," National Commission on Terrorist Attacks Upon The United States, accessed October 22, 2024, <https://9-11commission.gov/report/>

hunt down and kill leaders within al-Qaeda. President Bush also agreed to a CIA list of about two dozen targets whom the agency was authorized to kill or capture without further presidential review and allowed the addition of names to that list without presidential permission.<sup>24</sup> On the day of signing the *Memorandum* President Bush spoke to the press, repeating his vow to hunt down Bin Laden and Al-Qaida responsible for the attacks. Bush stated to the press: “I want justice and there’s an old poster out West, as I recall, saying Wanted Dead or Alive”.<sup>25</sup> Officials in Washington clarified that although the Presidential authority was granted to the CIA, the President did not waive the executive order banning assassinations. Executive Order 12333, first signed by President Gerald Ford and re-issued by every succeeding President, outlined the United States’ position on assassination.<sup>26</sup> No one had more influence on the United States’ interpretation of the law of war than William Hays Park, who wrote the foundational sections of Executive Order 12333. Hays had served in the Vietnam War and would eventually direct the effort to produce the DoD’s Law of War Manual. The authority given by President Bush to kill terrorists, defined members of Al Qaeda as enemy combatants and thus legitimate targets for lethal force it was argued. Thus, the CIA had its killing machine, the *MQ-1 Predator* RPA and its license to kill in the aftermath of 9/11. And since many in the CIA thought that there remained a ban on assassinations, a name change was required, and ‘assassination’ replaced by ‘targeted killing’. Until the attacks on 9/11, some in the CIA showed itself reluctant to carry out targeted killings. During the 9/11 Commission, CIA Director George Tenet argued that “he had no authority to pull the trigger”, “This was new ground he claimed, what would be the chain of command, who would take the shot, were political leaders comfortable with the CIA going outside of normal military command and control.”<sup>27</sup> Already five days after the attacks on 9/11, the CIA had shipped three *MQ-1 Predators* armed with *Hellfire* missiles and the *MQ-1 Predator* with tail-fin number 3034, controlled by U.S. Air Force Airmen Swanson would fire the first RPA Missile at a live target. These RPA’s were designated as *MQ-1 Predators*, the ‘M’ meaning multi purpose and the ‘Q’ meaning remotely piloted. These were different from the reconnaissance RPA’s, the *RQ-1 Predators*.<sup>28</sup>

After the 9/11 attacks, Congress passed the Authorization for the Use of Military Force (AUMF 2001) and on September 18, 2001, President Bush signed it into law. AUMF 2001 was a joint resolution, comprised of Public Law 107-40 and 115 Statutory 224 and it was introduced in the Senate as Joint Resolution .23 by Senate Majority leader Tom Daschle, a retired Air Force intelligence officer.<sup>29</sup> AUMF 2001 set out “to authorize the use of United States Armed Forces against those responsible for the

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<sup>24</sup> Chris Woods, *Sudden Justice: America’s Secret Drone Wars* (Oxford University Press, 2015) 48-50

<sup>25</sup> “Bush: Bin Laden Wanted Dead or Alive,” ABC NEWS, September 18, 2001, <https://abcnews.go.com/US/story?id=92483&page=1>

<sup>26</sup> “Executive Order 12333, United States Intelligence Activities,” United States Department of Defense, accessed October 23, 2024, <https://dpcl.d.defense.gov/Portals/49/Documents/Civil/eo-12333-2008.pdf>

<sup>27</sup> “9/11 Commission Report,” National Commission on Terrorist Attacks Upon The United States accessed October 24, 2024, <https://9-11commission.gov/report/>

<sup>28</sup> Chris Woods, *Sudden Justice: America’s Secret Drone Wars* (Oxford University Press, 2015) 23-45

<sup>29</sup> “S.J.Res.23 - Authorization for Use of Military Force”, Congress.gov, Accessed October 24, 2024, 2024, <https://www.congress.gov/bill/107th-congress/senate-joint-resolution/23/text>

terrorist attacks launched against the United States”. AUMF 2001 granted the President of the United States the authority to use all “necessary and appropriate force” against those whom the President determined “planned, authorized, committed or aided” the attacks on 9/11 or anyone who harbored said individuals or groups.<sup>30</sup> Since it’s signing into law on September 18, 2001, various Presidents have interpreted their authority under the AUMF 2001 to extend beyond al Qaeda and the Taliban who harbored Al-Qaida and Bin Laden in Afghanistan, to apply to various other individuals and groups as well as other geographic locations, due to the lack of an specific designated area of operations within the law. Before the attacks on 9/11, the United States took the role of a policeman when it dealt with terrorism abroad, suspected terrorists were seen as suspects of a crime and would be brought before a judge, however AUMF 2001 ended this altogether.

The Bush Administration began using RPA’s to target suspected terrorists in a policy often regarded as targeted killings. There have been two types of RPA strikes carried out by the U.S. Air Force. First there was the ‘personal strike’, which would target an individual. The U.S. Air Force determined who to strike based on a ‘kill list’, which was based on gathered intelligence. It was argued that the suspected terrorist’s name would go through a bureaucratic process before a strike was approved by the President. There would have been a betting process that would consider PID or ‘positive identification’, it’s target value or significance, and plausible collateral damage. The question at hand was, did the United States know for certain who it targeted was a terrorist? The justification for a targeted killing of suspected terrorist relied on the intelligence being as accurate as possible, this would make it possible for the terrorist to be treated as a combatant. If the intelligence wasn’t accurate or based on unsubstantiated fears, then the risk of killing an innocent person or persons was genuine. Perhaps there could be argued for a certain degree or middle-ground between knowing or not knowing for a fact which could make it permissible, but given the fact that suspected terrorists, who were subjected to RPA strikes, were unable to conflict physical harm in the United States, the targeted killing of those individuals would be difficult to justify. Targets of personal strikes fell between the AUMF 2001 and its associated forces interpretations, however near the end of the Bush administration a second type of RPA strike would be carried out by the U.S. Air Force, the ‘signature strike’. These strikes were also known as ‘crowd killing’ or ‘terrorist attack disruption strikes’, and they would target suspected terrorists who bear the ‘characteristics of Al-Qaida individuals. Targets for ‘signature strikes’ were selected on the basis of their behavioral patterns, their ‘signatures’. Thus, the CIA would target an individual based on the patterns of everyday behavior detected through intercepted signals and RPA reconnaissance.

To conclude this chapter, although, the world was focused on the war in Afghanistan in 2001, the United States, especially the CIA had begun to hunt down terrorists on a global stage. The secret *Memorandum of Notification*, coupled with the *Authorization to Use Military Force*, provided the

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<sup>30</sup> “S.J.Res.23 - Authorization for Use of Military Force”, Congress.gov, accessed October 25, 2024, <https://www.congress.gov/bill/107th-congress/senate-joint-resolution/23/text>

domestic enabling framework for the CIA's targeted killings. Executive Order 12333, which argued against assassinations was loosened due to the reasoning of the attacks on 9/11 being an act of war. And since it was argued to be a wartime in the aftermath of the attacks on 9/11, the targeted killings weren't assassinations, but war. On September 20<sup>th</sup>, 2001, President Bush addressed the nation and a joint session of Congress. Bush argued that "On September the 11<sup>th</sup>, enemies of freedom committed an act of war against our country." "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."<sup>31</sup> Thus, to answer this chapter's sub-questions, the RPA became the weapon of choice in the War on Terror due to its unique capabilities that it promised to excited lawmakers on Capitol Hill. The RPA could offer analysts in Washington with real-time intelligence on the suspected terrorists such as their locations. The RPA was fit to carry missiles and other sensors in the aftermath of 9/11 which could aid the CIA in taking out the suspected terrorists who 'allegedly' aided the 9/11 culprits. Furthermore, the strikes could be carried out without any American pilots put in harms way. The next chapter of this research will scrutinize the *War on Terror* and the CIA targeted killings using RPA's on a global stage, namely in Pakistan, Yemen and Somalia during the Bush and Obama administration.

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<sup>31</sup> "Address to a Joint Session of Congress And The American People," The White House, President George W. Bush, accessed October 25, 2025 <https://georgewbush-whitehouse.archives.gov/news/releases/2001/09/20010920-8.html>



## Chapter 2: Targeted Killings During the Bush and Obama Presidency's.

On May 23<sup>rd</sup>, 2013 President Obama held a speech at *Fort McNair*, Washington D.C., the National Defense University. In his address to the attendance Obama defended the use of RPA's in what he referred to as a just war of self preservation against deadly militants and as part of a campaign that had made America safer. Obama stated

Americans are deeply ambivalent about war, but having fought for our independence, we know a price must be paid for freedom (...); on September 11, 2001, we were shaken out of complacency (...) after I took office, we stepped up the war against al Qaeda (...) make no mistake, our nation is still threatened by terrorists (...) what we must do, is dismantle networks that pose a direct danger to us, and make it less likely for new groups to gain a foothold (...) what we've seen is the emergence of various al Qaeda affiliates, from Yemen to Iraq, from Somalia to North Africa, the threat today is more diffuse (...) we must finish the work of defeating al Qaeda and its associated forces (...) In some of these places (...) such as parts of Somalia and Yemen (...) the state only has the most tenuous reach into the territory. In other cases, the state lacks the capacity or will to take action. And it's also not possible for America to simply deploy a team of Special Forces to capture every terrorist (...) so it is in this context that the United States has taken lethal, targeted action against al Qaeda and its associated forces, including with remotely piloted aircraft (RPA's) commonly referred to as drones (...) as was true in previous armed conflicts, this new technology raises profound questions, about who is targeted, and why, about civilian casualties, and the risk of creating new enemies; about the legality of such strikes under U.S. and international law, about accountability and morality, - - America's actions are legal. We were attacked on 9/11. Within a week, Congress overwhelmingly authorized the use of force. Under domestic law, and international law, the United States is at war with al Qaeda, the Taliban, and their associated forces. We are at war with an organization that right now would kill as many Americans as they could if we did not stop them first (...) this is a just war, a war waged proportionally, in last resort, and in self-defense, - -nevertheless, it is a hard fact that U.S. strikes have resulted in civilian casualties (...) but as Commander-in-Chief, I must weigh these heartbreaking tragedies against the alternatives.<sup>32</sup>

At the time of his address at Fort McNair, Obama was recognized as one of the United States's greatest Presidential speakers. Obama's mastery of oratory and his delivery of arguments were like that

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<sup>32</sup> "Remarks by The President at The National Defense University," The White House, Office of The Press Secretary, accessed November 17, 2024, <https://obamawhitehouse.archives.gov/the-press-office/2013/05/23/remarks-president-national-defense-university>

of previous Presidents such as ‘Jack’ Kennedy and Ronald Reagan. But the depth and the resonance of Obama’s sentences have struck chord with those of President Abraham Lincoln and Dr. Martin Luther King. Many, including myself at some point in history, had been at awe with Obama’s enlightened and inspirational oratorical skills, yet the contradiction between Obama’s rhetoric and his application of policy in practice were nowhere more distinctly visible than in his counterterrorism policy.<sup>33</sup> Pakistan among the other nations this research addresses, came to symbolize the front line in the covert counterterrorism actions during the Bush and Obama presidencies.<sup>34</sup> At the time of Obama’s address at *Fort McNair*, the number of strikes by RPA’s in Pakistan alone was nearing four-hundred.<sup>35</sup> During most of the studied period that this research is concerned with, Washington ran two RPA initiatives, one was publicly acknowledged, these attacks took place in combat zones such as Afghanistan. But as I have previously stated, this research is more concerned with the second initiative, the covert one, which took place outside of combat zones. These RPA’s were flown by U.S. Air Force Airmen, but their missions were overseen by the CIA.<sup>36</sup> Indeed, the RPA strikes in Pakistan, Yemen and Somalia were supervised by the CIA, which were operating under the authorization of *U.S.C. Title 50*. RPA strikes carried out in combat zones by the U.S. Air Force were under the authority of *U.S.C. Title 10*, which necessitated public disclosure.<sup>37</sup> However, *U.S.C. Title 50* activities which were overseen by the CIA as covert operations did not require public disclosure.<sup>38</sup> It was not until 2013, towards the end of the Obama administration, that all CIA RPA operations shifted to DoD, and would be authorized under *U.S.C. Title 10*.<sup>39</sup>

Washington and the CIA faced a few challenges when confronted with hunting down suspected terrorists in the previously mentioned sovereign states. First of all, terrorists and terrorist groups are not an official recognized military who follow the laws of the *Geneva Convention*. Terrorists do not wear a uniform, always carry arms openly or display insignia which would make them a combatant, and this makes the suspected terrorists often indistinguishable from civilians.<sup>40 41</sup> Second, and perhaps more important, how grave must the threat be in order to designate the suspected terrorists as enemy

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<sup>33</sup> Micheal J. Boyle, “The Tragedy of Obama’s Foreign Policy,” *Current History* 116, no. 786 (2017): 12-16

<sup>34</sup> Patrick B. Johnston and Anoop K. Sarbahi, “The Impact of US Drone Strikes on Terrorism in Pakistan,” *International Studies Quarterly* 60, no. 2 (2016): 203-219

<sup>35</sup> “Drone Wars: The Full Data,” The Bureau of Investigative Journalism, accessed November 19, 2024, <https://www.thebureauinvestigates.com/stories/2017-01-01/drone-wars-the-full-data/>

<sup>36</sup> Chris Woods, *Sudden Justice: America’s Secret Drone Wars* (Oxford University Press, 2015) 45-70, 93-119, 144-169, 191-217.

<sup>37</sup> “Title 10 Armed Forces,” House of Representatives, accessed November 19, 2024, <https://uscode.house.gov/view.xhtml?path=/prelim@title10&edition=prelim>

<sup>38</sup> “U.S.C. Title 50”, Office of The Law Revision Council, United States Code, accessed November 19, 2024, <https://uscode.house.gov/browse/prelim@title50&edition=prelim>

<sup>39</sup> Chris Woods, *Sudden Justice: America’s Secret Drone Wars* (Oxford University Press, 2015) 144-169

<sup>40</sup> Isaac Taylor, “Just War Theory And The Military Response to Terrorism,” *Social Theory And Practise* 43, no. 4 (2017): 722

<sup>41</sup> Daniel Restrepo, “Naked Soldiers, Naked Terrorists And The Justifiability of Drone Warfare,” *Social Theory And Practise* 45, no. 1 (2019): 110-118.

combatants. It is often argued that the justification for the lethal force against terrorists lies in the fact that often other countries, who harbor suspected terrorists, are unable or unwilling to capture them.<sup>42</sup> Another important argument is that terrorism has more in common with war than crime.<sup>43 44</sup> Terrorism, like an act of war, has political motivation at its core, it is argued. This chapter will indulge in the targeted killings that took place outside of conventional combat zones and the arguments for the strikes by the RPA's including the new model 'MQ-9 Reaper', which had the ability to kill in its DNA, the blueprint.<sup>45</sup> This chapter will set out to find an answer for its subquestion: Why did the United States engage in RPA strikes outside of combat zones during the Bush and Obama presidencies? This chapter will argue that the RPA strikes were carried out because officials in the Bush and Obama administration claimed that the AUMF 2001 provided the necessary legal authority to strike where and when they wanted in their war on terrorism. The White House argued that the AUMF 2001 provided the President with domestic legal backing for covert RPA strikes against organizations they deemed as 'affiliates' thus making the argument that airstrikes in non-combat zones were necessary.<sup>46</sup>

In June 2004, the CIA took out a suspected terrorist for the first time in Pakistan, Waziristan province. Most of the attacks by CIA RPA's in Pakistan, have targeted the Waziristan province, an area known to harbor militants and suspected terrorists.<sup>47</sup> The CIA used a MQ-1 Predator to strike a suspected terrorist, and the attack was carried out using a Hellfire missile. The strike resulted in the immediate fatalities of civilians, in particular children.<sup>48</sup> In the years that followed more than two thousand people would be killed by the CIA in Pakistan's 'FATA' region, the *Federally Administered Tribal Areas*.<sup>49 50</sup> The strikes in the FATA region have targeted militant leaders, commanders, and low-level operatives of Al-Qaida, numerous Pakistani Taliban and associates which carried out attacks on NATO forces over the border. Since the attacks carried out by the RPA's in Pakistan were part of the covert activities of the CIA, Washington would deny involvement in the strikes. Nevertheless, the strikes would be widely reported in the Pakistani and international press. After the terrorist attacks on 9/11, Islamabad was pressured by Washington to combat the terrorism and deal with Al-Qaida on its soil. Immediately after

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<sup>42</sup> Daniel Restrepo, "Naked Soldiers, Naked Terrorists And The Justifiability of Drone Warfare," *Social Theory And Practise* 45, no. 1 (2019): 105

<sup>43</sup> Isaac Taylor, "Just War Theory And The Military Response to Terrorism," *Social Theory And Practise* 43, no. 4 (2017): 723.

<sup>44</sup> Michael Walzer, "Just And Unjust Targeted Killing And Drone Warfare," *Daedalus* 145, no. 4 (2016):13-14

<sup>45</sup> Chris Woods, *Sudden Justice: America's Secret Drone Wars* (Oxford University Press, 2015) 93-119

<sup>46</sup> Ashley S. Deeks, "The Obama Administration, International Law And Executive Minimalism," *The American Journal of International Law*, 110, no.4 (2016): 646-662

<sup>47</sup> Patrick B. Johnston and Anoop K. Sarbahi, "The Impact of US Drone Strikes on Terrorism in Pakistan," *International Studies Quarterly* 60, no. 2 (2016): 203-219

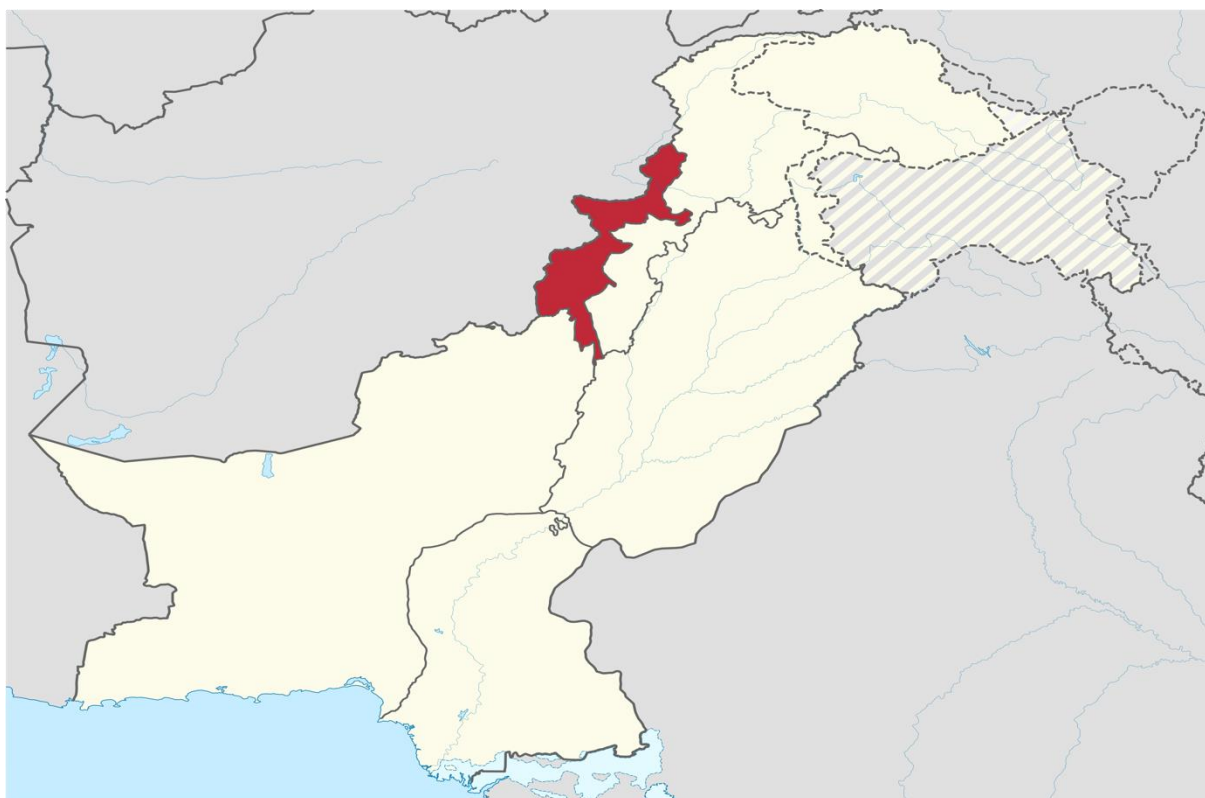
<sup>48</sup> "MQ-9 Reaper," United States Air Force, accessed November 20, 2024, <https://www.af.mil/About-Us/Fact-Sheets/Display/Article/104470/mq-9-reaper/>

<sup>49</sup> "Drone Wars: The Full Data," The Bureau of Investigative Journalism, accessed November 21, 2024, <https://www.thebureauinvestigates.com/stories/2017-01-01/drone-wars-the-full-data/>

<sup>50</sup> Jonosch Prinz, and Conrad Schetter, "Conditioned Sovereignty: The Creation and Legitimation of Spaces And Violence in Counterterrorism Operations of The "War on Terror"," *Alternatives: Global, Local, Political* 41, no. 3 (2016): 127-131



9/11, Islamabad gave the United States Air Force access to several air bases to fly missions into the tribal border region between Afghanistan and Pakistan. This act by Islamabad alienated the religious conservatives in the FATA region from the government, which seemed to lose control over the tribal regions also due to the influx of thousands of militants.<sup>51</sup> Many former Bush administration officials have remained tight-lipped regarding the early years of the RPA program in Pakistan. Thus, it is unclear whether the suspected terrorist who was targeted June 2004 fit the United States argument for targeted killings outside of combat zones. The United States argued that the legal authority for its targeted killing



The Federally Administered Tribal Areas in Pakistan. Wikimedia Commons, [https://commons.wikimedia.org/wiki/File:Federally\\_Administered\\_Tribal\\_Areas\\_in\\_Pakistan\\_\(claims\\_hatched\).svg](https://commons.wikimedia.org/wiki/File:Federally_Administered_Tribal_Areas_in_Pakistan_(claims_hatched).svg)

beyond the regular battlefield relied on whether the target was a member of Al-Qaida or a terrorist friendly group. Perhaps the strike was on behalf of Pakistan's own counterinsurgency program. This would make possible the CIA 'clientism' notion that the enemies of Islamabad would be dealt with by Langley in return for further strikes within the tribal regions of Pakistan due to the leverage held by the CIA.

The FATA region in Pakistan had been a place that dealt with poverty and illiteracy for a longer period of time. It was a mountainous region where homes still drew water from a well and paved roads were nonexistent for the most part. Both Washington and Islamabad were used to exploit this mix of poverty and militancy in the tribal region. Back in the 1980's it was here where the CIA turned the FATA

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<sup>51</sup> Chris Woods, *Sudden Justice: America's Secret Drone Wars* (Oxford University Press, 2015) 93-119

region into a Washington funded ‘laboratory’. As Afghanistan was invaded in the 1980’s during the Cold War, a jihad was encouraged by the CIA against the Soviet occupation of Afghanistan. The CIA would invest more than three billion dollars into the campaign of rounding up ‘holy’ fighters than went as far as printing out the holy book Quran in local tribal languages besides the Arabic and the funding of Madrassas, Quran lesson schools. Yet the control over the fighters was lacking, and it would remain to be that way for a long time. As the tribal insurgency gained ground in the region against the Soviets, talks about a global jihad gained interest among notable funded fighters such as Bin Laden. Paving the way to the attacks on 9/11.<sup>52</sup>

From the start of the CIA’s ‘targeted killing’ program, the United States and Pakistan sought to hide any problematic evidence of a covert RPA program. In Pakistan it was part of a secret agreement that was made in the aftermath of the attacks on 9/11. According to a reporter of the *New York Times*, a deal was made between the CIA’s station chief in Islamabad and the head of the ISI, Pakistans intelligence services, allowing for RPA strikes in the tribal *FATA* region.<sup>53</sup> The ISI demanded on their behalf that they would be allowed to approve the strikes, which would give them control over the targets, a type of control that was preferably kept by the President in the Oval Office. The ISI also demanded that the *MQ-1 Predator* would only fly in narrow lanes in the FATA region. A NATO air corridor had existed over the FATA region since the onset of Operation Enduring Freedom in Afghanistan in 2001, it was codenamed ‘the Boulevard’ and it was used to ferry troops and supplies to that conflict. ‘The Boulevard’ would be also in use by the CIA’s *MQ-1 Predators*, who would have to try to avoid any commercial plane. Islamabad and Langley agreed that two restricted operating zones would let *MQ-1 Predators* freely operate at specific heights within FATA. Evidence for the deal between Langley and Islamabad, which was never said to be formally written according to Pakistan, would be found inside the leaked US. Diplomatic cables obtained by Wikileaks in 2011 in which Langley pressured for a third operating zone.<sup>54</sup> The *MQ-1 Predator* strikes were launched from within Pakistan, in the same way that the CIA’s U2 spy planes were launched during the Cold War out of Pakistan. Remote airfields, under cover leases, outside of Balochistan and Jacobabad, were the new homes of *MQ-1 Predators* up until well into the Obama administration, deteriorating U.S.-Pakistani relations.<sup>55</sup>

With the end of the Bush administration in sight, Washington became more hostile towards Islamabad, militants and Al-Qaida friendly operatives would stage often daily attacks from Pakistani soil against American soldiers in Afghanistan. The pressure by the Obama campaign during the election year of 2007, made sure that the Bush administration tore up the 2004 secret agreement which was

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<sup>52</sup> Chris Woods, *Sudden Justice: America’s Secret Drone Wars* (Oxford University Press, 2015) 93-119, 144-169

<sup>53</sup> Mark Mazetti, “A Secret Deal on Drones, Sealed in Blood,” *New York Times*, April 6, 2013, <https://www.nytimes.com/2013/04/07/world/asia/origins-of-cias-not-so-secret-drone-war-in-pakistan.html>

<sup>54</sup> “Admiral Fallon Discusses Security Cooperation With General Kayani,” Wikileaks, accessed November 21, 2024, [https://wikileaks.org/plusd/cables/08ISLAMABAD609\\_a.html](https://wikileaks.org/plusd/cables/08ISLAMABAD609_a.html)

<sup>55</sup> Chris Woods, *Sudden Justice: America’s Secret Drone Wars* (Oxford University Press, 2015) 93-119

established thanks to the CIA and Islamabad. (DNI) Mike McConnell, the Director of National Intelligence, a formal position at the head of the Intelligence Community, established after 9/11 and CIA Director (DCIA) Michael Hayden confronted the president of Pakistan in Islamabad on January 9, 2008. One former senior US official recalls Hayden saying, ‘Mr. President we’ve had great success rolling up Al Qaeda. But our success has largely been limited to the settled areas, because you view Al Qaeda in the settled areas to be as much a threat to you as it is to us. But Mr. President, that’s not how you view Al Qaeda in the tribal region. You essentially view that to be our problem, not yours. That calculus, if it was ever correct Mr. President, is now wrong.’<sup>56</sup> Pakistan was pressured to allow for more and harder strikes in the FATA region.<sup>57</sup>

Indeed, by the time that Barack Obama was campaigning in the United States, the so called ‘good taliban’ was seen by Islamabad as a key to post-U.S. involvement in Afghanistan. It would offer Islamabad a counterbalance to Indian influence in Afghanistan, which were troublesome for Islamabad. The ‘good taliban’ enjoyed secret protection from Islamabad, with the ISI’s knowledge of raids carried out from Pakistan into Afghanistan. In the beginning, it seemed to Washington that Islamabad was only tolerating of the militant raids, however soon Washington became to believe that elements within the ISI were actively aiding militant attacks. The CIA pushed the Bush admin into permitting a major expansion of the *Predator* program in FATA. Previously, the CIA’s rules of engagement (ROE) had to meet a ninety percent success probability in order to be carried out, however that threshold was lowered to fifty percent. The CIA also ramped up their signature strikes in FATA, replacing the ‘personal strikes’ as the sole purpose of the CIA’s RPA program.<sup>58</sup> General Mike Flynn, who would lead the *Defense Intelligence Agency* (DIA), summarized the intelligence facilitation process as this: ‘While the enemy moves from point to point, airborne ISR (*Intelligence Surveillance and Reconnaissance*) tracks and notes every location and person visited, this analysis has the effect of taking a shadowy foe and revealing his physical infrastructure for things such as funding, meetings, headquarters, media outlets, and weapons supply points, as a result, the network becomes more visible and vulnerable, thus rejecting the enemy’s advantage of denying a target.’<sup>59</sup>

The effect of the signature strikes on the *FATA* region were significant, resulting in the thousands of deaths and scores of casualties from a single *MQ-1 Predator* strike.<sup>60</sup> The enemy of the CIA didn’t just lose its leaders and facilitators, but others as well, names were not of the issue any longer, it was the actions of individuals over time which made them a threat. These strikes bore close resemblance of a

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<sup>56</sup> Ibid. 111

<sup>57</sup> Ibid. 144-169

<sup>58</sup> Alcides Eduardo do Reis Peron, “The “Surgical” Legitimacy of Drone Strikes? Issues of Sovereignty And Human Rights in The Use of Unmanned Aerial Systems in Pakistan,” *Journal of Strategic Security* 7, no. 4 (2014): 81-87

<sup>59</sup> Chris Woods, *Sudden Justice: America’s Secret Drone Wars* (Oxford University Press, 2015) 113-115

<sup>60</sup> “Drone Wars: The Full Data,” The Bureau of Investigative Journalism, accessed November 22, 2024, <https://www.thebureauinvestigates.com/stories/2017-01-01/drone-wars-the-full-data/>

fighter plane seeking out targets of opportunity in the wars of the twentieth century. Under the leadership of President Obama, the signature strikes would come to dominate the CIA’s covert RPA program. Indeed, the CIA’s program’s different approach was also noticeable in the runner up to the *MQ-1 Predator*, the *MQ-9 Reaper* RPA. The United States Air Force had proposed the *MQ-9 Reaper* in response to the DoD’s directive to support initiatives of overseas contingency operations. The *MQ-9 Reaper* was larger and more powerful than the *MQ-1 Predator* and was designed to execute time-sensitive targets with ‘precision’. President Obama’s presidency was just seventy-two hours old when at least 14 civilians were reported dead in *MQ-9 Reaper* strikes he had personally authorized.<sup>61</sup>

	December 2016	2016	2009-2016
US strikes	0	3	373
Total people reported killed	0	11	2089-3406
Civilians reported killed	0	1	257-634
Children reported killed	0	0	66-78
Total people reported injured	0	3-6	986-1467

Confirmed RPA Strikes in Pakistan. The Bureau of Investigative Journalism, <https://www.thebureauinvestigates.com/stories/2017-01-17/obamas-covert-drone-war-in-numbers-ten-times-more-strikes-than-bush/>



An *MQ-9 Reaper*, armed with GBU-12 Paveway II laser guided munitions and AGM-114 Hellfire missiles, piloted by Col. Lex Turner flies a combat mission over southern Afghanistan. U.S. Air Force Photo / Lt. Col. Leslie Pratt, <https://www.af.mil/About-Us/Fact-Sheets/Display/Article/104470/mq-9-reaper/>

<sup>61</sup> Micah Zenko, “Obama’s Final Drone Strikes Data,” Council on Foreign Relations, January 20, 2017, accessed November 23, 2024, <https://www.cfr.org/blog/obamas-final-drone-strike-data>

In the first years of Obama's presidency, a noticeable indifference to collateral damage due to the *MQ-1 Predator* and *MQ-9 Reaper* strikes in Pakistan but also Yemen and Somalia seemed to worsen. In a move that would drastically change the scope of the targeted killing program of the CIA in their covert wars in Pakistan, Yemen and Somalia, the CIA's RPA's would also deliberately target any rescuers who would come to the aid of targeted terrorists after a strike.<sup>62</sup> The first confirmed case of an CIA RPA firing at unarmed rescuers in the aftermath of an RPA was in the early stages of the Obama administration, namely May 16, 2009. Militants had gathered in the FATA region for an incursion into Afghanistan before the CIA took out a large amount of them using a Hellfire missile. In the aftermath a group of villagers would come to the rescue of any wounded or retrieval of the deceased's bodies. For the CIA's RPA still lurking above, the intervention of rescuers was deemed a legitimate target for a second strike. A dozen civilians were killed in the second strike, and more would follow in similar fashion as part of a new tactic that Washington and Langley appeared to cast off as successful.<sup>63</sup>

On May 1<sup>st</sup>, 2011, President Obama addressed the nation live to bring the Homefront the good news that Osama Bin Laden had been killed in Pakistan, in a daring raid by U.S. Navy Seals under command of JSOC (Joint Special Operations Command).<sup>64</sup> The leader of Al-Qaida was no more, but that would not mean that strikes by CIA's RPA's would end there. After the death of Bin Laden, Yemen became the hottest front in the United States's war against Al-Qaida. During the first years of the Obama administration, numerous terrorist plots are traced back to their drawing board in Yemen. Notably in December 2009, a Nigerian national tried to set off an explosive device on board a passenger plane en route to Detroit from Amsterdam.<sup>65</sup> During the investigation it became clear to authorities that the assailant had become involved with Al-Qaida in Yemen where he received training in explosives. *The Senate Intelligence Committee* later noted that 'prior to the December plot, counter-terrorism analysts at the CIA and were focused on the threat of terrorist attacks in Yemen and not so much on the possibility of AQAP (Al-Qaida in Arabian Peninsula) attacks against the American homeland.'<sup>66</sup> Before the major plots involving airlines during the Obama presidency, Al-Qaida's regional revival had its origin beyond Yemen's northern border, where a series of attacks had already taken place against Saudi allies and western nationals during the Bush presidency in response to the Iraq War in 2003. Already in November 2002 a supposed leader of Al-Qaida in Yemen, who was believed to be one of the masterminds behind the terrorist attack on the *U.S.S. Cole*, a U.S. Navy vessel, was killed in Yemen by a CIA airstrike. It is noteworthy that the airstrike in Yemen was before the strike in Pakistan thus making it the first account of a targeted killing by a CIA RPA outside of a conventional war zone. As was the case in Pakistan, the

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<sup>62</sup> Andrew Cockburn, *Kill Chain: The Rise of The High-tech Assassins* (Picador, 2016) 171-191

<sup>63</sup> *Ibid.* 171-191

<sup>64</sup> "Osama Bin Laden Dead," The White House, President Barack Obama, May 2, 2011, accessed November 23, 2024, <https://obamawhitehouse.archives.gov/blog/2011/05/02/osama-bin-laden-dead>

<sup>65</sup> Chris Woods, *Sudden Justice: America's Secret Drone Wars* (Oxford University Press, 2015) 197

<sup>66</sup> "Senate Hearing 111-1070," United States Government, accessed November 23, 2024, <https://www.govinfo.gov/content/pkg/CHRG-111shrg56838/html/CHRG-111shrg56838.htm>

CIA had a secret agreement which led to the Yemeni government taking the blame officially. What was also exceptional about this strike was that it involved the first execution of an American citizen by a RPA, namely the Buffalo, New York born assistant of the suspected terrorist leader. However, the American assistant, would not be the last American who would be killed by a CIA RPA as it would also be decided by President Obama.<sup>67</sup>

Within a few days before the Inauguration of President Obama, the Yemeni and Saudi branched of Al-Qaida would merge and this troubled Washington. Indeed, in leaked diplomatic cables the former CIA station Chief of Riyadh, John Brennan ‘warned that the United States feared that Yemen could become another Waziristan or FATA and urged that the US and Saudi Arabia needed to work together to keep Al-Qaeda in Yemen from growing even more dangerous’.<sup>68</sup> When Brennan met with the leader of Yemen, the Yemeni leader pledged access to all of Yemen’s territory for United States’ counterterrorism efforts. A couple of later JSOC played a crucial role in a botched airstrike which led to mass civilian casualties, marking the first of President Obama’s intervention against AQAP a strategical mistake. Due to a lack of abundance of RPA’s, JSOC had to rely on a cruise-missile with cluster munition fired from a navy vessel off the coast of Yemen. A cruise-missile often leads to more civilian casualties especially in a dense area. JSOC had a reputation that preceded them thanks to their service in kill/capture operations in Iraq and Afghanistan. More faulty targeted strikes would follow up and lead eventually to a ban of airstrikes by JSOC in Yemen. It wouldn’t be until the Arab Spring in 2011 which crippled the central power in Yemen that JSOC could resume its targeted strikes again.

During the raid on Bin Laden’s compound which left the leader of Al-Qaida dead, the compound was searched and many Intel and data on Al-Qaida was gathered by JSOC. For Washington the intel showed evidence of communication between AQAP and Al-Qaida. The communication went so far as the AQAP leader wanting to step down notifying Bin Laden of his successor, a media wise American national Anwar Al-Awlaki. Anwar Al-Awlaki contributed regularly to online pet projects of AQAP, showing the utilization of the world wide web for communication between terrorists and sympathizers. Jihadist chat rooms proliferated due to AQAP, while media wings of Al Qaeda dumped propaganda on sites such as YouTube reaching thousands of viewers. Al-Awlaki wrote in the Jihadist AQAP’s journal’s first issue in June 2010, ‘I specifically invite the youth to either fight in the West or join their brothers in the fronts of jihad; Afghanistan, Iraq, and Somalia. I invite them to join the new front, Yemen, the base from which the great jihad of the Arabian Peninsula will begin, the base from which the greatest

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<sup>67</sup> Chris Woods, *Sudden Justice: America’s Secret Drone Wars* (Oxford University Press, 2015) 191-217

<sup>68</sup> “Counter-terrorism Adviser Brennan’s Meeting with Saudi King Abdullah,” leaked US embassy cable, March 22, 2009, accessed November 23, 2024, archived by Wikileaks at <http://www.cablegatesearch.net/cable.php?id=09RIYADH447&q=brennan>.

army of Islam will march forth'.<sup>69</sup> Anwar Al-Awlaki's preachings and emails had ties to a number of terror plots against the United States, but now Al-Awlaki was pressuring sympathizers in the west of carrying out 'lone wolf' attacks. The danger that Al-Awlaki posed to the United States made President Obama brand him as threat number one. Al-Awlaki's rise to infamy led to his death in Yemen by a CIA RPA in 2011, resulting in the execution of an American citizen sparking controversy. By 2011, the RPA was being used in Yemen after a two-year usage of manned fighter planes and cruise-missiles. The RPA strikes didn't lead to less casualties under civilian populations. The situation in Yemen became more complicated as the CIA and JSOC both participated in counterterrorism operations. The CIA had been brought to Yemen by the Obama administration after JSOC failed to apprehend Al-Awlaki soon enough. However, as I have stated before, JSOC was recognized as being a part of DoD which meant that JSOC strikes had to be recognized under U.S.C. law. The CIA RPA strikes on the other hand didn't have to be clarified since the CIA operated under a different U.S.C. law. By 2014, the death toll by the hands of RPA strikes under command of JSOC or the CIA was nearing almost 1500, with more than a hundred civilian casualties.<sup>70</sup> The mass casualties and the extent of the complicated 'out of hand' RPA program would lead, as he would say himself, to NSA whistleblower Edward Snowden to come out in the open.<sup>71</sup>

	<b>December 2016</b>	<b>2016</b>	<b>2009 to 2016</b>
US strikes	1	38	158-178
Total people reported killed	2	147-203	777-1075
Civilians reported killed	0	0	124-161
Children reported killed	0	0	32-34
Total people reported injured	0	34-41	143-287

RPA Strikes in Yemen, 2009-2016, <https://www.thebureauinvestigates.com/stories/2017-01-17/obamas-covert-drone-war-in-numbers-ten-times-more-strikes-than-bush/>

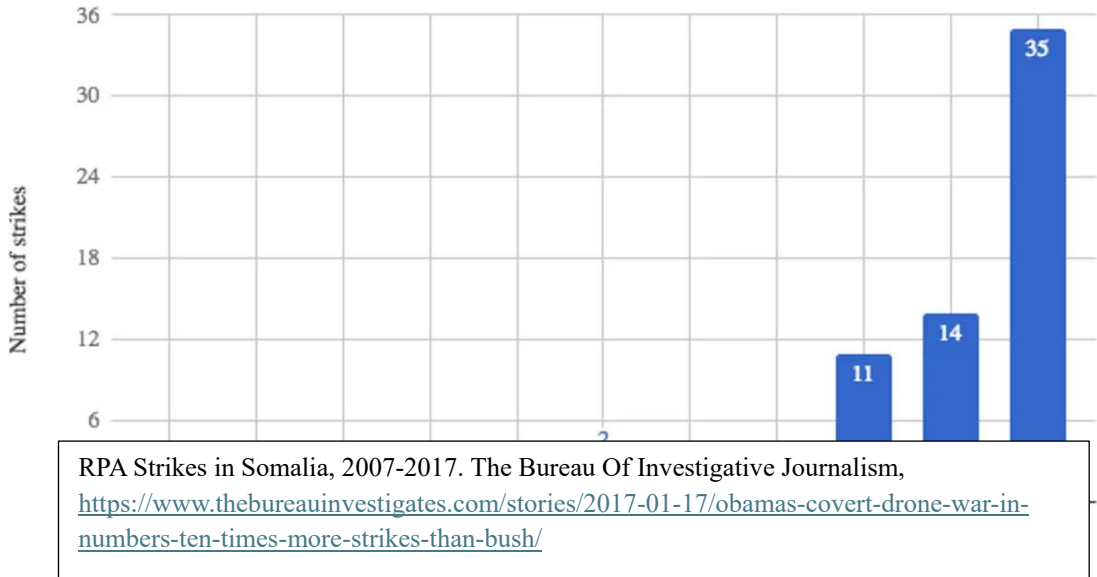
<sup>69</sup> "Awlaki Video Urges U.S. Muslims to join Al-Qaida," Reuters, December 20, 2011, <https://www.reuters.com/article/yemen-qaeda-awlaki/awlaki-video-urges-u-s-muslims-to-join-al-qaeda-idINDEE7BJ0CV20111220/>

<sup>70</sup> "Drone Wars: The Full Data," The Bureau of Investigative Journalism, accessed November 24, 2024, <https://www.thebureauinvestigates.com/stories/2017-01-01/drone-wars-the-full-data/>

<sup>71</sup> Glenn Greenwald, No Place to Hide: Edward Snowden, The NSA And The U.S. Surveillance State (Henry Holt, 2014) 40-44



In the Aftermath of the attacks on 9/11, Washington didn't pay much attention to Somalia's militia activity except for Al-Qaida East Africa's (AQEA) activity. Yet President Bush had no intention of following his fathers' footsteps by sending foot soldiers into Somalia. The DoD and the CIA at first thought of different methods in their fight against AQEA. The CIA and JSOC took part in what would be known as a shadow war in Somalia in which proxy militias were used to seize suspected terrorists. Remnants of AQEA would go on to be part of the new formed AL-Shabaab, an organization of extremists which Washington viewed as a danger to the region. In 2006 JSOC would carry out airstrikes against Al-Shabaab and affiliated groups such as the Islamic Courts Union, a coalition of extreme groups, which had taken the capital. Following the American war effort, the fleeing of ICU left a vacuum in which Al-Shabaab could prosper due to nationalism and anti-western involvement jihadist propaganda. Long before President Obama would take his seat inside the Oval Office, Al-Shabaab would control parts of Mogadishu.<sup>72</sup> In 2011, leaked U.S. security assessments on the topic of Somalia were leaked by U.S. Army intelligence analyst Chelsea (Bradley) Manning.<sup>73</sup> It showed evidence and reasons behind the heavy presence of CIA and JSOC in Somalia. A leaked security assessment from 2006 stated that 'Somalia is the epicenter of terrorist activity in the region, an active safe haven different from others in the world because it overlays a failed state. The al Qaida presence in Mogadishu is part of a larger network, Al Qaida East Africa (AQEA), which maintains operatives, facilitators and associates in Somalia, Kenya, Tanzania, Djibouti, Ethiopia and probably Sudan and Eritrea. AQEA has close ties to al Qaida core leadership in Pakistan and Afghanistan, and has links to the UAE, Saudi Arabia and Yemen and appears to be funded by sources in these countries as well as the Somali diaspora.'<sup>74</sup>



<sup>72</sup> Chris Woods, Sudden Justice: America's Secret Drone Wars (Oxford University Press, 2015) 191-217  
<sup>73</sup> "CT in Horn of Africa; Results and Recommendations From May 23-24 RSI Chiefs of Mission," Embassy Dar es Salaam, leaked US diplomatic cable, July 3, 2006, accessed November 24, 2024, <http://www.cablegatesearch>  
<sup>74</sup> Ibid.



To conclude this chapter, more often than not, with a rise in targeted killings under the Obama administration, RPA strikes have left families bereaved and towns under constant fear of air attacks leading to a major rise in PTSD. Back in the United States, especially after the rise of RPA's under Obama, senior political, military and intelligence officials were starting to doubt what the secret air war being waged by RPA's was trying to achieve. It had been more than a decade since the AUMF 2001 had been passed by Congress, yet, to answer the subquestion of this chapter, as to why the United States carried out the RPA strikes in non-combat zones, officials in the Bush and Obama administration were claiming the AUMF 2001 provided the necessary legal authority to strike where and when they wanted in their war on terrorism. The former CIA station chief and advisor to Obama John Brennan insisted that there was nothing to be found in the AUMF 2001 which restricted the use of military force against Al-Qaida and other terrorist threats. This notion was often challenged and in a famous filibuster on the Senate floor against the appointment of Brennan as the new DCIA in 2013, Senator Rand Paul stated that 'the problem is as this war has dragged on, they take that authorization of use of force to mean pretty much anything.' 'And they have now said that the war has no geographic limitations, so it's really not a war in Afghanistan, it's a war in Yemen, Somalia, Mali, it's a war in unlimited places.'<sup>75</sup> In turn, officials in Washington would argue that the AUMF 2001 still provided the necessary domestic legal backing for covert RPA strikes abroad since organizations such as Al-Shabaab and AQAP were 'affiliates' thus making the argument that airstrikes were necessary in the housed regions. The final chapter of this thesis will break down the AUMF 2001 and look at the legal backing of the strikes. Various scholars' views on the domestic legal backing and its possible infringement on International Law will be debated as its core content.

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<sup>75</sup> "Unofficial Transcript: Hour 1—Sen. Rand Paul Filibuster of Brennan Nomination," March 6, 2013, <https://www.paul.senate.gov/?p=press>

In 2010, Professor Harold Hongju Koh held a keynote speech at the American Society of International Law. Harold Koh, one of the nations leading experts in international law, national security law, and human rights, had been the legal advisor to the United States' State Department. In his address at the ASIL, Koh, for the first time clarified to the world the Obama administration's legal rationale for its policy of targeted killings, to say it more bluntly, the RPA attacks in non-combat zones. As would have been expected from the State Department's legal advisor, Koh argued that, at first, 'the United States is in a state of armed conflict with Al-Qaida and that its power to target combatants or belligerents in that conflict, however defined, derives from the law of war. Second, 'that the United States has the inherent right to self-defense that allows it to target those individuals who engage in attacks against the United States'.<sup>76</sup> Harold Koh's address to ASIL was a clear and plain statement of Washington's view of the law and its application.<sup>77</sup>

The United States had been carrying out RPA strikes for more than a decade at the time of Koh's address. As the years went by, the numbers of RPA strikes grew exponentially, and the targeted killings program reached its peak during the Obama administration. More strikes meant more casualties and also risk of more collateral damage, namely innocent civilians. Criticism by rights groups and rights advocates also grew due to the number of strikes that were being carried out. The most consistent point of contention had been the legal basis for the counter-terrorism program, which the targeted killings was a core part of. The core law that underpinned the foundation of the war on terror, the United States war against Al-Qaida and their associates in various sovereign states, has been the AUMF 2001. The Authorization for the Use of Military Force which was drafted by the Bush administration in the days after 9/11. The soul and heart of that law was to be found in a sixty-word phrase which gave both President Bush and President Obama the legal basis and 'right' 'to use all necessary and appropriate force against those nations, organizations, or persons' which the President determined were behind or aided the culprits behind the attacks on 9/11.<sup>78</sup>

In the final chapter of this research, I will indulge into the debate surrounding the AUMF 2001, the legal basis for the RPA strikes in the war on terror and the law of war, the International Humanitarian Law. In the previous chapters of this research, I have discussed the promises and the practice of RPA warfare. This chapter will subject the targeted killings program and its legal basis, the AUMF 2001 to

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<sup>76</sup> "The Obama Administration And International Law" U.S. Department of State, accessed December 8, 2024, <https://2009-2017.state.gov/s/l/releases/remarks/139119.htm>

<sup>77</sup> David P. Forsythe, "U.S. Foreign Policy And Human Rights: Situating Obama," *Human Rights Quarterly* 33, no. 3 (2011): 768-789

<sup>78</sup> "S.J.Res.23 - Authorization for Use of Military Force", Congress.gov, Accessed December 8, 2024, <https://www.congress.gov/bill/107th-congress/senate-joint-resolution/23/text>

the laws of armed conflict. In doing so it aspires to answer this chapter's subquestion; how did the AUMF 2001 relate to the just war theory? This chapter will argue that it is debatable whether the CIA's RPA strikes have been in accordance with the principles of the just war theory. The United States have argued that it is at war, however whether the terrorist attacks on 9/11 can be labeled an armed attack and thus act as a pretense for a military response, which would be justifiable by international law, is debatable.<sup>79</sup> Also, the secret nature of the CIA's RPA program has made it difficult to address whether the United States could be labeled as a nation at war, since it requires assessing whether the targeted persons were affiliated to the targets outlined in the AUMF 2001. Furthermore, if the United States were legitimately at war, then the principles of the just war theory which include discrimination apply. This means that the CIA's RPA strikes have failed to live up to the principles of the just war theory.<sup>80</sup>

For starters, the CIA's RPA strikes were in compliance with the federal law of the United States due to the AUMF 2001, which was signed within days after 9/11, granting the president the power to use military force against the culprits behind the terror attacks and those who aided and possibly harbored them. The AUMF 2001 legitimized a broad use of military force allowing the president to place military action at the center of its counter-terrorism operations.<sup>81</sup> AUMF 2001 contained no expiry date or geographic boundaries and granted the president the authority to determine which countries, groups or individuals would be targeted by military action. Instead of relying on additional authority from Congress, both Presidents Bush and Obama, and their successors, relied on a weary interpretation of the AUMF 2001. These strained interpretations allowed the president to determine the war on terror's scope outside of Congress. Many scholars have criticized this broad interpretation of the AUMF 2001 which meant that almost no limitations would be placed on the president's authority in the war on terror. Questions have been brought up about the link between the targeted suspects of the targeted killings and the culprits behind the attacks on 9/11. It is fine that the AUMF 2001 would be used as an authorization to go after the ones responsible for the attacks on 9/11, however using the AUMF 2001 as a permanent statutory authorization for RPA strikes during covert counter-terrorism actions suspected terrorists with presumed ties to the culprits of 9/11 should not have been accepted. Since the covert actions undertaken by the CIA have remained secret to date, this covert nature makes it almost impossible to assess the CIA's counter-terrorism actions validity under the AUMF 2001.<sup>82</sup> For such an assessment a full disclosure of the suspected terrorist's identity would be necessary and the link with the culprits behind 9/11. If the White House were required to gain an authorization prior to each strike from a court, it would

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<sup>79</sup> Ashley S. Deeks, "The Obama Administration, International Law And Executive Minimalism," *The American Journal of International Law*, 110, no.4 (2016): 646-662

<sup>80</sup> Tom Farer & Frederic Bernard, "Killing by Drone: Towards Uneasy Reconciliation With The Values of a Liberal State," *Human Rights Quarterly* 38, no. 1 (2016): 108-133

<sup>81</sup> "S.J.Res.23 - Authorization for Use of Military Force", Congress.gov, Accessed December 8, 2024, <https://www.congress.gov/bill/107th-congress/senate-joint-resolution/23/text>

<sup>82</sup> Catherine Connolly, "Necessity Knows no Law: The Resurrection of *Kriegsraison* Through The U.S. Targeted Killing Program," *Journal of Conflict & Security Law* 22, no. 3 (2017): 463-496

need to provide intelligence linking the target with organizations behind 9/11. However, the White House has not been under such strict oversight control during its counter-terrorism actions, hence its targeted suspected terrorists may or may not fall within the scope of the AUMF 2001.

In order to be lawful under the domestic law of the United States, the CIA's RPA program would have to be in accord with the United States Constitution as well as federal statutes. Kleidman argues that the United States' constitution authorizes covert action such as the RPA strikes by the CIA. He argues RPA strikes are conducted by the CIA as part of the United States's right to self-defense as they would fall under the activities that the framers of the Constitution thought would be necessary to protect the United States. Kleidman also argues that both the legislative and the executive branch have simultaneous authority to authorize covert action such as RPA strikes.<sup>83</sup> It is important to note that, as dictated by the United States' Constitution, the president serves as the commander in chief of the armed forces and so long as the covert counter-terrorism program were authorized by Congress via statutory law and used as part of the White House's war on terror, the president had the authority to order RPA strikes. In the absence of congressional authorization, the president may have used independent constitutional authority to green-light strikes.<sup>84</sup> However, this does not mean that the program would be exempt from congressional oversight.

The law of war, or the International Humanitarian Law establishes what may and may not be done by belligerents or parties engaged in an armed conflict. The laws seek to minimize human suffering, protecting civilians, while also granting rights to combatants.<sup>85</sup> The main treaties of the International Humanitarian Law are the four 1949 Geneva Conventions. International Humanitarian Law only applies to an armed conflict, and it doesn't involve internal strife or isolated acts of violence. The law is applied only once an armed conflict has begun and is it is applied to all belligerents or parties regardless of who started the conflict. There is a distinction made within the International Humanitarian Law between an international and a non-international armed conflict. At first, an international armed conflict is a conflict which involves at least two belligerents, which are states. These belligerents are subjected to the laws as set in the four Geneva Conventions and the Additional Protocol I.<sup>86</sup> Second, non-international armed conflicts are those which are restricted to the territory of a single state. The conflict may involve regular forces fighting groups or dissidents or armed dissidents and groups fighting each other. A more limited

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<sup>83</sup> Jamie L Kleidman, "The Constitutionality of The Predator Drone Program" *De Gruyter* (2017): 350-365, <https://www.degruyter.com/document/doi/10.1515/icl-2010-0304/html?lang=en&srsltid=AfmBOoo9t5QzGrKWGkVYikMoLYqa5MAyB7OQpdbhzWMZ8Qi-HtZDMYBPB>

<sup>84</sup> "ArtII.S2.C1.1.11 Presidential Power and Commander in Chief Clause", Constitution Annotated, accessed December 9, 2024, [https://constitution.congress.gov/browse/essay/artII-S2-C1-1-11/ALDE\\_00013473/](https://constitution.congress.gov/browse/essay/artII-S2-C1-1-11/ALDE_00013473/)

<sup>85</sup> Tom Farer & Frederic Bernard, "Killing by Drone: Towards Uneasy Reconciliation With The Values of a Liberal State," *Human Rights Quarterly* 38, no. 1 (2016): 108-133

<sup>86</sup> Scott D. Sagan and Benjamin A. Valentino, "Not Just a War Theory," *International Studies Quarterly*, 62, no. 3 (2018): 548-551

range of laws are applied in these cases, laid down in Article three, common to the four Geneva Conventions as well as in Additional Protocol II.<sup>87 88</sup>

International Humanitarian Law covers two areas: the protection of those who are not or no longer take part in the conflict and second, it puts restrictions on the means of waging war, in particular the weaponry and the methods of combat, including tactics. The International Humanitarian Law protects those who do not partake in the conflict, such as civilians or religious and medical military personnel. It also grants rights to those who have laid down arms, for various reasons, such as being wounded. These also enjoy legal guarantees and must be protected and treated in a humane way with no adverse distinction. To say it more bluntly, it is forbidden to eliminate or wound an enemy combatant who is unable to fight, and the wounded must be cared for by the party in whose hands they find themselves.<sup>89</sup>

In a just war, there are a set of principles which ought to regulate how warfare is conducted by all belligerents and parties involved. As I have earlier stated, the just war theory consists of two important elements, *jus ad bellum* which specifies when the reason to go war is justified, and *jus in bello*, which lays out the restrictions on those waging war. *Jus ad bellum* states that the war has to be fought for a just cause and that the intention of those fighting the war must conform to the just cause. Furthermore, the war has to be waged by a legitimate authority and should be the option of last resort. *Jus in bello* states that combatants should only carry out operations necessary to their legitimate military objective and the harm that any operation causes must be proportionate. Also, only combatants are legitimate targets and non-combatants should not be harmed on purpose.<sup>90</sup> As I have stated in the introduction, *jus in bello* derives from the International Humanitarian Law which deals with the practice of warfare.<sup>91 92</sup>

It is important to note that terrorism is something that has been hard to define for quite some time now. Miller argues that terrorism is a political and/or military strategy that consists of intentional violent actions, as a means of terrorizing to achieve political goals and it relies on killing.<sup>93</sup> Historically, the use or threat of violence against civilians to extract concessions have long been the practice and

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<sup>87</sup> “Geneva Conventions of 1949 Additional Protocols And Their Commentaries”, ICRC, accessed December 9, 2024, <https://ihl-databases.icrc.org/en/ihl-treaties/geneva-conventions-1949additional-protocols-and-their-commentaries>

<sup>88</sup> Scott D. Sagan and Benjamin A. Valentino, “Not Just a War Theory,” *International Studies Quarterly*,” 62, no. 3 (2018): 548-551

<sup>89</sup> Ibid.

<sup>90</sup> Scott D. Sagan and Benjamin A. Valentino, “Not Just a War Theory,” *International Studies Quarterly*,” 62, no. 3 (2018): 548-551

<sup>91</sup> “What Are Jus ad Bellum And Jus in Bello”, International Committee of The Red Cross, accessed December 9, 2024, <https://www.icrc.org/en/document/what-are-jus-ad-bellum-and-jus-bello-0>

<sup>92</sup> Isaac Taylor, “Just War Theory And The Military Response to Terrorism,” *Social Theory And Practise* 43, no. 4 (2017): 717-718

<sup>93</sup> Seumas Miller, “The Ethics of Targeted Killing: Osama Bin Laden, Drones And Counter-terrorism,” *Public Affairs Quarterly* 28, no. 4 (2014): 318-320.

strategy. More generally, terrorists act for a variety of reasons, but the intentions and motivations should not be necessary for defining terrorism. Also, the terrorist groups that this paper has dealt with, which were targeted by RPA strikes, were not closely affiliated with any recognized state. Although they may receive some funding, protection or implied support from states, terrorist groups operate somewhat independent from states' governments. Terrorist groups often organize themselves in a decentralized manner across different borders. While many states have been known to support terrorist organizations, such may be the case in Pakistan, state-sponsors are able to deny any involvement thus avoiding a confrontation. Unlike regular soldiers, terrorists are difficult to distinguish from civilians, as terrorists do not wear a uniform. Being indistinguishable is important to their operational success, however this also means that since they operate close to civilian populations this affects the (moral) constraints on counter-terrorism action.<sup>94</sup>

During the Obama administration in particular, several White House officials provided policy justification for the use of the RPA's and the targeted killings. Harold Koh stated targeted killings were legitimate since the targeted suspects were members of a group in active war with the United States.<sup>95</sup> Koh also argued that RPA's amounted to the appropriate choice of weaponry as long as their use were in accord to the laws of war. Targets would have been selected through strict filters and would not violate domestic assassination ban.<sup>96</sup> John Brennan argued that RPA strikes against a non-state party, such as a terrorist group, would be in accord with international law if the country where the terrorists found their refuge would be unable or unwilling to take action.<sup>97</sup> <sup>98</sup> Attorney General Holder went a step further and stated that the targeted killing of an American citizen would even be legal if the suspect would be engaged in terrorism activities and pose an immediate danger.<sup>99</sup>

Because of the covert nature of the CIA's RPA program, it is difficult to determine whether the targeted killings that have been utilized during counter-terrorism operations were authorized by the United States' Constitution and fell within the scope of the AUMF 2001. The speeches given by officials in Washington and the somewhat published policy during the Obama administration made things a little clearer about the White House's view on the RPA program, in particular the targeted killings.

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<sup>94</sup> Daniel Restrepo, "Naked Soldiers, Naked Terrorists And The Justifiability of Drone Warfare," *Social Theory And Practise* 45, no. 1 (2019): 110-118.

<sup>95</sup> Ashley S. Deeks, "The Obama Administration, International Law And Executive Minimalism," *The American Journal of International Law*, 110, no.4 (2016): 646-662

<sup>96</sup> "The Obama Administration And International Law" U.S. Department of State, accessed December 8, 2024, <https://2009-2017.state.gov/s/l/releases/remarks/139119.htm>

<sup>97</sup> "Remarks of John O. Brennan, "Strengthening our Security by Adhering to our Values and Laws"," The White House, Office of The Press Secretary, accessed December 10, 2024, <https://obamawhitehouse.archives.gov/the-press-office/2011/09/16/remarks-john-o-brennan-strengthening-our-security-adhering-our-values-an>

<sup>98</sup> Jonosch Prinz, and Conrad Schetter, "Conditioned Sovereignty: The Creation and Legitimation of Spaces And Violence in Counterterrorism Operations of The "War on Terror"," *Alternatives: Global, Local, Political* 41, no. 3 (2016): 127-131

<sup>99</sup> "Holder Letter on Counterterror Strikes on U.S. Citizens," The New York Times, accessed December 10, 2024, <https://archive.nytimes.com/www.nytimes.com/interactive/2013/05/23/us/politics/23holder-drone-letter.html>



Nevertheless, it is yet to be found, due to the insufficient provided information, whether the RPA program run by the CIA had been legal under domestic law. However, the targeted killings by the CIA during the Bush and Obama presidencies do raise international law issues. The first issue is whether the CIA's targeted killings are in accord with *Jus ad Bellum*. As I have stated before, *Jus ad Bellum* has to do with the reason to go to war. It derived from international law which governs the use of force by one party against other parties or non-state entities. International law prohibits the use of force against the territorial integrity of other states. However, there are two exemptions as dictated by United Nations' Authorizations, which make the use of force possible. The United Nations' Security Council's Authorization to use force and the Authorization to self-defense.<sup>100</sup> Since the United States did not gain the authorization from the United Nations to use RPA's in various nations abroad, the only way the use of RPA's by the CIA would be in accord with the law of war would be if the strikes were carried out in self-defense. Various officials in Washington have stated since the days after 9/11 that the terrorist attacks on the United States constituted to an armed attack on American soil, hence the United States would have the authority to wage war in self-defense against all those it deemed responsible for the attack. However, the covert nature of the CIA's RPA program makes it almost impossible to determine whether the targeted killings in the discussed nations were legal under *Jus ad Bellum*.<sup>101</sup>

However, the notion that a terrorist attack would accord with armed attack or said bluntly, act of war, is debated. Some scholars take an approach to terrorism that is familiar with crime, others with war. Miller argued that for a liberal state such as the United States, the terrorism-as-crime framework is preferable. A terrorism-as-war framework should only be applied if it meets certain criteria such as serious and ongoing terrorist attacks, the framework is able to contain the terrorist attacks, the framework should be proportionate to the attacks, and it should be applied only to an extent. The terrorism-as-war framework should merely be applied if the liberal nation cannot contain the terrorist activity of a terrorist group, in a large-scale theater of war for example, such as the conflict between Hamas, Hezbollah and Israel.<sup>102</sup> It is possible for a state to wage a war against a non-state actor. Some have argued that when states conduct military operations against 'irregular forces', such as terrorist organizations, it becomes harder for them to meet some of the standard principles of the just war theory. Thus, providing a somewhat of a justification to apply a more lenient version of the principles of just war theory or even going further and getting rid of the principles when states are dealing with certain terrorist organizations.

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<sup>100</sup> "Chapter VII Action With Respect to Threats to The Peace, Breaches of The Peace, And Acts of Aggression," United Nations, Codification Division Publications, accessed December 10, 2024, <https://legal.un.org/repertory/art51.shtml>

<sup>101</sup> Catherine Connolly, "Necessity Knows no Law: The Resurrection of *Kriegsraison* Through The U.S. Targeted Killing Program," *Journal of Conflict & Security Law* 22, no. 3 (2017): 463-496

<sup>102</sup> Seumas Miller, "The Ethics of Targeted Killing: Osama Bin Laden, Drones And Counter-terrorism," *Public Affairs Quarterly* 28, no. 4 (2014): 318-320.

Taylor goes against this and states that although the situation of a conflict between a state and non-state actor is unique, considerations need to be taken into account in applying the principles of the just war theory to the military response against terrorist organizations. The conflict would not warrant a modification of the principles themselves. The principle 'just cause' requires that the cause for which a war is fought should be 'just'.<sup>103</sup> According to the conservative debate, for a long time that had been strictly self-defense. More recently, more causes have been accepted as 'just' such as humanitarian interventions to prevent human rights abuses in foreign countries. However, preventative wars with the aim of averting threats in the future are deemed not permissible by many. One might wonder whether a 'just preventative war' can be fought against a hostile state which is stockpiling its weaponry in preparation for an invasion in the distant future. If a preventative action could be taken in order to stop the aggression, what good would hesitation lead to, other than a situation of imminent aggression. The current situation in the South China Sea is a prime example of such a crisis with build-up tension between Taiwan and China. However, orthodox theorists of the just war theory argue against this and state that determining whether a state will turn violent in the future is difficult. However, it is important to note that non-state actors' activities, such as terrorism are more predictable. This would make preventative action against terrorist groups more permissible since they are not under democratic pressure and are not affiliated with states.

Walzer argues against a terrorism-as-crime framework and states that while individuals who engage in terrorist activities against a nation may be legitimate targets and it would be best to apprehend them, in reality, that is not the best reasonable option. The risks of such an operation would be too high, innocent could be killed in the arrest attempt, the preliminary work would take a lot of time, during the preparation for Operation Neptune's Spear, the Seals who would apprehend Bin Laden, rehearsed the attempt multiple times in a replica model house, also time is a critical factor when the risk of attacks are great or imminent.<sup>104</sup> The war on terror has been fought in places like Yemen and Pakistan which do not fit a combat zone criterion, but neither do they fit a peace zone. The counter-terrorism operations in such regions are not armed conflict, yet neither are they exactly law enforcement action. If one is willing to accept that the United States is, by international law, permitted to carry out RPA strikes under the pretense of self-defense, then each of the CIA RPA strikes have to comply individually with the criteria of *jus ad bellum*. One has to address whether efforts have been made to engage with the threat with a non-violent option. Thus, the CIA would have to determine that the target poses an imminent threat to the United States due to willingness and proof of continuing terrorist activity against the United States. It is almost impossible to address whether the CIA RPA strikes are in accord with the 'just' and 'last resort' principle of *jus ad bellum*.

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<sup>103</sup> Isaac Taylor, "Just War Theory And The Military Response to Terrorism," *Social Theory And Practise* 43, no. 4 (2017): 723.

<sup>104</sup> Michael Walzer, "Just And Unjust Targeted Killing And Drone Warfare," *Daedalus* 145, no. 4 (2016):12-13



Both the Bush and the Obama presidencies have argued that the United States have been ‘at war’ with Al-Qaida, Taliban (for a period of time) and many affiliated groups. The characterization of their counter-terrorism effort as a ‘war on terror’ is important because if it is in fact an armed conflict or a war, then it dictates the principles of the law of war, in particular *jus in bello*. As I have stated, *Jus in Bello* dictates the conducts of all belligerents and parties involved during the conflict. The principle of ‘distinction’ between combatants and non-combatants and ‘proportionality’ are key criteria which ought to dictate the military operations.<sup>105</sup> Any lawfully attack must be directed towards a legitimate target which could be a member of a member of an armed group such as an insurgency, a civilian who is actively participating in hostile combat operations or a military objective. The criteria of a combatant and what falls under direct participation in hostilities is debated and interpreted in a lenient manner by the United States which has argued that almost any member of Al-Qaida and affiliated groups are legitimate targets.

Since the very first RPA strike by the CIA in Pakistan, the targeted killing program run by the CIA in the war on terror has been known to cause many unnecessary, and perhaps unintentional, collateral damage, civilian deaths. For a large part this has to do with the fact that the suspected terrorists unlike the standing armies of today were indistinguishable from civilians. Before I turn to the civilian casualties, I would like to address the factor whether a terrorist fits the framework of a combatant. Walzer argues that insurgents, like Al-Qaida or affiliated groups, fight more in accord with soldiers, with military equipment and should be treated as such.<sup>106</sup> And if captured after apprehension should be treated according to the law of war which dictates prisoner of war conduct. They would not be criminals who would have to await trial. Thus, the targeted killing of a terrorist should meet the same morals and standards like that of the killing of a soldier. However, it would have to meet criteria of proportionality and the fact that collateral damage should not be disproportionate to the value of the military target, but more on proportionality I will discuss later on. Miller however, states that certain criteria should be met to be labeled an armed force. First, it should be comprised of active combatants with distinct roles, second there should be a clear structure of command, third, there should be a recruitment practice, fourth, it should be engaged in direct conflict with another armed force and lastly, it should pursue a collective military goal.<sup>107</sup> Indeed, in a military conflict it is morally permissible for a combatant to neutralize an enemy target, even if it does not entail defending own life or of others, since it is part of the rationally defensible manner to achieve the end goal, the collective self-defense, of the state for example. Restrepo, argues that terrorists and combatants are different and states that if the United States is actually at war with Al-Qaida and affiliated groups, and we can brand them combatants, then it is important to know

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<sup>105</sup> “What Are Jus ad Bellum And Jus in Bello”, International Committee of The Red Cross, accessed December 11, 2024, <https://www.icrc.org/en/document/what-are-jus-ad-bellum-and-jus-bello-0>

<sup>106</sup> Michael Walzer, “Just And Unjust Targeted Killing And Drone Warfare,” *Daedalus* 145, no. 4 (2016): 14

<sup>107</sup> Seumas Miller, “The Ethics of Targeted Killing: Osama Bin Laden, Drones And Counter-terrorism,” *Public Affairs Quarterly* 28, no. 4 (2014): 322.

the identity of the targeted individuals and their direct ties to the targets of the AUMF 2001.<sup>108</sup> Indeed, a soldier can never be a ‘suspected combatant’, but there have been numerous suspected terrorists. There have been good reasons as to wonder whether the vetting process before the RPA strikes have been strict enough to determine whether the targeted suspects were in fact a legitimate terrorist target as dictated by the AUMF 2001. It is important to know whether, the combatant is actually a combatant, but the covert nature of the CIA’s targeted killings make this difficult to assess. However, as I have stated before in this research, the intelligence process has been muddy and often faulty before the CIA’s carried out its RPA strikes on numerous occasions in various nations.

The CIA’s RPA strikes have accounted for many non-combatants deaths in all three of the discussed nations in this research. Especially, the rise of signature strikes has led to a rising unnecessary civilian death toll. Many scholars agree that the signature strikes carried out by the CIA and JSOC are a breach of the principle of discrimination as dictated in *jus in bello*. RPA strikes by themselves are often carried out in populated areas where many residents live their day-to-day lives. Numerous strikes carried out in such regions have led to collateral damage and also important psychological damage to residents. The fear of constant death from above infringes on the right to life of all sentient beings. Signature strikes are carried out on the criteria of certain behavior of a suspected target and thus a person might fear for his life due to his daily chores and behavior. Signature strikes fail to discriminate between combatants and non-combatants. During the Obama administration, which saw a rise in signature strikes, a disputed method of counting collateral damage was used which involved counting all military aged males in the target area as combatants.<sup>109</sup> This meant that anyone who was surrounded within the vicinity of the targeted terrorist became legitimate target. This has been scrutinized by many scholars as a way to defend the targeted killings of the CIA, in light of collateral damage and indiscriminate. As Walzer states, that the United States was not aiming to kill men of military age, fifteen years and up, but Washington did make them liable to be killed.<sup>110</sup> The CIA did not know other than their gender and presumed age, yet they passed as legitimate combatants and targets. Indeed, as Hall and Coyne argue, the intelligence process is often imperfect. Decision makers behind the RPA strikes have relied on patterns of behavior that have been determined to be general behavior or ‘signatures’ of terrorists.<sup>111</sup> Targeted killings are at default discriminatory surgical strikes against a target ought to be killed. At least in principle, the problem of distinguishing the terrorist from the civilian is substantially reduced by the practice of targeted killing, especially when one compares it to other tools in warfare. Some intelligence

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<sup>108</sup> Daniel Restrepo, “Naked Soldiers, Naked Terrorists And The Justifiability of Drone Warfare,” *Social Theory And Practise* 45, no. 1 (2019): 111

<sup>109</sup> “Will I be Next: U.S. Drone Strikes in Pakistan,” Amnesty International, accessed December 12, 2024, [https://www.amnesty.nl/content/uploads/2016/08/will\\_i\\_be\\_next\\_us\\_drone\\_strikes\\_in\\_pakistan\\_091013\\_final.pdf?x32866](https://www.amnesty.nl/content/uploads/2016/08/will_i_be_next_us_drone_strikes_in_pakistan_091013_final.pdf?x32866)

<sup>110</sup> Michael Walzer, “Just And Unjust Targeted Killing And Drone Warfare,” *Daedalus* 145, no. 4 (2016): 17

<sup>111</sup> Abigail R. Hall, Christopher J. Coyne, “The Drone Paradox: Fighting Terrorism With Mechanized Terror,” *The Independent Review* 23, no. 1 (2018):57-61

investigations have indeed been faulty, mistakes in identity have been made and discrimination has been sloppy. Would it be safe to say that the difficulties surrounding distinguishing between terrorists and civilians is not sufficient ground to claim that the practice of targeted killing have not been morally and legally prohibited.

To conclude this final chapter, the legal basis for the CIA's RPA strikes, the AUMF 2001 was drafted in the wake of the attacks on 9/11. It ought to provide a legal basis for the hunt on the culprits behind the terrorist attacks and their affiliates. However, since the AUMF 2001 has been broadly interpreted by various administrations, it allowed for RPA attacks by the CIA and JSOC in various regions directed towards various individuals and groups. Domestically, the validity of the targets under the AUMF 2001 has been questioned, but since the CIA program has a covert nature, it has been almost impossible to assess the validity of the program due to a lack of congressional oversight of the executive branch. More importantly, to answer the sub-question of this chapter, how did the AUMF 2001 relate to the just war theory, first, it has been debated by various scholar whether the CIA's RPA strikes have been in accordance with the principles of the just war theory or the international law of war. The United States have argued since the wake of 9/11 that it is at war, however whether the acts of terror on the United States soil can be labeled an armed attack and thus act as a pretense for a military response, as is justifiable by law, is debatable. Second, the covert nature of the CIA's RPA program has made it difficult, if the United States could be labeled at war, to assess whether the targeted persons were affiliated to the targets outlined in the AUMF 2001. Furthermore, if the United States were legitimately at war, then the principles of the just war theory which include discrimination between combatants and non-combatants apply. Thus, the RPA strikes have failed to live up to the principles of the just war theory.

To Conclude, the RPA had an unconventional coming to be in the 1980's, being built in a garage by a former Israeli Air Force engineer, it gained the attention of policy makers in the Pentagon and on Capitol Hill. In the wake of terrorist attacks in the 90's on American military personnel overseas, the need for intelligence gathering was high at the headquarters of the CIA in Langley, Virginia and at the DoD. After *General Atomics* had acquired the predecessor of the Predator RPA, the American company would work on an improved RPA that would be able to gather real-time intelligence for the CIA and the Pentagon. The CIA would fly the first *RQ-1 Predator* RPA's over the Balkan during reconnaissance missions in the 90's. The *RQ-1 Predator* was outfitted with multiple sensors that could identify targets and their surroundings which were deemed a game changer for policy makers in Washington. The Pentagon was satisfied with the result of the outcome of their operations in the Balkan thanks in part to the use of their new military gadget, the *RQ-1 Predator* and the United States Air Force took it under its wing. The *RQ-1 Predator* had been outfitted with GPS, night vision and infrared real-time cameras and a laser targeting designator at the end of the Balkan conflict in the '90's. The laser designator made it possible for the *RQ-1 Predator* to pinpoint targets which could be neutralized by a fighter plane. The *RQ-1 Predator* could not yet take out targets on itself and relied on other fighter planes to deal the finishing blow.

In the wake of the terrorist attacks on the U.S.S. Cole, the American military barracks in Beirut and the American embassies in Kenia and Tanzania by Al-Qaida, the CIA had set its goal of finding Osama Bin Laden who was wanted as a mastermind behind the attacks. A year before the attacks on September 11, 2001, the CIA was flying a *RQ-1 Predator* over Afghanistan when it thought for certain to have found Bin Laden in a camp. It was unfortunate for the CIA that the *RQ-1 Predator* was not outfitted for military strikes. The Director of the CIA George Tenet became a convert after the 'Bin Laden incident' and after the CIA raised the issue on Capitol Hill, the calls to outfit the *RQ-1 Predator* with armaments grew among policy makers. Early 2001, the first successful tests with an armed *Predator* RPA were conducted using a *Hellfire* missile. It wouldn't be long until the CIA could strike at a live target. In the aftermath of the terrorist attacks on 9/11, Congress passed the *Authorization for the Use of Military Force* (AUMF 2001), which authorized the use of military force against the culprits behind the attacks affiliates and states harboring them. The CIA which failed to thwart the plot, became the most powerful organization in Washington as it led the hunt against Al-Qaida.

The CIA was granted a carte blanche with the AUMF 2001 and had its desired killer weapon, the armed and newly christened *MQ-1 Predator* RPA. The CIA would go on to strike targets across the globe first in conventional war zones such as Afghanistan but soon it would also attack targets in non-combat zones such as Pakistan, Yemen and Somalia. The CIA would practice a targeted killing program in their hunt for terrorists which included personal strikes that were aimed at individuals that came from a list in Washington and gathered intelligence. However, soon after the CIA practiced a second method of targeted killing, signature strikes which often failed to discriminate between combatants and non-

combatants due to the nature of the strike, which relied on the individual's behavior and daily patterns that could be interpreted as characteristics of Al-Qaida and affiliates.

As the strikes on suspected terrorists went on, so did rise the number of casualties and that of civilians, especially during the Obama administration. The CIA would continue its covert targeted killing program using the *MQ-1 Predator* and shortly before the Obama administration it would gain its successor, the more deadly and designed for combat *MQ-9 Reaper* RPA. Who, the CIA targeted remained classified and accountability remained minimal due to the fact that for a long period of time, the CIA operated under *U.S.C. Title 50*, which did not require public disclosure. Thus, it would almost be impossible to know whom the CIA targeted with an RPA and also why. The targeted killings by the CIA took place in non-combat zones, outside of conventional battlefields, sovereign nations with which the United States had no quarrel. These non-combat states were Pakistan, Yemen and Somalia. In Pakistan, it was the FATA region, housing Al-Qaida affiliates and Taliban sympathizers which was hit by targeted killings and the strikes resulted in many casualties, also among civilians. Due to a secret deal crafted between the CIA and Islamabad, the CIA tried to downplay or outright hide its role in the attacks yet was granted the authority to carry out the targeted killings. During the Obama administration the CIA became more hostile in Pakistan and the agreement between Pakistan and the CIA was cut leading to more strikes in the FATA region. The CIA deemed Pakistan's intelligence community as too much an enabler of terrorist activity in the region and especially Afghanistan.

The targeted killing program took a worse turn during the first years of the Obama administration when the practice of a second strike was adapted. The second strike involved attacking any rescuers after the initial strike leading to numerous civilian casualties. The number of casualties grew exceedingly during the Obama administration which saw a surge in targeted killings. Furthermore, under the Obama administration, to make the civilian death-count more lenient, the practice of targeting military aged males (MIM) was adopted. This meant that whoever between the ages fifteen and up was in the vicinity of the target during the RPA strike, was deemed a legitimate enemy combatant by the CIA. There was no clear discrimination between combatants and non-combatants nor was there due to the covert nature of the CIA's RPA program any proof which could argue that faulty intelligence was not at play.

In 2011, the United States at last took out Bin Laden after the CIA had found him in Pakistan. Although Bin Laden would not be neutralized by a RPA, the evidence which was taken from his hideout would provide more targets for targeted killings by RPA's. Alleged communication between Al-Qaida and Al-Qaida in the Arabian Peninsula (AQAP) and the conclusion of the Senate Intelligence Committee, in the aftermath of bomb plots against the United States, provided a reason for the CIA to strike suspected terrorists in Yemen. Especially after DoD caused too many civilian deaths in Yemen, the CIA took over counterterrorism operations. The CIA would begin their hunt of BinLaden supposed

successor in Yemen, its organization and affiliates. The death toll under civilians in Yemen grew exponentially, especially after JSOC also stepped in with their counterterrorism operations. Mass casualties led to the famous NSA whistleblower Edward Snowden coming forward providing data on the civilian toll of the RPA strikes. Another whistleblower, U.S. Army intelligence analyst Chelsea (Bradley) Manning would do the same after witnessing the toll of the CIA's and JSOC's shadow war in Somalia. The CIA deemed Mogadishu's suspected Al-Qaida presence as part of a global Al-Qaida network and thus legitimate targets for targeted killings.

The legality of the targeted killings in Pakistan, Yemen and Somalia has been debated by scholars. Since the aftermath of the attack on 9/11 and the passing of the AUMF 2001 in Congress, various officials in the United States, including the President and his legal advisors have argued that the United States has been at war with Al-Qaida and its terrorist affiliated groups. It is perfectly legal for a nation to defend itself against an armed attack in self-defense according to the United Nations Authorization to self defense. However, it is debatable whether the terrorist attacks on 9/11 amount to an armed attack. And if the United States were actually at war with a non-state actor such as Al-Qaida, then the principles of the just war theory should be applied by the CIA in their counterterrorism operations. The just war theory derives from the law of war, and it encompasses two important principles. The first principle is that of *jus ad bellum*, which dictates that the war must be fought for a 'just' cause and should be the option of last resort. Officials in the United States, including the President have argued that they are fighting a just cause, namely Al-Qaida and its affiliates. Officials in Washington have argued that Al-Qaida has attacked the United States on 9/11 and that the United States has the right to strike the organization and its affiliates. If the United States were in their right and were legally allowed to attack the individuals targeted by the CIA in non-combat zones, then those targeted individuals should have a clear relationship with the deemed enemy in the AUMF 2001 that Congress passed.

The covert nature of the CIA's RPA strikes makes it impossible to know the identity of the targeted individuals and their alleged relationship with the culprits behind the attacks of 9/11. The missing intelligence on those who are targeted by the CIA makes it hard to understand their relationship with the AUMF 2001, which ought to be the legal backing for the CIA's targeted killings. The targeted killings have been the result of two different administrations in the White House that sidelined Congress and chose to interpret the AUMF 2001 at their own liking. In part it is due to the AUMF 2001's form as the sixty words law provided no geographic boundaries for operations, or expiry date. Yet the AUMF 2001 granted the President as the Commander in Chief the power to use military action against whoever he may interpret as a part of, or an affiliate of the enemy as laid out in the AUMF 2001, wherever he/she may be. To genuinely know whether the targeted victims had ties with Al-Qaida, full disclosure should have been granted to Congress. Full (Congressional) disclosure would also encompass the assurance that civilians and/or individuals with no ties to Al-Qaida, the culprits behind 9/11, were not targeted. Furthermore, full disclosure would also address the legitimacy of the threat that the United States faced

coming from the targeted individual. The AUMF 2001 granted the President the power to take military action in order to stop further future attacks on the United States. The intelligence which ought to prove that the targeted individuals by the CIA were planning an attack on United States' soil is missing due to the covert nature of the CIA's targeted killing program. Thus, it is impossible to know whether an RPA strike on a suspected target abroad was legitimate and in accord with the AUMF 2001. Preventative military action or war is prohibited by the law of war, since it is not a just cause. One can not legally strike a target to make sure that the target does not pose a threat in the future. There has to be legal justification, namely a legitimate threat, planned attack or plot. Furthermore, if terrorism is indeed an act of war, then military action could be argued to be the right approach, however, if that is not the case, then more so, should military action not be the first approach. If terrorism is not accounted to an act of war, but more in accord with an act of crime, then apprehension of suspects in order to bring them in front of the court of law is preferable and extrajudicial killings of suspected terrorists would be a breach of international law.

If the United States were indeed at war with Al-Qaida, then the CIA should have to abide by the second principle of the just war theory, namely *jus in bello*, which dictates that military action should be proportionate. However, the evidence in the wake of the targeted killings by RPA's is proof of the contrary of proportional military action. The RPA's strikes have had a devastating effect on the suffering and loss of human lives in Pakistan, Yemen and Somalia. The number of casualties of non-combatants grew exponentially over the years, especially during the Obama administration to hundreds. Many of the unnecessary civilian casualties are due to unreasonable practices such as the 'second strikes' which would target the same area with rescuers on site, and the counting of any military aged males (MIM) in the vicinity of the RPA strikes as legitimate targets. *Jus in bello* dictates that any lawful attack must solely be directed at a legitimate target, namely a conventional combatant, a member of an armed group, or a civilian who is actively participating in hostile operations. The targeted killings program has failed on numerous occasions in different nations to effectively discriminate between individuals. To effectively be sure of who is a legitimate member of Al-Qaida and/or its affiliates with ties to the attack on 9/11, the CIA would have to grant full disclosure on the targeted victims of the RPA strikes. Only a legitimate target, an enemy combatant with proven ties to Al-Qaida and 9/11 could have been legally attacked, if the United States were indeed at war. Striking a target that the CIA suspected of ties to Al-Qaida due to various reasons would not be justifiable by law. In the practice of modern warfare, under the rules of law, a soldier, a conventional combatant is more often than not a legitimate target, but he/she is never a suspect-combatant. The CIA's practice of signature strikes has failed to live up to the standards of the principle of discrimination, as dictated by *jus in bello*. The CIA's 'signature strikes' have relied on the behavior of targeted individuals that would be interpreted by CIA analysts as characteristics of Al-Qaida and affiliates. The CIA's 'personal strikes' which were the result of intelligence gathering, if to be legitimate under the law of war, would have to be grounded in rock solid proof showing ties

between the target and the AUMF 2001. However, it has been suggested that the intelligence gathering process is often muddy and not as clear as it should be, and moreover, the covert nature of the CIA's intelligence gathering process makes it impossible to determine whether the targets would have been in accord with the just war principles and the AUMF 2001.

Just as many of the signature strikes, so too have the practices of second strikes and counting MIM's failed to discriminate between legitimate targets. In blatant violation of the principles of just war theory, no proof of ties between the targeted individuals and the target as outlined in the AUMF 2001 is disclosed other than the mere interpretation of CIA analysts and reliance on their intelligence process. The RPA strikes have also been disproportionate in the way of affecting not only those which bear the physical effects of the strikes, but the mental effects. By international law, all individuals have the right to a fair life under normal circumstances. The data on the effects of targeted killings have laid bare the psychological effects on the populations that have been affected by the RPA strikes. For many non-combatants, the fear of RPA's flying overhead, looking for a target to strike based on disputed practice, have made a fair living, as granted by international law, more often than not impossible. Many non-combatants must have questioned themselves whether they could be next, as a victim of a signature strike, or a second strike, or a MIM casualty. Thus, were the American military drone strikes in the post 9/11 era justified taking the Just War Theory into account? To argue that the targeted killings were justified in light of the just war theory, one would have to wholeheartedly believe that the intelligence process of the CIA is thoroughly reliable. Furthermore, one would have to take the CIA's word as proof of the agency operating in accordance with international law, and also as the legitimacy of targeted killings. However, since the intelligence process of the CIA has been disputed, and full disclosure is missing, it is safer to assume that the targeted killings undertaken by the CIA are more often than not a clear breach of the principles of the just war theory and not justifiable.



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