ABSTRACT

This thesis portfolio examined the targeted-killing program inherited – then enhanced – by President Barack Obama. These topics were selected because as future officials and scholars make important decisions about the future of the program and conduct research on it, it is important to better understand the impacts of what has been dubbed a new way of war. Chapter One examined whether the targeted-killing program hindered the pursuit of U.S. foreign policy goals in Afghanistan and Pakistan. Chapter Two examined whether access to armed drones and elite commandos transformed what many experts considered an anti-war philosophic Liberal into a hawkish Realist. Chapter Three examined the program’s legality. The portfolio analyzed scholarship on U.S. war powers, the Constitution, existing U.S. laws, as well as Obama’s statements, writings, actions and his administration’s internal policy documents that were germane to his philosophy and the targeted-killing program during the examined span (early 2007-May 2014). Chapter One determined the program had a net positive effect on the pursuit of U.S. goals in the Afghanistan-Pakistan region during the examined timeframe (between September 2001 and December 2012). Chapter Two determined the program did not alter Obama’s philosophy, but in many ways, embodied his hybrid philosophy. And Chapter Three concluded that the program challenges some boundaries, but overall is legal. This research is important because the use of drone strikes and special operations raids – this new way of war – inside sovereign countries where the United States has not formally declared war is expected to continue under future commanders in chief. Therefore, this portfolio makes a contribution by shedding more light on the targeted-killing program’s real-world impacts, and could help better inform decision-makers and scholars as they shape the future scope of the program and conduct additional research about it.

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PORTFOLIO INTRODUCTION

John Rizzo, a former acting CIA’s general counsel, made clear in his 2014 memoir that the use of armed drone aircraft to take out al-Qaeda leaders and potentially other U.S. foes likely has become a permanent part of the American warfighting arsenal. Rizzo wrote “the drone program is here to stay, not just under Obama but whoever his successors may be. … The technology has gotten so good and is bound to get better." The Obama administration’s targeted-killing program, and its reliance on drone strikes and special-operations raids, often have been compared to America’s post-9/11 protracted ground wars under the George W. Bush administration. As Rizzo notes, even most of the program’s critics concede drone strikes are “a far more preferable option for any presidential administration than ‘boots on the ground’ and flag-draped coffins arriving at Dover Air Force Base.” Rizzo -- a 34-year CIA lawyer who was its acting general counsel from 2001-2002 and again from 2004-2009, as well as deputy general counsel from 2002-2004 -- predicts future commanders in chief will follow Obama’s use of drones, and then “double down on it,” including by deploying their senior lawyers to “duly rationalize its lethal actions as being totally in accordance with international law.” And when and if that occurs, Rizzo expects his former spy agency to “be in the middle of it without hesitation or resistance.” The former senior CIA lawyer’s comments dredge up a slew of policy and legal questions that this thesis will attempt to address, aiming to further some existing research and serve as a building block for future national security and presidential scholarship.

This thesis trilogy will examine the targeted-killing of senior al-Qaeda leaders by U.S. President Barack Obama and his administration, which inherited the program from the previous administration – and then dramatically ramped it up in an aggressive attempt to defeat the Islamic extremist organization by eliminating its top leaders. Such an examination is important at this time, as Obama’s second term already is being somewhat overshadowed by the emerging field to become America’s next commander in chief. Experts say it is likely that Obama’s successor will inherit and continue the targeted-killing program, especially as drone aircraft technology continues to become more precise – and more lethal. That means a

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2 Ibid
4 Rizzo, “Company Man,” p300
5 Ibid
list of unresolved policy questions must be examined. This thesis attempts to inform that debate by adding to existing scholarship on the program and serving as a starting point for future academic work.

The thesis also is one about a presidency, one of the most controversial and closely scrutinized in some time – especially Obama’s foreign policy and national security decisions. Many presidential scholars take a broad view of executives’ time in the White House. This thesis is a niche study of one aspect of Obama’s evolution from a candidate to a nominee to president-elect to commander in chief. This portfolio will add not only to existing global security studies and related academic scholarship, but importantly, the chapters will add to the work of presidential scholars by explaining Obama’s national security and foreign policy philosophy, and showing how it was largely enabled by his inheritance and ramping up of the armed drone and commando raid program. The third chapter provides insights into how Obama and his top aides view and interpret the Constitution, something that should help define how future scholars judge his eight years as the Chief Executive. Future presidential scholars can build on this work in a number of important ways as they try to better understand what many see as an enigmatic presidency.

To be clear, the Obama administration has used drone strikes and special operations raids to kill thousands of alleged al-Qaeda militants and leaders⁶. The program has been operationally effective. But it could also be a double-edged sword due to questions about the ramifications of issues such as civilian casualties and angering governments central to the pursuit of U.S. objectives in places like Pakistan and Yemen. It is into this debate that this portfolio delves, attempting to determine whether the program hinders or helps the pursuit of U.S. goals, whether it could transform what many viewed as an anti-war presidential candidate into a largely unchecked assassin-in-chief, and whether it is legal.

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The first paper in this trilogy focused on the effect the Obama administration’s use of drones and commando raids had on the pursuit of U.S. national security and foreign policy goals in Afghanistan and Pakistan. The aim of this paper was to determine whether the targeted-killing program is a viable and sound alternative to other approaches for fighting al-Qaeda and similar groups. The author hoped to add to existing scholarship by reaching informed conclusions about whether the policy has hindered the pursuit of

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American foreign policy and national security goals in that region from January 2009 until December 2012. Such an analysis could help future scholars build on any findings by, for instance, emulating this paper’s approach in an effort that spanned a longer timeframe, therefore, presenting a more nuanced picture of the targeted-killing program’s impact on U.S. goals.

This paper featured this research question: How did the United States’ increased reliance on covert CIA/military special operations missions and drone strikes affect the pursuit of its foreign policy and national security goals in Afghanistan and Pakistan between January 2009 and December 2012? The paper argues that the shift to a strategy based largely on commando raids and drone strikes was a necessary evolution that had a net positive impact on the pursuit of U.S. foreign policy goals in the Afghanistan-Pakistan region from 2009 through 2012. It used a counterfactual Tora Bora mission construct to examine the commando-raid element of the targeted-killing program that, along with an economic-impact analysis and the finding of a “functional relationship” with Pakistan, proved a net positive finding.

This paper used two case studies, one that examined the use of elite American special operations forces and a second mostly focused on the use of armed drone aircraft. The former focused on an alternative 2001 operation at Tora Bora in Afghanistan with a force mix more in line with the covert-action missions employed by President Obama; and the latter analyzed the U.S. drone-strikes and special operations missions inside Pakistan between January 2009 and December 2012. It is imperative here to make clear that the Tora Bora case study is intended to examine only the use of special operations forces – not armed drone aircraft. It featured a counterfactual analysis of a similar American operation at Tora Bora against the same alleged al-Qaeda and Taliban leaders. This case study used a counterfactual analysis to examine the foreign-policy impact of a successful alternative Tora Bora battle plan that used more U.S. military special operations forces and CIA personnel than did the actual mission. Unlike the actual mission, U.S. special forces – not Afghan troops -- were given the lead role in the mission and backed up by the conventional forces requested by commanders on the ground before the actual mission. This allowed an identification of possible alternative outcomes of a U.S.-led mission featuring more American special operations troops, one more in line with the later Obama approach that relied more heavily on special operations forces. (Again, this case study is not an examination of the American drone-strike program.) This kind of analysis helped determine which pre-2009 approach – conventional versus Obama-preferred
commando teams – better advances the pursuit of U.S. national security and foreign policy goals in the region during the examined timeframe.

The Pakistan case study also is not merely an examination of the use of drone strikes. Rather, it used a counterfactual analysis to examine whether a mission conducted by a joint U.S.-Pakistani force would have had as much, less or the same chances of success as the actual team used in the Abbottabad mission. The paper used issues like civilian deaths from drone strikes, the ebbs and flows of U.S.-Pakistani disputes over issues like transportation routes and the scope of the U.S. drone program inside Pakistan, and other issues during the examined timeframe to determine the net effect on pursuit of U.S. goals in the region. Together, the two case studies allowed for an in-depth examination of the merits and shortcomings of missions with similar aims, but very different force compositions and outcomes. The paper also examined the economic costs of the 2001 to 2009 U.S. approach to the Af-Pak war, and projected the costs of the Obama approach to determine the impact on the pursuit of U.S. goals. The paper argues any policy analysis of a war approach must look at the economic impacts because only a holistic analysis of a policy provides an accurate picture – in short, if a war approach/policy expends massive treasure with little strategic return, one could argue the approach/policy was net negative. Ultimately, the first chapter concluded the program, during the examined time period, had a net positive impact on the pursuit of U.S. goals in Afghanistan and Pakistan during the examined period.

The trilogy’s second chapter focused on whether the drone strike- and special operations-based approach altered the foreign policy and national security philosophy of an incoming president. The aim in this chapter was to determine whether the ability to launch drone strikes in or insert special operations troops into sovereign countries could alter the philosophy of a new commander in chief that entered office with a reputation for being an anti-war philosophic Liberal on the campaign trail. This chapter features this research question: Did the post-2008 increased use of aerial drone strikes and covert action missions alter the foreign policy and national security philosophy of Barack Obama through May 2013? The second chapter argues Obama, from the campaign trail as early as 2007 through May 2013, was a consistent foreign policy/national security “hybrid situationalist,” which I defined as using the parts of Liberal and Realist philosophies in certain situations depending on specific circumstances and specific desired outcomes. This definition and characterization is an important addition to existing scholarship because of
the heated debate on pegging Obama as a member of one philosophic camp. This kind of characterization is important also to gauge whether a new way or conflict, which experts say is here to stay, could change the approach of a commander in chief – possibly in a dangerous way.

The second paper used Obama's own words and actions as a candidate and as president during his first term to determine whether his foreign policy and national security philosophy evolved between 2007 and May 2013, or whether it changed very little. It is important to note in this introduction that I noticed a hawkish side to Candidate Obama on threats he felt were the country’s top threats (for instance, al-Qaeda in the Af-Pak region but not the Iraq war). This is why I was interested in the topic. This paper examined three foreign policy and national security philosophies: Realism, Liberalism and Neoconservatism. Realism and Liberalism were the camps into which most existing scholarship placed Obama. The paper also examined Obama’s campaign and administration advisers and mentors, then compared their philosophies to his rhetoric and actions.

The paper used two case studies – one focused on Obama’s approach to battling al-Qaeda in Pakistan and Yemen, and a second focused on his policy toward Iran. It applied the Realist, Liberal and Neoconservative philosophies to each situation to determine what a policy based on each would look like in practice. This approach allowed the author to diagnose Obama’s philosophy by identifying the one – or ones – his preferred course(s) of action most closely resembled. It also helped the paper determine how closely President Obama’s actions remained true to the philosophy described by Candidate Obama. This metric helped determine if the drone strike-covert action policy altered Obama’s foreign policy/national security philosophy.

The Iran case study showed Obama – during the part of his presidency examined in Chapter Two – mostly employed a course of action that aligned with the Liberal approach in efforts to end that nation’s alleged nuclear-arms ambitions – with a touch of Realism (for instance: the Stuxnet virus attack). Obama’s course of action on Iran most resembled the Liberal philosophy during that timeframe by working through multinational entities to impose strict sanctions on Iran. If Obama was a strict practitioner in the Realist philosophy, he would have been most likely to have launched a conventional military strike on Iran’s nuclear weapons facilities or secondary targets. However, the Realist-like Stuxnet cyber strike on Iranian nuclear program that is widely accepted as ordered by Obama shows his “hybrid situationalist” philosophy
at work. Meantime, the Pakistan-Yemen case study showed, by expanding the drone strike-covert action program begun by the previous administration, Obama during that timeframe also was willing to employ aspects of a Realist philosophy applies in certain situations. This is apparent in his willingness to violate the sovereignty of other nations by carrying out drone strikes and special operations missions on foreign soil without seeking permission from nor informing those nations’ leaders. Ultimately, the paper deemed Obama a user of multiple philosophies, but determined the targeted-killing program he inherited and ramped up did not alter his approach.

The final paper in the targeted-killing trilogy examines the program’s legal standing. This kind of policy-based analysis was built around a focus on the intent of the Constitution, existing laws, and historical precedents, and a discussion of the intent of the Founding Fathers. Collectively, this allowed for a methodology to construct a box of legality. Analyzing those things and the Obama administration’s interpretations and applications of them then allowed to determine whether the program fits inside the box and is, therefore, legal. The paper featured this research question: What aspects of the Obama administration’s targeted-killing program using armed drones and covert raids are legal, considering the intent of the U.S. Constitution and existing U.S. laws and standards, as well as historical precedents set during wartime and emergency conditions? The chapter argues that, overall, the program fits just within the box constructed by the methodology designed to measure legality, and based on the intent of existing laws, the Constitution, historical precedent and warfighting standards.

The paper argued that an Executive Branch-orchestrated targeted-killing program really is an examination of U.S. war and emergency powers. Since those stem from the Constitution, the paper’s legality criteria was constructed to give the authorities assigned by the Constitution the most emphasis. The criteria was next built to factor in historical precedents, using a review of how Constitutionally-assigned authorities have shifted and morphed over time. The paper also examined specific incidents and cases that set precedents by altering U.S. war and emergency powers. The paper assigned the next amount of emphasis to the intent behind the 2001 Authorization of the Use of Military Force, and its applicability to the Obama administration’s use of it to justify its drone strikes and covert raids. A review of past court cases and existing literature showed there is a clear precedent that U.S. laws and standards can be treated as elastic during war and emergency – but never allowed to be ignored or broken. Therefore, such a practice
of elasticity, if evidence showed such an approach was used by the Obama administration, would lean
toward legality and was given the next amount of emphasis. Finally, compliance to war fighting standards
like the Civil War-era Lieber Code’s standards were factored in last.

The third paper determined that a substantial precedent exists in the United States of interpreting
the Constitution’s war powers and adjusting existing laws to meet the specific demands of war and
emergency periods. The Obama administration, as the paper showed, did just that in its legal justification
for the targeted-killing program. Granted, specific strikes and missions, it can be argued, seem to violate
laws and standards. But given a government-wide precedent of allowing laws and standards to be adjusted
during wartime, the paper determined the program is legal.
CHAPTER ONE
FUNCTIONAL RELATIONSHIPS
TARGETED KILLING DISMANTLED AL-QAEDA. DOES IT ALSO DISMANTLE U.S. FOREIGN POLICY GOALS?

RESEARCH QUESTION
How has the United States’ increased reliance on covert CIA/military special operations missions and drone strikes affected the pursuit of its foreign policy and national security goals in Afghanistan and Pakistan between September 2001 and December 2012?

INTRODUCTION
In the decade following the Sept. 11, 2001 terrorist attacks, U.S. leaders have given more and more authorities to American intelligence agencies. Missiles fired by intelligence agency-controlled unmanned aircraft have routinely killed suspected al-Qaeda targets from Pakistan to Iraq to Yemen. CIA-operated drones have killed American citizens on foreign soil. The agency has steadily ramped up its use of unmanned aerial vehicles to target al-Qaeda leaders. One Washington think tank concluded there were 54 reported U.S. drone strikes in Pakistan during 2009 alone, Obama’s first year as president; there were around 45 during the eight years of the George W. Bush administration. These moves have transformed 21st century warfare away from one where conventional forces rumble around battlefields toward highly precise strikes carried out by elite commandos and machines.

The team of elite military commandos who conducted the bold May 1, 2011 raid that killed al-Qaeda leader Osama bin Laden were that night under the command of the Central Intelligence Agency – not the Defense Department. The raid was the high point since a 2009 policy shift made by President Barack Obama that America’s top goal was to dismantle and destroy al-Qaeda. Scholars have written and debated what they call a blurring of the lines between CIA operatives and military troops. Designers and advocates of these new authorities and roles say it would be impossible to achieve the Obama administration’s narrowed goal of dismantling the al-Qaeda network and its allies in the Afghanistan-

Pakistan region. This paper will examine how these new authorities have affected how Washington pursues its foreign policy goals in the Afghanistan-Pakistan (Af-Pak) region. It will then conduct several comparative case studies to determine whether the new authorities and roles have furthered or hindered the pursuit of U.S. foreign policy in the region.

This paper will examine two case studies, both of which are aimed at examining both parts of the Obama administration targeted-killing program: drone strikes and special operations forces. The first is an analysis solely focused on the use of special operations troops – it does not analyze the use of armed drone aircraft. It is based on the 2001 operation at Tora Bora but using an alternate force mix to determine the prospects for success of a force more in line with the Obama administration’s approach of relying more often on special forces. The second case study is aimed at examining both drone strikes and the use of special operations forces. The second case study analyzes the use of U.S. covert-action and drone-strike policy inside Pakistan. It features a counterfactual analysis of an American operation in the region against al-Qaeda leaders, while the latter allows informed conclusions about how the use of covert action missions and drone strikes affects Washington’s relations with the nation where said U.S. actions are occurring. Together, the two cases allowed for an in-depth examination of the merits and shortcomings of missions with similar aims, but very different force compositions and outcomes. The paper argues that the shift to a strategy based largely on covert action and drone strikes was an evolution that has bolstered the pursuit of U.S. foreign policy goals in the Afghanistan-Pakistan region during the examined period.

Standing in the White House’s East Room just before midnight on May 1, 2011, President Obama informed the world that American forces had killed al-Qaeda leader Osama bin Laden. It would be several days before key details about the brazen commando raid would surface. But Obama also summed up America’s top goal in the Afghanistan-Pakistan region. Obama offered many subtle clues during his remarks. “Shortly after taking office, I directed Leon Panetta, the director of the CIA, to make the killing or capture of bin Laden the top priority of our war against al-Qaeda,” Obama said. That direction to Panetta was the first step toward a new top priority, which Obama himself summed as a plan to “disrupt, dismantle,
and defeat al-Qaeda in Afghanistan and Pakistan, and to prevent it from threatening America and our allies in the future.

With just six words, the commander in chief altered America’s goals in the Afghanistan-Pakistan region. As part of the analysis for this paper, I will take a broader view than existing scholarship in attempting to measure how successes and setbacks of the increased reliance on covert action has affected the pursuit of U.S. foreign policy objectives in the Af-Pak region.

Notably, Obama’s statement focused mostly on the U.S. intelligence community, not the U.S. military. Though it has been widely known for a decade that the nation’s intelligence community has been heavily involved in the campaign against al-Qaeda – as well as the Iraqi conflict – the bin Laden raid offers clues into just how much Washington has broken new ground by assigning what traditionally have been military tasks to its intelligence agencies. The mission also highlights the extent to which U.S. leaders have made the military’s special operations forces the go-to troops for America’s most strategically important and sensitive operations. A close examination of the words Obama used offers clues into how the raid represented a new U.S. approach: “A small team of Americans carried out the operation with extraordinary courage and capability.” The president’s avoidance of calling the troops “military forces” (or something similar) was a signal: Long-established lines between covert CIA and special operations forces had not just been blurred since 9/11; they had been erased.

**Literature Review**

The literature review portion of this paper will seek to identify possible outcomes of a policy for targeting a shadowy terrorist network using covert forces and unmanned aircraft strikes. To this end, the paper will examine the impact the policy has had on al-Qaeda top ranks; the pros and cons related to public backlash from the new policy; the debate about precision strikes and civilian casualties; how the policy has altered America’s relationships in the region; and the cost and economic implications of such a policy vis-à-vis a protracted ground-troop heavy operations. To do so, the author will use statics of al-Qaeda leaders and operatives killed by covert U.S. special operations missions and drone strikes, as well as Afghan and Pakistani civilians killed in those missions. The paper also will employ metrics such as credible sources that examine how much Washington spent on the alternative: Post-9/11 protracted counterinsurgency.

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32 Ibid
missions that focused mostly on nation-building. The author will examine how the economic effects of the 2001-2008 U.S. strategy, which allow one to estimate how a covert/drone strategy would be different. Finally, the literature review will weigh the pros and cons of the aforementioned potential outcomes to determine the net effect of the covert/drone policy.

Washington’s Relationships

Washington’s shift to an increased reliance on special military forces and CIA commandos raises a list of issues about its pursuit of foreign policy goals. Those include things like how America treats and interacts with its longtime partners – and new ones from which it seeks assistance in the fight against al-Qaeda. Before the shift toward increased reliance on special operations and CIA covert forces, U.S. military bases in other nations typically were large facilities with hundreds or thousands of personnel. That’s no longer the case. The Obama administration quietly has erected “a constellation of secret drone bases for counterterrorism operations in the Horn of Africa and the Arabian Peninsula.” The new drone bases typically feature a single or a few nondescript buildings and only up to 100 personnel. The Obama administration’s top counterterrorism official, John Brennan, in April 2012 offered a window into how the use of unmanned aircraft strikes has given the U.S. war on Islamic extremists a strategic boost. “Large, intrusive military deployments risk playing into al-Qaeda’s strategy of trying to draw us into long, costly wars that drain us financially, inflame anti-American resentment and inspire the next generation of terrorists,” Brennan said. But scholars like Georgetown University’s Rosa Brooks question the net impact of drone strikes. Brooks has written that “the advantages of drones are often as overstated and misunderstood as the problems they pose.” That is because, among other issues, “drone technologies temptingly lower or disguise the costs of lethal force.” What is more, Brooks concluded that the “apparent benefits” of drone strikes might “mask their potentially dangerous longer-term costs and the broader strategic consequences.”

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14 Ibid
17 Ibid
18 Ibid
Brennan’s comment shows one possible outcome is U.S. officials are comfortable with, for the most crucial missions, risking the creation of ill will with some of its allies by opting against including indigenous forces in such operations. To that end, Brooks’ assessment suggests the consequences from the use of drone strikes can be long lasting and undermine Washington’s broader strategic aims. After all, theologian Richard Niebuhr decades ago argued Washington should seek a “tentative equilibrium of power” globally and avoid pursuing any form of global order and relations with other countries by fiat because such efforts likely would fail. Niebuhr also said the United States should not define global leadership as meaning it possessed heavy handed authority, and advised Washington to make security and foreign policy decisions based on a metric that sought balances between international and national interests. This chapter will seek to determine whether America’s targeted-killing program has hindered Washington’s pursuit of foreign policy goals by, as Niebuhr warned, leading by fiat and in a manner other countries believe reveals a belief in an unilateral authority. This chapter also will seek to determine whether the targeted-killing program has allowed for the kind of “equilibrium” between Washington and Islamabad that Niebuhr recommended.

Without the need to win and maintain the approval of friendly governments to erect sprawling military bases or ensure their forces are a part of high-value target raids, a possible outcome is change in the way U.S. officials treat other governments and their leaders. It is possible American officials have become more heavy handed in their dealings with the leaders of other nations as they pursue goals in and related to the Af-Pak region. Another possible outcome is the new policy has not substantially altered America’s relationships in places like Afghanistan and Pakistan, nor with governments with which it deals to pursue its goals there. What was clear during the timeframe examined in this chapter is just how shaky was the U.S.-Pakistani relationship. C. Christine Fair wrote in the University of California’s Asian Survey in 2011 that Pakistani officials and citizens alike feel Washington often has “used” their country – “then abandoned it when expedient.” Fair noted that “Americans who are familiar with” the two countries’

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20 Ibid
21 Ibid
22 Ibid
relations spanning the last 60 years believe Islamabad has only endorsed U.S. whims “to serve its own ends.” And, to be sure, Fair states Pakistan’s role in the post-9/11 conflict against al-Qaeda “has left both Pakistanis and Americans deeply frustrated.”

Given the high stakes surrounding Washington’s relationship with Islamabad, this paper will examine in some depth the effect the covert action-drone policy has had on U.S.-Pakistani relations. A major issue identified by Fair is that “ten years into this most recent period of engagement, it has again become abundantly clear that Pakistan’s interests diverge starkly from those of the U.S.” One possible outcome is the shift has played a role in sinking relations to levels so low the two nations are barely cooperative. Another possible outcome is that the shift created only periodic ill will during the analyzed span that has at worst delayed the pursuit – and achievement – of U.S. policy goals in the Af-Pak region.

For instance, shortly after the 9/11 attacks “the Pakistani government permitted the Federal Bureau of Investigation (FBI) and other U.S. forces to participate directly in operations against important terrorist targets.” Schaffer concluded these actions were “critical” to early U.S. successes inside Pakistan, pointing specifically to “operational and intelligence cooperation.” The Pakistan case study will examine whether the covert action-drone strike campaign had a major effect on several specific U.S.-Pakistani disputes and their respective outcomes.

**Collateral Damage**

The debate about America’s increased use of unmanned aircraft strikes and special operations forces includes a vigorous discussion about whether drone strikes place civilians at too much risk. U.S. officials tout body counts of al-Qaeda leaders killed in such strikes; anti-drone participants in the debate cite body counts of killed civilians. American civilian and military leaders say they go to great lengths to avoid killing bystanders, but note sometimes the benefits of eliminating an enemy leader or operative means it is necessary. A policy of using drones to decapitate a terrorist organization known to have its operatives attempt to blend with civilian peoples, by definition, assumes the risk of civilian deaths. But that

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24 Ibid, p100  
25 Ibid  
26 Ibid  
27 Teresita Schaffer, “‘US influence on Pakistan: can partners have divergent priorities?’” Washington Quarterly 26, no. 1: pp 169-183, Massachusetts Institute of Technology and Center for Strategic and International Studies, International Political Science Abstracts, EBSCOhost  
28 Ibid
only hinders the tactic’s effect on the pursuit of the user’s broader goals if high numbers of bystanders are killed in each strike compared with a low number of members of that terrorist group. There is scant evidence civilian deaths from drone strikes significantly hindered the pursuit of U.S. goals in the region during the examined period.

Georgetown University’s Brooks argues it is “undoubtedly true²⁹” that American drone strikes have killed innocent civilians. Yet, she notes remotely piloted combat aircraft can remain over potential targets longer than manned planes, and their pilots can be replaced regularly to guard against mistakes due to fatigue – while also pointing out the missiles they fire are among the U.S. military’s most precise munitions³⁰. This means a possible finding in this chapter is that drones’ cost, crew and precision advantages make them a more reasonable means of targeting al-Qaeda leaders and operatives. But Brooks also examines the other side of the coin with two questions: “How many civilians are killed in these actions, and are these casualties greater than if other weapons systems had been used?³¹”

One British research organization determined that as the result of all drone strikes inside Pakistan between 2009 and 2012, between 1,778 and 2,929 people were killed there³². Of that amount, between 249 and 621 were determined to be civilians. At the high end of that data, that translates to a civilian kill rate of 21 percent. Here, Brooks raises a challenge for scholars examining the targeted-killing program: “Whether drones strikes cause ‘a lot’ or ‘only a few’ civilian casualties depends on what we regard as the right point of comparison³³.” She notes that Obama-era drone strikes could be compared to mass bombing campaigns employed by Washington in the Vietnam War and, before that, during World War II. But, Brooks concluded, “these comparisons may not tell us anything useful³⁴.” The civilian-deaths data and Brooks’ conclusions show how the complex set of questions created by the Obama targeted-killing campaign, and specifically, the U.S. drone campaign. But Brooks and other scholars have yet to uncover a causal relationship between the program and any long-term difficulties encountered by the United States in pursuing its foreign policy goals in the Af-Pak region.

²⁹ Brooks, p2
³⁰ Ibid
³¹ Ibid, p3
³³ Brooks, p4
³⁴ Ibid
Both the New America Foundation and *Long War Journal* data reveal the number of civilian casualties between 2008 and 2012 is dwarfed by the number of al-Qaeda and Taliban members killed during the same span. This means there are several possible outcomes. One is that the dip in civilians killed was an aberration, and has slowly returned to previous levels. This would undermine the pursuit of U.S. goals in the Af-Pak region. Another is the decline in non-combatant deaths is the result of a refined approach that has remained at lower levels during the three years since the shift in American policy.

**Hearts & Minds**

Since the U.S. invasion of Afghanistan in late 2001, much has been made about the requirement to win the hearts and minds of Muslims in areas where U.S. forces are fighting al-Qaeda and its allies, as well as across the broader region. Some scholars involved in the debate over Washington’s new tactics argue special operations/CIA paramilitary raids and drone strikes create anger among Muslim populations, making it more difficult for their governments to cooperate with America’s foreign policy whims. After all, as the bin Laden raid showed, such covert raids often are carried out at night. When U.S. helicopters land in one’s village, and heavily armed U.S. personnel storm a the home of a neighbor, friend or loved one, leaving with one or more inhabitants of that home – sometimes leaving behind collateral damage in the form of dead innocents, one potential product is the erosion of goodwill toward the United States and its cause in a part of the world were such goodwill is nearly non-existent. Part of the debate about the program is that even substantial damage inflicted on extremist groups is “outweighed” by the “ability of such organizations to exploit … civilian casualties with the goals of persuading people to join or support the insurgency.” To that end, Lovelace notes “critics … suggest that drone strikes have been ineffective or have actually backfired.” That is because drone strikes would be “ineffective” if violent extremist groups are “large and resilient enough” to recover from the attacks.

American drone strikes come out of nowhere, and sometimes strike the wrong individuals. As Ofek notes, “when innocents are inadvertently killed, drone strikes can foment public anger and increase

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36 Douglas C. Lovelace, Jr., Forward to "THE EFFECTIVENESS OF DRONE STRIKES IN COUNTERINSURGENCY AND COUNTERTERRORISM CAMPAIGNS," Strategic Studies Institute and U.S. Army War College Press, September 2013, p v
37 Ibid
38 Ibid
the popularity of militants." David Kulcullen and Andrew Exum have said drone strikes might take out al-Qaeda leaders who seek to attack U.S. targets, but they also have “created a siege mentality among Pakistani civilians." The duo also notes that for the citizens of nations where American covert action and drone strikes are frequently carried out, “for a frightened population they seem less ominous than a faceless enemy that wages war from afar and often kills more civilians than militants.” When Kilcullen and Exum were writing, the Obama shift was in its early days. Citing “Pakistani sources,” they claim that for every 14 terrorist leaders killed to that point, 700 civilians had been killed – a “hit rate” of just 2 percent. What’s more, the ripple waves of diminished public opinion of the U.S. triggered by a drone strike or raid in a Pakistani village that leaves civilians dead is not confined to that village. “Rather, the strikes are now exciting visceral opposition across a broad spectrum” of other regions of Pakistan, Kilcullen and Exum note. Since the Obama shift, U.S. officials have talked frequently about how that “hit rate” has substantially improved, meaning a potential outcome is public opinion of Washington could have risen in recent years.

Participants in the drone debate who are critical of the campaign also charge the increased use of drones since 2009 has driven down Pakistani attitudes about the U.S. The Pew Research Center, in a 2009 poll, concluded “fully 64 [percent] of the [Pakistani] public regards the U.S. as an enemy, while only 9 [percent] describe it as a partner.” A version of the same poll published in June 2012 found 74 percent of Pakistanis consider America an enemy, while 8 percent view it as a partner. That 10 percent increase gives some credence to drone campaign critics, especially when paired with Pew’s finding that “Pakistan is the only country where ratings for Obama are no better than the ratings President George W. Bush received during his final year in office.” One possible outcome is that the U.S. would be unable to expand its use of drone strikes and special operations missions inside Pakistan, with a related outcome being it is unable to kill substantially more Pakistan-based al-Qaeda leaders and operatives than during the previous eight years.

39 Ibid, 35
41 Ibid
42 Ibid
Still, a possible outcome is U.S. officials are willing to trade short-term negatives for what they perceive as long-term positives. It also suggests another potential outcome is the targeted-killing policy did not hurt the pursuit of America’s goals in the region.

The findings of the New America Foundation and Long War Journal are notable, but a deeper look is required vis-à-vis the commander in chief’s publicly stated definition as the nation’s top national security and foreign policy objective: “I set a goal that was narrowly defined as disrupting, dismantling, and defeating al-Qaeda and its extremist allies,” Obama stated in a December 2009 speech. Obama and Brennan, like other U.S. officials in recent years, have spoken publicly about a weakened al-Qaeda – due in large part to the leadership-targeting drone program. “In Pakistan, al-Qaeda’s leadership ranks have continued to suffer heavy losses. … With its most skilled and experienced commanders being lost so quickly, al-Qaeda has had trouble replacing them,” Brennan said in April 2012. “This is one of the many conclusions we have been able to draw from documents seized at bin Laden’s compound. For example, bin Laden worried about, and I quote, ‘The rise of lower leaders who are not as experienced and this would lead to the repeat of mistakes.’” That means on potential product of the new policy is hindering al-Qaeda’s overall capabilities.

An examination of the above data reveals a trend of decreasing civilian casualties, and a major decline since the Obama policy was put in place. In 2004, 10.7 civilians were killed in each drone strike, compared with 7.1 militants; in 2009, 2.5 civilians were killed, compared with 7.4 militants; and by 2012, just 0.1 civilians were killed and 6.2 militants. Therefore, a potential outcome of the new policy is a determination by American civilian and military leaders that the pros that come with eliminating the leadership and key operatives of one’s enemy outweigh the cons of dead civilians – especially when efforts to limit the latter are successful.

**Cost Implications**

In determining whether the policy of drone strikes and special operations raids has impacted the pursuit of U.S. foreign policy goals in the region, it is instructive to examine the costs and the Afghanistan

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46 Transcript, “Full President Obama speech text on Afghanistan,” via Los Angeles Times, Dec. 1, 2009, Full President Obama speech text on Afghanistan
47 Brennan April 2012 speech
48 Ibid
49 New America Foundation
war and its broader economic impact. Theologian Richard Niebuhr determined Washington’s overseas military activities in the name of security could ignore economic factors\textsuperscript{50}. “The primary cause would be that the strength of a giant nation was directed by eyes too blind to see all the hazards of the struggle; and the blindness would be induced not by some accident of nature or history but by hatred and vainglory.”\textsuperscript{51}

There are enough facts available to project how a lower-footprint approach than the one employed in Afghanistan and Iraq since late 2001 would differ in terms of total cost and economic impact on the United States. This section will view the Afghanistan war— to include operations across the border in Pakistan—as an investment, aiming to answer the following question: Has the United States gotten an adequate return on its investment?

The non-partisan Congressional Budget Office has tabulated that between September 2001 and October 2012, the United States spent $1.4 trillion to the two conflicts\textsuperscript{52}. CBO calculates that the cost of a 60,000-troop deployment in Afghanistan over four years is around $72 billion\textsuperscript{53}. (At the time of this writing, the U.S. had about 68,000 troops there.) U.S. and Afghan officials, as of December 2012, had yet to finalize a pact defining the U.S. military presence in Afghanistan beyond 2014. But the CBO figures provide a window into the costs of maintaining large numbers of American ground forces. In contrast, U.S. drone bases in other nations like those that could be built in Afghanistan have been described as “relatively small footprint” consisting of “about 100 U.S. military personnel and contractors.”\textsuperscript{54} This shows one potential outcome of a shift in the Afghanistan-Pakistan region to a strategy based mostly on the use of drones would produce significant cost savings, producing a better return on the U.S. investment.

Former Georgetown University professor and longtime national security analyst Loren Thompson, shortly after the May 2011 commando raid that killed bin Laden, commented on the decade it took to find the world’s most wanted terrorists, saying his death was a tactical win but a strategic loss for Washington. “We have defeated a terrorist in the tactical sense but failed in the strategic sense by allowing him to demonstrate the limits of American power. When future historians recount what happened to America in

\textsuperscript{50} Niebuhr
\textsuperscript{51} Ibid
\textsuperscript{54} Whitlock and Miller
the first decade of the new millennium, they will point to the attacks Osama bin Laden mounted on 9-11 as a turning point in global history, and see in Washington’s response a partial explanation for the nation’s subsequent decline.\(^6\)

Thompson’s point largely is a veiled one about Washington being lulled into not one but two extensive, costly land wars against a non-state force that used guerrilla tactics and quickly proved itself difficult to decisively defeat. As Thompson notes, bin Laden and al-Qaeda’s allies in Afghanistan-Pakistan and Iraq were able to show America’s friends and foes that the world’s lone superpower could be fought to a strategic stalemate at worst, and an outright strategic defeat at best. But a war on extremists that is focused more on the use of covert military and CIA forces and unmanned aircraft strikes would make unnecessary the kind of lengthy counterinsurgency/nation-building mission in which Washington became bogged down in not once but twice, and, as Thompson noted, revealed America’s weaknesses.

In addition to examining the costs of the targeted-killing program vis-à-vis America’s post-9/11 protracted ground operations, it is instructive to compare the costs of armed drones to other U.S. combat systems. Early models of the U.S. Air Force’s next-generation fighter aircraft, the F-35, which will perform air-to-ground strikes, cost $124.8 million each\(^56\). Reaper drone aircraft cost around $20 million each – including the munitions they fire\(^57\). Therefore, as Georgetown’s Brooks argues, a cost analysis and comparison – Brooks also compared the drones’ cost to the price tags of the F-22 and F-16 fighter aircraft\(^58\) – shows the option to buy substantially cheaper drone aircraft makes this aspect of the targeted-killing program “vastly more appealing than, say, sending scores of thousands of troops off to war\(^59\).”

The American political system also raises another possible cost outcome: A policy and moral dedication to providing health care for its war fighters for life. This could produce large bills if the nation opts to conduct a ground-troops intensive counterinsurgency campaign that features multiple deployments, regular firefights with enemy forces and a foe whose main weapons are limb-severing and brain-shaking

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59 Brooks, p8
59 Ibid
makeshift bombs. “The present value of medical liabilities for veterans who have served in these conflicts through December 2010 will be between $118 billion and $168 billion … through 2055. This does not include the costs of these veterans beyond the age of 67, which will be additional costs to the U.S. taxpayers through the Medicare and TRICARE for LIFE systems.” This is not possible outcome, but a known fact. Only the exact amounts the U.S. government will pay is in question. Therefore, if another strategy that allows U.S. forces to engage al-Qaeda operatives and their allies can be employed, it would lessen the negative impact on the U.S. federal budget and, by extension, the American economy.

**Tactical Implications**

The unfolding U.S. shift to covert action and unmanned aircraft strikes could spawn a revolution in military affairs. Though it will be several years before politicians, generals, scholars and analysts determine whether such a radical change is taking root within the U.S. military and across the globe, it is instructive to examine how this new method of war could influence the pursuit of U.S. foreign policy goals in the Afghanistan-Pakistan region. “What Obama seems enthusiastic about is the use of hard power – lethal force,” as Michael Hirsh has written. “And the more precise and deadly, the better. As long as it’s done covertly. And that’s the key.”

It is necessary to note the roots of the Obama administration’s increased reliance on drone strikes and special operations forces raids in many ways originate in Washington’s inability to fashion a policy on how to handle al-Qaeda detainees. “It’s a lot simpler and easier for a sniper to shoot or to use a Predator to launch a lawful attack than to detain and interrogate prisoners,” he says. “Once they’re dead, then Human Rights Watch or Amnesty International doesn’t bring a habeas [corpus] case for them,” a senior administration official told Hirsh.

One possible outcome of the shift is the ability of U.S. military and intelligence officials to collect less actionable intelligence from captured al-Qaeda and allied leaders and operatives. “A dead terrorist isn’t always as good as a detained terrorist,” writes Hillel Ofek. Another possible product of the new tactics against al-Qaeda and its allies is perhaps best summarized by a 2002 comment from former CIA General

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62 Ibid
Counsel Jeffrey Smith: “If they’re dead, they’re not talking to you, and you create more martyrs.” The move toward special operations and drones could leave more extremists dead, allowing al-Qaeda to label them martyrs for use in recruiting new members and garnering sympathy within the Islamic world. Lovelace, citing a review of several studies, concluded each one determined drone strikes “have little influence, positive or negative, on the amount of insurgent violence.” This suggests the targeted-killing program has had little impact on al-Qaeda and Taliban actions, and therefore, on the pursuit of U.S. foreign policy goals.

A debate has been ongoing for years about the merits and shortcomings of fighting wars like the one in the Afghanistan-Pakistan region with small-footprint capabilities like special forces and unmanned aircraft. Walsh, a University of North Carolina at Charlotte scholar, writing for the Strategic Studies Institute, summarized the analytic conundrum surrounding drone-strikes. Walsh said there is “little systematic evidence” to support the arguments of advocates or opponents. “It is not clear if drone strikes have degraded their targets” or that they have killed ample civilians to stir up “sizable public backlash against the United States.” Walsh suggests the U.S. drone program could hinder the pursuit of foreign policy goals because they may be conducted “in situations where they are less likely to be effective and where there is difficulty in predicting the consequences.”

A possible product of such a war is that a force that lacks the manpower to conduct the labor-intensive work necessary to defeat a group like al-Qaeda and its allies. “Without persistent presence and engagement in and around the terrorist’s home ground, the United States will lack the real-time actionable intelligence necessary to target terrorists effectively and to suppress insurgencies successfully,” writes James J. Carafano. However, it also is possible that, after a decade of war, al-Qaeda and its allies have been so degraded that the kinds of heavy force for which Carafano advocates is needed. And, finally, two potential outcomes of this kind of policy is either the insistence that indigenous forces be included in high-

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64 Lovelace Jr., p vi
65 James Igoe Walsh, “THE EFFECTIVENESS OF DRONE STRIKES IN COUNTERINSURGENCY AND COUNTERTERRORISM CAMPAIGNS,” Strategic Studies Institute and U.S. Army War College Press, September 2013, p xi
66 Ibid
stakes missions to foster goodwill with allied governments, or excluding them due to concerns about their competence and operational security.

**HYPOTHESIS**

Washington’s shift to a strategy based largely on covert action and aerial drone strikes, though flawed, was a necessary evolution to salvage a conflict against al-Qaeda and its allies in the Af-Pak region. The approach had a net positive effect on the pursuit of U.S. foreign policy and national security goals in the Af-Pak region during the examined period.

**CASE STUDY: TORA BORA & SPECIAL FORCES**

It has been called a seminal moment in the 11-year-old Afghanistan conflict, and it came long before President Obama and his national security team ushered a heavy reliance on special operations forces. In November 2001, the momentum in Afghanistan was very much on the side of U.S., NATO and Afghan forces. As Dr. Richard Kugler put it in a Pentagon-backed study, at that time, “enemy forces had been routed on the battlefield and the Taliban regime removed.” In late November of that year – just over a month after the Sept. 11 attacks in America – came an opportunity to strike a major blow against al-Qaeda and its Taliban allies. U.S. military and intelligence officials determined a large number of enemy forces were gathered in northeastern Afghanistan, in a rugged mountainous location called Tora Bora. What transpired there is widely considered one of the largest strategic and tactical blunders in modern American military history, and it provides a window into how U.S. policy for such operations has changed.

The Tora Bora operation as a case study for this paper allows for the examination of a U.S. operation against the leadership of al-Qaeda and affiliated leaders at the onset of Washington’s post-9/11 wars. Analyzing how an important mission launched years before the shift to covert raids and drone strikes provides an example against which to judge the new way of warfare. This case study will use a counterfactual analysis to examine the foreign-policy impact of a successful alternative Tora Bora battle plan with additional U.S. military and CIA special operations forces, and with those troops given the lead role in the mission and backed up by the conventional forces requested by commanders on the ground. It is imperative here to stress this case study is solely intended as an examination of the use of special operations forces.

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forces; this case study is not an examination of the use of drone aircraft. While drone strikes often have garnered the most scholarly and media attention, the high operational, strategic and political stakes of special forces missions makes an examination of this aspect of the targeted-killing program important.

It is crucial to focus on U.S. commanders’ and civilian leaders’ reliance on relatively untrained Afghan forces and conventional U.S. troops, and the effect that decision had on the pursuit of U.S. policy goals in the Af-Pak region. As the Senate Foreign Relations Committee concluded in a comprehensive study of the Tora Bora operation, less than 100 U.S. commandos were used in the mission69. What’s more, quick-strike and heavily mobile forces that might have been used to conduct a surprise strike on bin Laden and the other al-Qaeda and Taliban leaders were never sent to Tora Bora. “The vast array of American military power, from sniper teams to the most mobile divisions of the Marine Corps and the Army, was kept on the sidelines. Instead, U.S. commanders chose to rely on airstrikes and untrained Afghan militias to attack bin Laden and on Pakistan’s loosely organized Frontier Corps to seal his escape routes70.”

A closer look at the indigenous Frontier Corps is instructive to understanding what went wrong at Tora Bora, and it offers insights into the shift toward commando raids in Pakistan that feature few or no indigenous forces. The Senate Foreign Relations Committee labeled the Frontier Corps “loosely organized” and too “ill-equipped for the job”71. The operation started to unravel on Dec. 8, 2001, when the Afghan force retreated after believing they were close to bin Laden in the mountainous cave complex. This showed, as a U.S. Special Operations Command history of the operation concluded, the indigenous forces’ “fighting qualities proved remarkably poor”72. Not only were the Frontier Corps – also known as the Eastern Alliance – poor soldiers, their questionable will and discipline proved problematic for their U.S. allies. As Grant describes the U.S. strategy: “The plan was to prompt the Afghan forces to destroy bin Laden’s hard-core fighters in the caves73.”

But U.S. commanders on the ground soon ran into several major problems. The Afghan commanders, warlords Hazarat Ali and Haji Zaman, were reluctant to take the steps necessary to hold

70 Ibid
71 Ibid
72 Rebecca Grant, “Tora Bora,” Air Force Magazine, December 2011, 53
73 Grant, 55
territory their forces had captured, and insisted on pulling back from their battlefield positions each night. Nationalism also appears to have played a role in influencing the Frontier/Eastern Corps’ will to keep pressing Taliban and al-Qaeda forces, even when the enemy changed from an offensive strategy to a defensive one. Maxwell C. Bradley, then the three-star commander of U.S. Air Force Special Operations Command explained to Grant that when the Taliban “ceased armed resistance,” Ali and Zaman ordered their forces to do the same. “The Afghan forces insisted on a quiet battlefield for several hours, with the explanation that al-Qaeda had decided to surrender and needed an opportunity to come down from the mountains and turn in their weapons.” Enemy forces, including bin Laden, were able to sneak out of Tora Bora, safely moving their base of operation to Pakistan, where they were able to successfully plan several terrorist attacks across the globe and help fight U.S. and NATO forces to a strategic draw in Afghanistan.

But the situation shows just how reliant the outcome of the Tora Bora mission was on the Afghan forces. As will be evident later in this chapter, the Tora Bora operation and the May 2011 special operations raid in Pakistan that killed bin Laden were similar in some ways. Both relied of a relatively small number of elite U.S. military and CIA commandos. Both were supported by U.S. aircraft, including unmanned surveillance aircraft. But the most glaring difference – and perhaps the decisive element of each – is the major role indigenous forces played in the former, and the non-existent role indigenous forces played in the latter. Comparing the mixed Afghan-U.S. force composition at Tora Bora to the American-only force composition at Abbottabad reveals American leaders have calculated killing some enemy leaders is important enough to risk short-term foreign policy setbacks. The research conducted for this paper shows, as noted in the literature review, any political ill will created by the policy almost always failed to permanently or significantly derail the pursuit of Washington’s policy aims in the Af-Pak region.

An examination of the Tora Bora operation also must explore the thinking of senior U.S. political, military and intelligence officials. The Senate Foreign Relations Committee concluded that then-American leaders opted against putting a more lethal package of U.S. troops on the ground because they determined there was insufficient intelligence data to know whether bin Laden and other top al-Qaeda and Taliban

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34 Ibid
36 Ibid
37 Ibid
commanders were present\textsuperscript{78}. Then-U.S. Central Command chief Army Gen. Tommy Franks and then-Vice President Richard B. Cheney, along with other American leaders argued “the intelligence was inconclusive about the Al-Qaeda leader’s location\textsuperscript{79}.” Ample scholarly work by former officials, academics and defense-sector analysts since the late-2001 operation suggests otherwise. A declassified version of a U.S. Special Operations Command-compiled official history of the Tora Bora operation concluded bin Laden was indeed there\textsuperscript{80}. Senior U.S. civilian and military leaders vetoed several Tora Bora plans proposed by American commando leaders on the ground, including one the Senate Foreign Relations Committee dubbed an “audacious assault” that would be led by members of the Army’s elite Delta Force special operations unit\textsuperscript{81}. U.S. leaders felt they had few adequate options in terms of bases from which to launch a special operations-based mission capable of killing bin Laden. They also were reluctant to go too far and upset the tenuous political situation in Kabul. Nearly ten years later, U.S. leaders green-lighted another mission designed to nab the al-Qaeda leader, and as will be examined later, set aside worries about the politics of the nation in which he was hiding. What’s more, as the Senate panel notes in its report, “soldiers and scholars alike have argued that there were sufficient troops available in Afghanistan and nearby Uzbekistan to mount a genuine assault on Osama bin Laden’s position at Tora Bora. And they could have been augmented within about a week by reinforcements from the Persian Gulf and the United States\textsuperscript{82}.” That kinds of construct might sound familiar. It is similar to the 2011 raid that killed bin Laden, showing how Washington’s use of special operations forces evolved over the decade that followed the Tora Bora mission.

The reason(s) American military and political leaders opted to implement a plan at Tora Bora that relied so heavily on local Afghan troops remain unclear to this day. But, as congressional investigators and scholars have made clear, many of the reasons clearly were political. As Peter John Paul Krause notes in what is widely regarded as one of the seminal analyses of the Tora Bora plan battle, U.S. leaders’ hesitance to use a plan that put a larger number of American commandos in the lead stemmed, in large part, to concerns “about Americans being perceived as an invading force\textsuperscript{83}.” Sending in more American

\textsuperscript{78} Ibid
\textsuperscript{79} Ibid
\textsuperscript{80} Ibid
\textsuperscript{81} Senate Foreign Relations Committee, 12
\textsuperscript{82} Ibid, 16
commandos would have required not only a larger special operations and CIA footprint, but also more supporting forces to maintain their equipment and perform other functions. But deploying even a thousand more troops than were in theater in late 2001, American leaders calculated, “would have made a crucial [negative] difference in the perceptions of the Afghan population.” Washington was too fearful of a “Black Hawk Down-type episode” to enact a battle plan built around more U.S. commandos leading the effort to take out bin Laden and other al-Qaeda and Taliban leaders.

**Tora Bora’s Impact**

This decision set off profound ripple waves that affected the pursuit of U.S. national security goals in Afghanistan, Pakistan and beyond. As part of this counterfactual analysis, the author assumes American military and CIA commandos would have been placed in the lead of an alternative Tora Bora mission. They would have been supported by the additional conventional forces requested by ground commanders in late 2001. This alternate force would have been supplemented and advised by an adequate number of indigenous troops, as well.

Under such an alternative scenario, one must assume this beefed up American assault team would have killed or captured bin Laden and other senior al-Qaeda members. There is evidence to support the notion that Washington’s pursuit of its foreign policy and national security goals would have transpired much differently over the preceding decade. Then-American officials were worried placing too many American troops on Afghan soil would cause the indigenous population to view them as an invading force. Perversely, by deciding in late 2001 against sending additional numbers of its smallest-footprint and most lethal forces to engage bin Laden and other key al-Qaeda figures at Tora Bora, U.S. officials missed the best chance they had to date of avoiding precisely the kind of large-footprint conflict with tens of thousands of conventional U.S. forces essentially occupying Afghanistan about which they had grave concerns. In fairness, U.S. leaders a decade later enacted the policy shift with reams of data about successes and failures of the 11-year-old war and a force shaped by lessons from them that leaders in 2001 simply did not have.

Fast forward eleven years. U.S.-Afghan relations are strained, with the latter often sharply criticizing the former. At the time Chapter One was written, the pursuit of U.S. policies in Afghanistan were on such a southward trajectory that some were wondering whether the best Washington could hope to leave behind is “an undefeated Taliban insurgency and a dysfunctional government mired in corruption
and utterly dependent on foreign aid.” Abdel Karim Khurram, Afghan president Hamid Karzai’s chief of staff, noted in a November 2012 interview that the manner in which the U.S. has conducted its Afghan campaign since 2001 has been “counterproductive.” What’s more, Khurram made two declarations that suggest the post-Tora Bora years failed to achieve America’s top foreign policy and national security goals. Krurram said the Taliban, nearly defeated in 2001, are making a comeback across Afghanistan, adding: “This region is more radical now than 10 years ago.”

After OBL and other key al-Qaeda and allied leaders and operatives escaped from Tora Bora, many U.S. military thinkers and scholars say years of “mission creep” – meaning the expansion of an operation beyond its original parameters, sometimes after early success – plagued the U.S.-led operation in Afghanistan. Instead of terminating the founder and leader of al-Qaeda, and other key AQ and Taliban figures, the United States wound up “drunk on mission creep,” aiming to “fix” Afghanistan to “Western specifications” due to paranoia that the country inevitably would again become a base for a terrorist organization “we refused to attack … [when] we knew they were there” as far back as the late 1990s.

Retired U.S. Army Lt. Col. Ralph Peters argues America’s failures in its pursuit of al-Qaeda came before and after Tora Bora. The Clinton administration was too “feckless” to attack bin Laden and al-Qaeda targets in the late 1990s; and the George W. Bush administration became too fixated on the “neomedieval lifestyle of villagers in remote valleys.” After Tora Bora, the U.S. mission drifted to the pursuit not of al-Qaeda and its Taliban enablers, but to what Peters dubs “a challenge of marginal relevance, forgetting that al-Qaeda was a parasite on the Afghan body and choosing to address an Arab-fathered crisis by teaching our values to illiterate tribesmen who do not speak Arabic.” The counterfactual analysis shows a modest increase at Tora Bora could have made a major impact.

What’s more, public opinion in Afghanistan of the U.S. military have remained low in the decade after the Tora Bora mission. One widely referenced poll revealed that over half – 55 percent – of all Afghans want all U.S. troops to leave their country, with 6 percent expressing a “very favorable” view of

85 Ibid
86 Ibid
88 Ibid
89 Ibid
American troops. Officials from two U.S. administrations from two political parties have repeatedly stressed the need to win the hearts and minds of Muslim peoples to truly win the war on al-Qaeda and other Islamic extremists. The American-led war in Afghanistan, shaped largely by the events of the battle of Tora Bora, has done little to achieve that end. The literature review identified several potential products in terms of public opinion. With public views of the U.S. still low a decade after the Tora Bora mission and a full three years into the new policy, it appears the new approaches impact on goodwill/ill will toward the U.S. is net neutral. And with no clear impact, in this area, the new approach does not appear to have hindered the pursuit of American goals in the region during the examined timeframe.

When coupled with Thompson’s conclusions about how failing to capture bin Laden until 2011 hurt the United States economically and strategically, it becomes clear U.S. leaders’ decision to rely on indigenous forces at Tora Bora had a net negative effect on the pursuit of America’s foreign policy goals across the region during the analyzed span. The offensive strategy adopted by the United States since 2009, and built around covert action and unmanned aircraft strikes, is in line with Peters’ conclusion that al-Qaeda should have been America’s focus all along because “even a return to power of the Taliban … does not mean that September 11, Part Two, then becomes inevitable.”

**CASE STUDY: PAKISTAN**

Selecting U.S. military and CIA operations in Pakistan as a case study provides dynamic examples of both aspects of the targeted-killing policy that can be dissected to judge this chapter’s hypothesis. American unmanned aerial vehicles have been targeting al-Qaeda leaders and their allies in northwest Pakistan for years, a campaign that provides ample data for study of issues such as: civilian casualties, the impact on al-Qaeda, diplomatic fallout, and public backlash. What’s more, the May 1, 2011 commando raid that killed Osama bin Laden in Abbottabad, just miles from Pakistan’s capital city, allows for a fascinating comparison to another mission nearly a decade prior that also targeted al-Qaeda’s founding member and leader. Finally, perhaps as well as any other example, covert raids and drone strikes in Pakistan provide a rich data set with which to examine whether this war fighting policy shift has substantially hindered Washington’s relations with a key ally – and by extension, hindered the pursuit of its foreign policy goals.

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91 Peters, 64
Though catching or terminating bin Laden was downgraded as a foreign policy and national security objective by the George W. Bush administration, it was elevated to a top goal by the Barack Obama administration in early 2009. But the Obama administration cast aside several concerns that dominated their predecessors’ thinking in planning and carrying out the Tora Bora operation. First, they deemed achieving U.S. objectives sometimes more important than concerns about the sovereignty of and politics inside nations in which drone strikes and covert action raids aimed at high-level enemy leaders. The Obama administration enacted a Realist foreign policy model by calculating America was so powerful and influential that it could stretch the traditional rules of sovereignty and war. A leading example of how the Obama administration placed achieving national security goals ahead of a traditionalist foreign policy approach is the May 1, 2011 raid in Abbottabad, Pakistan. Notably, the commander in chief himself says he made the call against targeting bin Laden’s suspected Abbottabad hideout with a drone strike. Obama told journalist Mark Bowden that he and his advisers “worked through a whole bunch of those scenarios” while planning the Abbottabad mission. Obama clearly preferred capturing bin Laden, if possible, telling Bowden he believed “that I would be in a pretty strong position, politically, here, to argue that displaying due process and rule of law would be our best weapon against al-Qaeda.” For the commander in chief, a special operations raid made capturing and putting bin Laden on trial possible, if operationally unlikely. Obama wanted that option. A drone strike presented but one option: the al-Qaeda leader “appearing as a martyr.”

In 2001 at Tora Bora, those American commandos’ orders were to support indigenous forces, as already examined. The commando team aboard the helicopters that snuck into Pakistan to kill bin laden had much different orders: To engage indigenous forces if necessary. In fact, President Obama reportedly insisted the size of the commando team be larger to give it more firepower should a fight with Pakistani forces break out. As the *New York Times* reported, the commander in chief’s “decision to increase the size of the force sent into Pakistan shows that he was willing to risk a military confrontation with a close ally in

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92 Bradley A. Thayer, “The Continued Relevance of Realism in the Age of Obama: Plus Ça Change, Plus C’est La Même Chose,” *American Foreign Policy Interests: The Journal of the National Committee on American Foreign Policy*, 32:1, 1, 3-4
94 Ibid
95 Ibid
order to capture or kill the leader of al-Qaeda. Additionally, it reveals of the two possible outcomes noted in the literature review, the U.S. has opted for to exclude indigenous forces for the most sensitive commando raids against al-Qaeda leaders.

The Abbottabad planning shows “how little the administration trusted the Pakistanis as they set up their operation,” especially since Obama and his aides “rejected a proposal to bring the Pakistanis in on the mission.” In fact, Pakistani President Asif Ali Zardari learned about the operation hours after the U.S. assault team had escaped back to their Afghanistan base. There were ample reports in the days and weeks after the raid based on this premise: Obama’s decision to keep Pakistani officials in the dark was merely a statement about the poor state of Washington’s troubled relationship with Islamabad. The decision reveals as much about the evolution of Washington’s covert action- and drone-based approach as U.S.-Pakistani relations. It suggests U.S. officials learned a difficult lesson from missions like the one at Tora Bora: Relying too heavily on indigenous forces severely limits what can be accomplished through operations carried out by America’s most elite commandos.

Examining the possible outcomes of a joint U.S.-Pakistani raid on bin Laden’s Abbottabad compound via a brief counterfactual analysis is a crucial exercise in adequately analyzing the U.S. covert action approach. One possible alternative scenario would have been attaching a Pakistani component composed of Inter-Services Intelligence (ISI) directorate and military commandos to the American assault force and placing it in the lead, ala the Frontier Corps at Tora Bora. Of course, such a joint operation might have been successful. After all, as Jayshree Bajoria, and Eben Kaplan of the Council on Foreign Relations have noted, Pakistan’s intelligence and military forces have nabbed a long list of high-value al-Qaeda leaders and operatives on their own soil. “Pakistan has arrested scores of al-Qaeda affiliates, including Khalid Sheikh Mohammed, the alleged mastermind of the 9/11 attacks. The ISI and the Pakistani military have worked effectively with the United States to pursue the remnants of al-Qaeda.”

What’s more, as U.S. and Pakistani officials frequently highlight in public comments, since the 2001 attacks on the United States that Pakistani ISI and military forces have waged their own bloody battle

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with Islamic extremists. “Following 9/11, Pakistan also stationed [80,000] troops in the troubled province of Waziristan near the Afghan border. Hundreds of Pakistani soldiers died there in resulting clashes with militants, which, as [former Pakistani President Pervez Musharaff said] in September 2006, ‘broke the al-Qaeda network's back in Pakistan’99.” And ISI forces had intimate knowledge of bin Laden’s compound, which they had stormed in 2003 while looking for al-Qaeda leader Faraj al-Libi100. By contrast, U.S. forces had only a crude estimate of the layout of the inside of the facility, meaning bringing in Pakistani forces could have substantially improved planning for the Abbottabad raid.

Pakistani forces’ alleged effectiveness at fighting al-Qaeda and other groups like the Haqqani Network suggests they could have added some combat utility to the assault team. Yet, there are reasons to question whether a joint U.S.-Pakistani raid on the Abbottabad compound would have been effective – or even been launched. Adding Pakistani forces to the assault team risked jeopardizing the entire mission. The CFR scholars note that in 2009, then-Defense Secretary Robert Gates said of Pakistani leaders “to a certain extent, they play both sides” in an attempt to garner a “strategic hedge” intended to help them gain influence in Afghanistan when American and NATO troops leave101. Then-U.S. Joint Chiefs Chairman Adm. Michael Mullen in September 2011 that the al-Qaeda-allied and Pakistan-based Haqqani Network is a “veritable arm” of Pakistan’s ISI102. American officials were concerned some within the ISI might tip off al-Qaeda of the coming raid, allowing bin Laden to escape.

There also were questions about whether the Pakistani forces possessed the necessary will to participate in such a high profile mission. After all, Pakistani leaders had for years resisted U.S. pleas to attack Taliban factions that often operate from the northwestern region of their country103. This counterfactual analysis reveals a joint raid was unlikely to yield success. It also shows the evolution of U.S. covert-action policy: In late 2001, U.S. officials insisted that indigenous forces not only be a part of a mission targeting bin Laden but take the lead; almost a decade later, however, U.S. officials insisted indigenous forces must remain in the dark about such a raid – even when their national sovereignty would

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99 Ibid
100 Waraich
101 Bajoria and Kaplan
103 Waraich
be violated by American combat troops. The Abbottabad raid’s exclusion of indigenous forces shows the U.S. concluded the most-high profile missions in their war on Islamic extremists require the exclusion of indigenous forces to give American goals a reasonable chance to succeed.

It is important to also examine U.S. drone strikes in Pakistan, and attempt to measure their impact on the pursuit of U.S. foreign policy goals during the examined period. As previously noted, the Obama administration carried out about a half-dozen drone strikes inside Pakistan in its first 11 months in office than during the entire tenure of former President George W. Bush. Data compiled by the New America Foundation shows the dramatic increase in the use of unmanned aircraft strikes inside Pakistan since the Obama administration took office in January 2009. Data compiled by the respected periodical Long War Journal shows 801 al-Qaeda and Taliban members were killed in 117 U.S. unmanned aircraft strikes inside Pakistan in 2010. The next year, 405 al-Qaeda and Taliban operatives were killed in 64 strikes, and so far in 2012, 281 have been killed in 40 drone strikes. This increase, perhaps more than any other action, embodies the Obama administration’s top national security objective: disrupting, dismantling, and defeating al-Qaeda and its allies.

Brennan’s pro-drone comments that were noted earlier in this paper, however, represent just one side of the debate about the United States’ increased reliance on drone strikes. There is ample scholarship, such as Sluka’s work, that challenge the legal, moral, military and strategic utilities of the use of unmanned aircraft to pursue al-Qaeda targets. “The evidence shows that the hyperbole surrounding UAVs and their vaunted precision is sheer fantasy, if not literally science fiction. There have been many mistakes,” writes Sluka. Administration and other drone program proponents often cite how accurate drone strikes are compared to other options, such as sending in large numbers of ground troops or World War II-style aerial bombardments. These proponents say those alternative tactics would kill substantially more civilians than do precision munitions launched from UAVs. But some scholars like Sluka have challenged such assertions. Sluka tabulates U.S. drone strikes have killed over 1,000 civilians, have “a particular affinity for hitting weddings and funerals, and appear to be seriously fueling the insurgency.” While U.S. officials

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104 Bergen and Tiedemann
106 Ibid
107 Brennan via Woodrow Wilson Center
108 Sluka, 72
depict the drone campaign as their best tool in meeting their stated goal of destroying al-Qaeda and its allies, Sluka concludes “statistics suggest it would be more accurate to say that [drone strikes] are now almost single-handedly losing [the war].” In Pakistan alone, Sluka, citing the independent organization Pakistan Body Count, states “2,205 civilians had been killed and 909 seriously wounded, and that this represents just a three percent success rate against Al-Qaeda.”

Amid the souring public opinion numbers for the U.S. and its commander in chief, America has been able to expand its drone program inside Pakistan and kill substantially more Pakistan-based al-Qaeda leaders and operatives than during the first eight years of the war against the extremist group and its allies. This proves one of the possible outcomes described in the literature review: U.S. officials are willing to trade short-term negatives long-term benefits, has proven true. The data showing a drop in non-combatant deaths, when coupled with Washington’s ability to achieve many of its goals in Pakistan, show the new policy did not hurt the pursuit of America’s goals in the region during the examined period.

This leads us to the next line of criticism that declares U.S.-Pakistani relations at a “new low” every time a drone strike goes bad or U.S. commandos step foot on the latter’s soil. K. Alan Kronstadt in May 2012 declared the relationship as “fluid … but running a clearly negative course.” Scholars and analysts often use a single incident when making such bold statements. For instance, Council on Foreign Relations Senior Fellow Daniel Markey said a June 4, 2012, U.S. drone strike in Northwest Pakistan that allegedly killed a deputy al-Qaeda commander put the nations’ relations at “a new low.” These statements are easy to make after high-profile setbacks – and setbacks are inevitable in such a complicated relationship based almost entirely on a complicated intelligence and military operation. There is little need to even develop an intricate metric to measure whether such pronouncements are accurate or false because their basic premise simply defies reality: U.S.-Pakistan relations are functional, which is adequate to meet America’s policy aims.

109 Ibid
110 Ibid
**A Functional Relationship**

It is accurate that setbacks have strained the relationship, with leaders from each nation – especially the Pakistanis – spouting harsh rhetoric toward its reluctant ally. One example is a months-long row following a November 2011 friendly fire incident along the Afghanistan-Pakistan border. While Pakistani officials responded by shuttering U.S./NATO access to ground transportation routes through its territory for several months, an agreement was in place eight months later to re-open them. During the trials and tribulations of the post-9/11 American-Pakistani partnership, disagreements have played out time and again in just this manner. But it is crucial for any serious scholarship to note that in most instances, the American policy objective was at worst delayed by weeks or months, not permanently derailed.

As mentioned previously, one possible outcome of the covert action-drone policy could be to inflict significant damage to U.S.-Pakistani relations. As this case study shows, the policy has not had such an impact. “We should remember that before 9/11, the relationship with Pakistan was almost nonexistent, certainly in terms of any kind of U.S. assistance.” There is little doubt that Washington’s relationship with Pakistan is complex, but to merely state it troubled and doomed is a remarkably anti-intellectual and incomplete argument. The partnership is strained, but in terms of Washington’s ability to achieve its goals in the region, U.S.-Pakistani relations are strikingly functional. And despite public opinion polls and episodic ill-will peppered with incendiary statements meant largely to appease domestic political constituencies, there is scant evidence the increased U.S. reliance on covert action and unmanned aircraft strikes hindered Washington’s ability to achieve its narrowly defined foreign policy and national security goals in the Af-Pak region during this timeframe.

**Conclusion**

The case studies confirm the above hypothesis. There is wide agreement in scholarly and national security/foreign policy circles that the United States’ increased reliance on covert action and drone strikes is in some ways an incomplete and flawed strategy. There are several camps involved in an ongoing debate about whether relying on military and CIA commandos and drone aircraft will be enough to definitively defeat the Islamic extremist group and its allies. Some critics argue the programs violate other nation’s sovereignty and cause counterproductive civilian casualties. Still other critics call targeted raids and aerial

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113 Ibid
strikes on individual or small groups of al-Qaeda leaders a high-stakes game of Whack-A-Mole, and urge a more muscular military campaign against them. But, as noted in the previous pages, the U.S. tried such a strategy, built around conventional military forces and operations for more than eight years only to receive limited returns on its foreign policy pursuits in the Af-Pak region.

The result in Afghanistan was a mostly defensive crouch as military forces attempted a complex counterinsurgency mission based on a set of goals for building a highly functional and democratic Afghanistan, something that had never existed in that nation’s history. As shown in the previous pages, the U.S.-led operation in Afghanistan in the eight-year span between Tora Bora and the implementation of the covert action-drone strike strategy were a drain on U.S. resources with little show in terms of foreign policy goals reached. Mission creep set in, and Afghanistan essentially became another amid a myriad poorly performing Pentagon programs.

Just like the Defense Department’s lengthy list of questionably managed weapon programs, the conflict soon after Tora Bora featured the same recipes for struggle. It had a set schedule complete with a “fighting season,” telegraphing to al-Qaeda and Taliban forces when operations would start and stop – allowing the Taliban to easily determine when it could surge from and retreat to safe havens in Pakistan. It had a guaranteed set annual budget to which Congress tinkered only at the margins, usually to add funding. And the Afghan war had a series of commanders, who, like their weapons program managing brethren, did not remain in their jobs long enough to establish important relations and expertise, and were gone long before they could have been held accountable for their questionable command decisions. Reminiscent of many big-ticket weapon programs, the Afghan conflict became too important to fail but – especially as the Iraq war became the nation’s top priority – it drifted into afterthought status as the U.S. pursued a set of overly ambitious goals.

As shown above, there is evidence to support the notion that, with al-Qaeda leaders and the Taliban nearly defeated by the start of the late-2001 Tora Bora mission, Washington likely would have achieved more of its foreign policy and national security aims in the Af-Pak region had military and civilian leaders used a covert-action blueprint similar to the kind used in the 2011 Abbottabad raid that killed bin Laden – meaning one featuring mostly U.S. special operations forces with U.S. troops in the lead. To be fair, one must note U.S. leaders lacked a decade of post-9/11 evidence about the effectiveness of U.S.
special operations and CIA forces. The confidence their successors had in deciding to rely more heavily on those forces was based on their evolution during the Afghanistan and Iraq wars.

In concluding the shift to covert action and drone strikes had a net positive effect on the pursuit of U.S. foreign policy goals in Afghanistan and Pakistan during the examined period, it is notable to return to the conclusion by Carafano and others that only a large ground-based force could adequately defeat a terrorist network. A large U.S. military and intelligence footprint in Afghanistan and Iraq failed to, in Carafano’s own words, “target terrorists effectively and to suppress insurgencies successfully” during much of the eight years of the conventional force-focused strategy implemented by the George W. Bush administration in both theaters. Carafano continues: “U.S. presence may not always mean boots on ground or bucketfuls of foreign aid, but it does mean conducting a range of activities that include economic, political and diplomatic action – and, sometimes, a more muscular military response.” But as data cited in this paper shows, such an approach is not necessarily superior to a smaller-footprint approach as to, in every applicable case, justify its high costs in terms of dollars spent, lives lost and soldiers forever mangled by protracted wars.

This chapter focuses on the narrow policy goal laid out by President Obama in 2009: the disruption and dismantling of al-Qaeda. As the commander in chief ushered in that policy, his administration was shifting to an increased reliance on covert action and drone strikes in the Af-Pak region. Since the implementation of this policy, independent and government data shows the U.S. has significantly increased its targeting of senior al-Qaeda and Taliban leaders in the Af-Pak region. Senior U.S. White House, military and intelligence officials have in recent months described a much weakened al-Qaeda core (meaning its top leadership based in the Afghanistan-Pakistan region). There is wide agreement, even from critics of the special operations-drone strike approach, that the loss of senior leaders has indeed hindered the extremist group’s ability to plan attacks on the United States and its allies, as well as to recruit and train new members. It is this agreement that shows the hypothesis above correct: Washington’s shift to an increased reliance on covert operations and aerial drone strikes has improved the pursuit of its foreign policy goals in the Af-Pak region during the examined period of time.
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CHAPTER TWO
BARACK OBAMA: MISUNDERSTOOD HAWK

DID TARGETED-KILLING PROGRAM TRANSFORM AN ANTI-WAR CANDIDATE INTO A HAWKISH PRESIDENT?

RESEARCH QUESTION

Did the post-2008 evolution of the United States' policy of aerial drone strikes and covert action missions alter the foreign policy and national security philosophy of Barack Obama through May 2013?

INTRODUCTION

A missile fired from an American unmanned aircraft struck a vehicle convoy in Yemen in September 2011. The attacked killed an individual U.S. officials had deemed a senior al-Qaeda figure. The successful attack was just the latest of hundreds mounted by U.S. military and CIA drone aircraft since Barack Obama became President in January 2009. On the surface, the attack was just another step in a strategy Obama and his top national security aides have described as one to “disrupt, defeat and dismantle” the organization that planned and carried out the Sept. 11, 2001 terrorist attacks in the United States. But beneath that veneer, the 2011 strike was much more. It represented a seminal moment in Obama’s presidency and provided key clues about his foreign policy and national security philosophies.

When Obama came into office, there was widespread speculation about his foreign policy and national security doctrine, and a spirited scholarly debate. It is that debate which this paper intends to further and inform. This paper also examines the important issue of whether this new way of waging war – especially as technology improves – is such a precise, lethal and tempting tool that it could transform what some labeled an anti-war Liberal candidate into a hawkish Realist commander in chief. Many scholars and experts were surprised by Obama's heavy reliance on special operations forces to conduct lethal raids like the one that killed Osama bin Laden, and his controversial drone-strike policy. But should they have been?

This paper will examine how Obama’s narrowed strategy on dismantling al-Qaeda fit with his foreign policy/national security philosophy, and how that philosophy was altered through May 2013 by the drone strike-covert action policy on which he has so relied. Did the policy change his philosophy, or is it merely a reflection of his philosophic flexibility? Did Candidate Obama’s rhetoric and actions during the 2008


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presidential campaign match this new kind of hawkish foreign and national security philosophy? This paper will seek to delve behind partisan criticisms and talking-points about Obama’s philosophies to determine whether his philosophy has been consistent, or if circumstances led him to the drone strike and covert action approach, causing a natural evolution of his philosophy. This will help determine whether this new way of waging war could alter an incoming president’s philosophic view of armed conflict.

**Methodology & Roadmap**

During the 2008 campaign, the only agreement about Obama’s foreign policy and national security philosophy was it differed from other candidates because it was difficult to classify the Illinois senator into long-established philosophical categories. To that end, some analysts, scholars and political operatives painted Candidate Obama as a Liberal who would consult with and work through the United Nations and other international institutions. Others placed Obama into the Realist camp, predicting, if elected, he would carry out a foreign policy/national security most like past Realist presidents, like George H.W. Bush. And politically Liberal analysts and scholars saw Candidate Obama as likely to carry out a less-hawkish version of the Neoconservative philosophy that guided the first term of George W. Bush. Even years into Obama first term, there was little agreement concerning his philosophy.

This paper will attempt to place Candidate Obama into one of those philosophical camps, and measure whether the covert action/drone policy altered his philosophy through May 2013. In short, my goal is to add to existing scholarship on America's covert action/drone strikes policy after 2009, as well as scholarship on Obama’s presidency. To do so, I intend to measure any change in Obama’s philosophy from the onset of the policy this way: By first placing Candidate Obama into a philosophical camp, and then searching for changes from the onset of the covert action/drone policy until the end of his first presidential term.

The paper will use two cases – one focused on Obama’s approach to battling al-Qaeda in Pakistan and Yemen, and a second case study focused on his policy toward Iran. In those case studies, the foreign policy/national security philosophies examined earlier – the Realist, Liberal and Neoconservative schools – will be applied to the situations in Pakistan/Yemen and Iran. The paper will test its own hypothesis by examining what would a policy based on each philosophy look like in practice, with the paper’s conclusion section built on the findings of the two case studies. Such an analysis will allow the author to pinpoint
Obama’s philosophy by identifying which one his course(s) of action most aligned in each circumstance through May 2013. It also will allow the paper to determine how closely President Obama’s actions remained true to the philosophy described by Candidate Obama. This aspect of the metric will help determine if the drone strike-covert action policy altered Obama’s foreign policy/national security philosophy. The case studies also will search for trends in President Obama’s approach to Pakistan and Yemen, as well as Iran. This will test the hypothesis by determining whether he more often applies one philosophy than others. Again, the aim is to determine Obama’s true philosophy and whether the ability to order precise drone strikes and special operations raids altered it.

**Possible Philosophies**

This paper will examine three foreign policy and national security philosophies: Realism, Liberalism and Neoconservatism. The former two are the camps into which most existing scholarship would place Obama; the latter is the philosophy most associated with his predecessor, and against which Obama’s rhetoric and actions often are compared. The Realist philosophy states a nation will always place its interests and security first in an anarchic system where ever-competing states seek greater global power. Realists believe war is unavoidable because only conflict will settle disputes and distribute power to the victors. The Liberal philosophic camp believes cooperation among states is essential and war is very avoidable. Liberals differ from Realists because they do not believe the global system must be anarchic, and because they place less importance on nations’ quest for endless power. Finally, Neoconservatives believe powerful democracies have an obligation to promote democracy. Neocons also believe conflict will find powerful nations, and if a nation has the world’s best military it should use it.

**Supporters & Critics**

The inability to cleanly categorize Obama under a traditional foreign policy philosophy was – and in many ways remains – widespread among scholars and analysts. For instance, one journalist wrote that even after conversations with then-Candidate Obama’s foreign policy advisers, he was unable to determine whether Obama’s thinking was more aligned with U.S. foreign-policy hawks or anti-war doves. “They envision a doctrine that first ends the politics of fear and then moves beyond a hollow, slogans-eering ‘democracy promotion’ agenda in favor of ‘dignity promotion,’ to fix the conditions of misery that breed anti-Americanism and prevent liberty, justice, and prosperity from taking root. An inextricable part of that
doctrine is a relentless and thorough destruction of al-Qaeda. Is this hawkish? Is this dovish? It's both and neither. This paper will use Obama’s own words, writings and actions – and those of his campaign advisers – by juxtaposing them against his actions as commander in chief to track whether his philosophy as a candidate changed once he endorsed the increased use of covert action and aerial drone strikes. When examining major foreign policy and national security theories, this paper will rely heavily on a leading text on international relations theory, “Introduction to International Relations: Theories and Approaches” by Robert Jackson and Georg Sørensen. Using a single prominent text will allow for the establishment and maintenance of a consistent intellectual baseline on which to examine the theories and how closely each matches Obama’s rhetoric and actions.

This paper will begin with a brief discussion of the philosophies under which most U.S. presidents have been grouped, including the Realist, Liberal and the one to which he is most often compared Neoconservative camps. Some observers were quick to paint Obama into the camp of Liberal multilateralists, who believe the United States should work more with international organizations. These analysts and scholars concluded Obama’s campaign-trail rhetoric about some national security/foreign policy placed him alongside former presidents like Franklin Roosevelt, Harry Truman and John F. Kennedy achieved because he proposed working more with other countries and international organizations. Notably, the candidate’s vow to go after al-Qaeda mastermind Osama bin Laden inside Pakistan if he had ample proof the terrorist leader was there could be considered evidence that Candidate Obama fell under the Realist camp. One potential outcome is Obama’s strongest supporters and fiercest critics misread his campaign rhetoric, with both groups concluding – though for different reasons and with very different opinions -- in 2008 that he would be a stringent IR Liberal. Another potential outcome is Obama’s Neoconservative critics, largely in an attempt to defend their own collective George W. Bush-era legacy, wrongly painted Candidate Obama’s philosophy and continue to mischaracterize President Obama’s philosophy for the same reason. Yet another possible finding is critics and supporters alike used the post-9/11 Bush Neoconservative philosophy and approach as a baseline with which to measure Candidate

117 Ibid
Obama’s rhetoric and promise, and later President Obama’s rhetoric and actions. If this last potential outcome is proven, it is possible that this paper will show Obama’s philosophy remained largely consistent from his entry into the 2008 Democratic presidential primary through May 2013.

**Obama’s Principles, Advisers & Influencers**

Barack Obama has proven to be one of the most controversial and least understood U.S. presidents and politicians. His candidacy and presidency have been among the most polarizing in recent history. But this paper will attempt to peel off the sheen of political labels and accusations to find the core of Obama’s foreign policy/national security principles first as a candidate then the evolution of them to determine whether the drone strike/covert action altered those principles. Questions such as these will guide the author’s research and analysis: Does Obama’s order – following through on a 2008 campaign-trail pledge – to use a bold covert action raid that violated Pakistan’s sovereignty to kill Osama bin Laden prove he is a true IR Realist? Does his working through the United Nations to squeeze Iran over its nuclear-arms ambitions – also following through on a campaign-trail pledge – show he is an IR Liberal? One way in which this chapter intends to achieve that goal is to use counterfactual analyses to explore whether it is likely Obama would have ordered or approved such missions if his philosophy fell into a different category than the one this paper later will place him.

**Doctrines: Bush v. Obama**

Much has been written and said about the differences between Obama’s foreign policy/national security approach and that employed by his predecessor. But, in some ways, the similarities are strong. This paper will examine both the similarities and the differences to determine just what specific ones tell us about Obama’s philosophy. One potential outcome is Obama always has shared much of Bush’s Realist foreign policy leanings – but they diverge on situations that made Bush a Neoconservative and give Obama the sometimes-appearance of an IR Liberal. Another potential outcome is Candidate Obama possessed a very different philosophy than Bush, but it changed once he became commander in chief, taking on more and more aspects of the philosophy that best aligned with the actions employed by the 41st U.S. president. The author will compare Bush’s and Obama’s rhetoric/writings and their actions on the same/similar conflicts and situations to measure whether the Bush and Obama doctrines are really that different – and use the conclusions to help determine the current president’s true foreign policy/national security
philosophy. Again, this will shed light on the troubling notion that this new method of warfare could alter a new commander in chief’s philosophy about waging war in multiple nations across the globe.

**LITERATURE REVIEW**

**Critics**

National security hawks on Capitol Hill often worry about an unlikely coalition sinking controversial military and intelligence programs: An alliance between Liberal Democrats and conservative Republicans. While both sides for several years seemed to hold their fire on the administration’s drone strike policy, 2013 brought a change – and there are signs that left-right alliance is beginning to form. Increasingly, both sides in this alliance are questioning the legal underpinning of the program; and, to a lesser extent, the moral underpinnings of what the critics deem the administration’s practice of “targeted killings.” Political Liberals have raised concerns about the morality of the program, and have panned the administration for what they see as too much secrecy surrounding the program. Civil-libertarians on the American political right raise concerns about the legal authority of the executive branch to conduct strikes targeting American citizens who are aligned with al-Qaeda. Far-right scholars and lawmakers like the libertarian Sen. Rand Paul (R-Ky.) also have raised concerns about whether the drone war and covert action policy expands the limits of the Constitutional bounds of executive power.

While right-leaning civil libertarians have garnered widespread media attention with their criticisms, political Liberals have begun to push back hard on Obama. This is notable because many believed the Democratic Obama was a president they believed would scale back some of the George W. Bush era anti-al-Qaeda tactics they long believed crossed legal and ethical lines. “Liberal Democrats who are more wedded to ideology than partisan political tactics are emerging as even harsher adversaries in dissenting from President Obama’s drone assassination policy.” To that end, seven Senate Democrats who typically are Obama allies signed a February 4, 2013 letter to the president telling him “it is vitally important … for Congress and the American public have a full understanding how the executive branch interprets the limits and boundaries of [the drone-strike] authority.” The letter went on to state Obama

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should disclose that information “so that Congress and the public can decide whether this authority has been properly defined, and whether the President’s power to deliberately kill American citizens is subject to appropriate limitations and safeguards.”

Liberal U.S. lawmakers are not been alone expressing alarms and confusion about Obama’s doubling down on the Bush-era drone and cover action policy. Liberal-leaning former White House officials, as well as some Liberal national security scholars, also have criticized the program. For instance, former Carter administration National Security Adviser Zbigniew Brzezinski in March 2012, nearly a year before Wyden and his Liberal colleagues signed the aforementioned letter, bluntly said Obama would be wise to realize “some degree of self-restraint is necessary.” The former Democratic official also said, apparently referring to Pakistan: “If you're using [drones] in a foreign country which is not your enemy officially but which is causing you trouble, then … you will be also creating political trouble not only for them but for yourself.”

Additionally, criticism also has come from the scholarly left. Some has been on operational and strategic grounds. For instance, Ken Gude of the left-leaning Center for American Progress, a Washington think tank, focused his criticisms on the administration’s use of unmanned aircraft strikes against al-Qaeda’s Yemen branch, known colloquially as AQAP. “Yemen is a chaotic, confusing place in the best of times. Now, with a popular protest movement, top military commanders defecting, a violent split in the major tribal federation, and Islamists other than AQAP all competing with a very weak central government with a wounded president and other top leaders out of the country, getting good information on who to target with these airstrikes is practically impossible.” Gude argues there is real potential for U.S. airstrikes to either be misdirected or explicitly manipulated by local groups to target rivals.

Much of the criticism from the political and scholarly left has been muted – and more recent concerns were voiced only after Obama secured a second and final term. The political and scholarly right has been much more passionate and vigorous for years about the drone program. Benjamin Friedman of the libertarian CATO institute has argued the Obama-adopted drone-covert action approach has made war “too

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121 Ibid
123 Ibid
easy,” adding it is a major reason “we are fighting so much." Friedman and other libertarian scholars worry about Washington’s post-9/11 slide toward an “imperial presidency.” In their view, drone strikes and covert raids – largely due to the secrecy in which they are shrouded – “cheapen warfare” because there are few U.S. military casualties to rouse public attention and scrutiny. With drones and special ops raids mostly out of the public’s view, elected officials and their appointed aides have little, if any, “electoral incentive to restrain presidential war powers.”

Joining civil libertarian scholars is the political far right. Sen. Paul has led the charge among the political far right in criticizing the drone-strike program. Like Friedman, Paul another civil libertarian lawmakers are concerned about what the drone program means for executive power being stretched beyond its Constitutional limits. Paul brought new attention and scrutiny to the issue on March 6, 2013, when he used such worries to launch a filibuster of Obama’s CIA nominee, John Brennan. During the 13-hour filibuster Paul’s main question for Obama and his top aides was a true civil libertarian one: “Can you kill an American on American soil?” Paul echoed his far-right allies when he noted Obama “will be the sole arbiter” and the “sole decider” and the “executioner in chief” as the commander of the drone-strike program. The Obama administration eventually informed Paul it does not believe the executive branch has the legal authority to use a drone to strike an American citizen on American soil, but Paul and other lawmakers since have vowed to continue pressing for more transparency of the administration’s legal justification documents.

Advisers & Influencers

Much was made about Candidate Obama surrounding himself with foreign policy Liberals such as Samantha Power, Susan Rice and Anne-Marie Slaughter. Another was Greg Craig, who often said, if elected, Obama should do things such as end what many called a genocide in Darfur. Power and others who long have been considered Liberal idealists were close to Candidate Obama and many joined his

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125 ibid
126 ibid
128 ibid
administration in foreign policy and national security posts, but each appears to have struggled to exert much – if any – discernible influence over Obama’s foreign policy and national security policies and actions. “The balance … appeared poised between Wilsonian-inclined idealists such as Susan E. Rice, Samantha Power and Anne-Marie Slaughter, and supposedly more ‘Realist’ thinkers such as Robert Gates, James Jones and Thomas Donilon. Yet focusing on the appointments obscured as much as it revealed.”

That’s because one individual was and is Barack Obama’s chief foreign policy and national security adviser: Barack Obama. “The President himself has dominated the foreign policy-making process in a manner redolent of John F. Kennedy. No Acheson, Dulles, Kissinger, Brzezinski or Shultz has emerged to take the diplomatic lead. The dominant foreign policy voice within the Obama administration is Barack Obama’s.”

Candidate Obama’s philosophy was not just shaped by mostly career bureaucrats like Power and Rice. In an April 2007 conversation with New York Times columnist David Brooks, Obama called Reinhold Niebuhr “one of my favorite philosophers.” A pastor in the middle of the 20th century, Niebuhr criticized “morally complacent Christians. He thought the church was full of idealists who believed that progress was inevitable and that love alone would ultimately conquer injustice.” Columnist David Brooks dubbed Obama’s 2008 presidential campaign “an attempt to thread the Niebuhrian needle.” That is because, like Niebuhr, Brooks described Obama as an individual who “hates” the George W. Bush-era rhetoric of “ridding the world of evil and tyranny and transforming the Middle East.”

To better understand how Niebuhr influenced Barack Obama, it is instructive to examine the then-candidate’s own words. “The compelling idea that there’s serious evil in the world, and hardship and pain. And we should be humble and modest in our belief we can eliminate those things. But we shouldn’t use that as an excuse for cynicism and inaction. I take away … the sense we have to make these efforts knowing they are hard, and not swinging from naïve idealism to bitter Realism.” Blake wrote that much of

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130 David Milne, “Pragmatism or what? The future of US foreign policy,” International Affairs, The Royal Institute of International Affairs, 88: 5, 2012
131 Ibid
134 Brooks
135 Ibid
136 Ibid
Obama’s 2008 campaign-trail rhetoric and early first term philosophy were driven by his Niebuhr-like desire to “balance idealism with Realism.” Both Brooks’ and Blake’s descriptions support this paper’s pegging Obama’s foreign policy and national security philosophy as a hybrid of Realism and Liberalism, and shows how Niebuhr influenced it. Niebuhr also warned of American hubris and urged greater humility in its foreign policies – and its pursuit of those policy goals. Niebuhr warned of limits to America’s global power, something rooted in Obama’s philosophy. Obama, asked by a journalist in 2012 to define his foreign-policy doctrine, included this in his response: “It’s a U.S. leadership that recognizes our limits in terms of resources and capacity.” By turning to a lower-footprint, lower-cost, lower-U.S.-casualties approach via drone strikes and special operations raids, Obama has shown how Niebuhr influenced his philosophy. The targeted-killing program pursues America’s security interests while acknowledging the country lacks the resources to continue the Bush-era approach of protracted ground operations.

**International Relations Theories & Obama**

In order to accurately measure whether the policy of employing unmanned aircraft strikes and special operations covert missions against al-Qaeda altered Barack Obama’s foreign policy philosophy, it is constructive to examine several leading philosophies. This paper will discuss several philosophical camps in which Candidate Obama – and later, President Obama – might fit. The aim of this section will be to use patterns of Obama’s rhetoric and actions to determine which philosophy best matched his foreign policy philosophy as a candidate – and later, as commander in chief. This will help determine whether this new type of warfare altered a new president’s philosophy – a major issue for scholars since the targeted-killing program is expected to remain a part of U.S. warfighting canon and as a new presidential election cycle begins in just a few months. The section will conclude with the author’s conclusion about which philosophy best matches Candidate and President Obama.

This section will use Jackson and Sørensen to examine several prominent international relations theories and delve into the varying conflicts and differences among – and within – each camp. Jackson and Sørensen devote ample attention to the Realist, Liberal and constructionist IR theories, and use the thoughts

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137 Blake
of scholars from each group to describe the strengths of each line of thought and perceived failings of the others. This approach will enable an examination of Obama’s philosophy as a candidate and then as a president employing drone strikes and special operations raids on al Qaida leaders and operatives, and shed light on the question of whether this new way of war can alter a new president’s foreign policy and national security philosophy.

**Realism**

Jackson and Sørensen engage in an examination of the Realist theory, one built around the notion that anarchy among nations leads states to make paramount their own interests, survival and security when interacting with other states and non-state actors\(^{140}\). Realists believe states’ actions on the world stage primarily are solely about the pursuit of power and security. This is a conclusion shared by a long list of international relations and security studies scholars. As Jackson and Sørensen note, Realists believe “international conflicts [are] ultimately resolved by war\(^{141}\).” The duo also notes among the world’s most powerful nations, this Realist pursuit of power will play out at the expense of other nations\(^{142}\).

There is evidence suggesting Obama, at his core, entered office in January 2009 more likely to employ a Liberal philosophy. During his first presidential campaign, Obama often talked of rebuilding America’s image abroad and working through international institutions such as the United Nations. Such rhetoric seems out of step with a purely Realist philosophy. But a deeper dive into the speeches and remarks during interviews shows Obama repeatedly used phrases and laid out policy objectives in true Realist fashion. For instance, in August 2007, Candidate Obama said he would engage in diplomacy in seeking a solution to Iran’s nuclear-weapons ambitions\(^{143}\). Many of his Realist and interventionist critics panned him for using a Liberal philosophic diplomacy-first approach toward Tehran. A closer look at his 2007-2008 rhetoric on Iran reveals more of a Realist bend. The candidate did not simply call for diplomacy, he said he would engage Tehran with “tough and sustained diplomacy backed by real pressure,” adding “it’s time to deliver a direct message to Tehran.” What’s more, Obama’s 2007 pledge that, as commander in chief, he would “not hesitate to use military force to take out terrorists who pose a direct threat to

\(^{141}\) Ibid
\(^{142}\) Ibid
America inside Pakistan is classic Realist thinking. Obama, as president, has repeatedly made good on that pledge, both via drone strikes in northwest Pakistan and the May 1, 2011 raid in Abbottabad, Pakistan, that killed al-Qaeda leader Osama bin Laden. Such actions led foreign policy analyst and writer Fareed Zakaria to declare “Obama is a Realist, by temperament, learning, and instinct. More than any president since Richard Nixon, he has focused on defining American interests carefully, providing the resources to achieve them, and keeping his eyes on the prize.” But Colin Dueck argues differently, writing that all evidence shows “at heart, Obama does not really believe that conflict is at the essence of world politics.” This runs counter to realist thinking, and suggests there is a big part of Obama’s philosophy that diverges from the realist camp. Dueck takes this further, notes Obama – on a range of foreign policy issues – “frequently proposes … new regimens or collective concessions” with a goal of bringing about “broad processes of international accommodation.” Dueck shows how Obama rejects the Realist camp at times by aiming for “progressive agreement, reduced conflict, and increased cooperation internationally.” This shows any diagnosis would have to include some level of a Liberal philosophy.

Other scholars have written that Obama’s first-term Middle East policy was far more realist than liberal or neoconservative. For instance, Fawaz A. Gerges concluded that Obama’s first-term policies show he “fully accepts the basic Realist premises informing American foreign policy.” Gerges concluded Obama’s philosophy is a “centrist-realist” one that embraces Washington’s “predominant narrative” on any given issue. This scholarship review shows the debate about Obama’s philosophy often suggests a philosophy that is truly a mixed bag, with some diagnosing a Realist philosophy and others a Liberal one. But perhaps there is a more-fitting diagnosis. Were Obama more of a philosophic Liberal of the interventionist variety eager to enhance human rights around the globe as are some of his closest advisers, scholars could easily diagnose that. But sources used in this chapter show there is scant evidence of such. As noted in New Perspectives Quarterly, some experts see more of a hybrid philosophy. “It is a blend of

147 Ibid, p16
148 Ibid
149 Fawaz A. Gerges, ”The Obama approach to the Middle East: the end of America’s moment?,” International Affairs 89, no. 2, 2013, p299, EBSCOhost
150 Ibid
idealism and pragmatism that seeks to balance our values and our interests” that is “neither a realist nor an idealist but an idealistic realism151.” There is ample evidence this diagnosis is indeed the most accurate. To determine whether the Liberal aspects of the Obama philosophy is predominant, however, it is instructive to examine that philosophy’s core principles.

**Liberalism**

Those belonging to the Liberal IR camp mostly believe nations and individuals can use reason and collaboration in focusing on points of shared interests, “which results in greater benefits … at home and abroad152.” Most pure IR Realists believe war to settle differences on the global stage is inevitable. IR Liberals believe war is avoidable. Jackson and Sørensen point out that sociological Liberals believe a “security community” exists among the nations of the North Atlantic, fueled by social communication, more individual mobility and increased human interactions153. Candidate Obama displayed glimpses of a Liberal IR approach, sometimes with a hint of the sociological Liberalism described by Jackson and Sørensen. Again, a close study of Candidate Obama’s words offer evidence. He decried what he saw as the George W. Bush administration’s “disdain for diplomacy” in its management of the Iraq conflict154. Candidate Obama, striking a Liberal tone, questioned why “we have not brought allies to the table” and “refused to talk to people we don't like155.” More tellingly, the candidate talked of a need to “build a consensus in the region” by beginning “the most aggressive diplomatic effort in recent history” that would include Iraq’s neighbors and “the United Nations Security Council156.” President Obama’s Iran policy has featured many some hallmarks of a Liberal approach, including its pursuit of a diplomatic solution using stiff economic sanctions, as well as working through international entities to isolate Tehran. Realist IR philosophy largely is at odds with the very notion of international organizations. Obama clearly, before and during his presidency, has shown a belief in and insistence to work through that organization in some cases – but notably, not every case. This shows the foreign policy approach of Candidate Obama and later President Obama features is influenced by the Liberal IR theories and practitioners.

152 Jackson and Sørensen
153 ibid
154 Obama, August 2007.
155 ibid
156 ibid
To be sure, it is instructive to return to Dueck’s analysis. His study of Obama showed that “Obama sincerely believes … that the United States should be more accommodating toward potential adversaries and rivals overseas.” By working most closely with other nations and the international community, Obama believes “these potential rivals can be turned, if not into friends, then at least into something other than adversaries.” During a major 2012 speech at a U.S. military facility in Afghanistan, Obama revealed his administration had been in direct talks with the Taliban. The commander in chief said Taliban leaders and operatives could play a role in Afghanistan’s future – but only “if they break with al-Qaeda, renounce violence and abide by Afghan laws.” Opening talks with the Taliban falls in line with Obama’s liberal beliefs. To that end, Dueck concluded Obama believes just about any state or regime “can be successfully engaged” and “peeled off” through negotiations – “if only [U.S. officials] have the courage to try.” In a conclusion that makes clear Obama’s belief in the liberal philosophy, Dueck concludes Obama possesses a “faith in the endless possibilities of diplomatic engagement.”

Neoconservatism

Because Obama’s policies were products of his desire to move away from the Neoconservatism that dominated much of his predecessor’s tenure as commander in chief, it is necessary for this chapter to examine that philosophy – in part to determine whether Obama has embraced some of its beliefs. Many scholars, analysts and pundits have weighed in on one of the post-9/11 era’s driving questions: What constitutes a Neoconservative foreign and national security approach? For answers, this chapter examines a lengthy definition provided in 2003 by the patriarch of Neoconservatism, Irving Kristol. Yet, when examining Kristol’s own words, the answer is somewhat murky: “…there is no set of Neoconservative beliefs concerning foreign policy, only a set of attitudes derived from historical experience.”

While an exact definition for the Neoconservative philosophy is more difficult to extract from its practitioners than those of the Realist and Liberal camps, Kristol has defined some basic parameters of the

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157 Dueck, p15
158 Ibid
159 The White House, Office of the Press Secretary, “Remarks by President Obama in Address to the Nation from Afghanistan,” As delivered on May 1, 2012 from Bagram Air Base, Afghanistan, http://www.whitehouse.gov/the-press-office/2012/05/01/remarks-president-address-nation-afghanistan
160 Ibid
161 Ibid, p15
162 Ibid
philosophy. One is a rejection of the very notion of international institutions, writing “world government is a terrible idea since it can lead to world tyranny,” adding multinational organizations “should be regarded with the deepest suspicion.” Neocons believe large, powerful nations have interests – ideological and material – spread far and wide. For the United States, those ideological interests mean Washington “always” will “feel obliged” to intervene when “a democratic nation [is] under attack from nondemocratic forces, external or internal.” Neoconservatives also believe if a nation possesses the world’s most powerful, best-funded and most technologically advanced military, it is obliged to use it to spread democracy around the globe. “With power come responsibilities, whether sought or not, whether welcome or not. And it is a fact that if you have the kind of power we now have, either you will find opportunities to use it, or the world will discover them for you.”

An examination shows Candidate and President Obama’s foreign policy and national security approach harbor few of Kristol’s Neoconservative principles. This becomes clear by comparing the rhetoric and actions of Candidate Obama and President Obama to Kristol’s outline of the Neoconservative philosophy. Kristol strikes an absolutist tone about the “responsibility” of the United States to use its military to promote democracy. But a review of Obama’s campaign-trail rhetoric shows he has not just long been a skeptic of the post-9/11 protracted stability operations/occupations brought about by neconservatism-in-practice, he outright rejects any notion such operations can deliver geopolitical benefits for the United States. In his 2007 and 2008 speeches, Obama regularly signaled he would end the neocon-driven Iraq war and narrow the mission against al-Qaeda in Afghanistan and Pakistan away from a Neoconservative insistent on democracy promotion on Afghanistan. Obama repeatedly made clear, as he did in that seminal August 2007 speech, that the necons’ insistence to spread democracy to Iraq had cost the United States too much national treasure, as well as lost lives, mental stability and appendages. Gerges concluded, as does this chapter, that Obama’s philosophy is mostly a rejection of neoconservatism, writing that Obama has “[shifted] his approach significantly from Bush’s ideology of proselytizing about democracy and the liberal deployment of force in world politics.”

164 Ibid
165 Ibid
166 Ibid
167 Gerges, p299
The George W. Bush administration’s post-9/11 agenda had a clear neoconservative flavor, with its calls for re-making the Middle East and Southwest Asia into zones of democracy. The Bush administration followed neoconservative philosophy by insisting the United States should use its best-in-the-world military to foster democracy in those regions. To be sure, however, there is evidence that Obama harbors some of the neoconservatives’ belief in pushing for democracy around the globe. One academic study of Obama’s first term found “contrary to what his critics said,” Obama had given “democracy promotion a clear place in his foreign policy.” The same study found Obama largely followed nearly every U.S. president in promoting an increase in the number of democratic states around the world.

It is important to note the differences between Obama’s philosophy and Kristol’s Neoconservatism. Where Kristol talks of the American “responsibility” to use its military to safeguard and spread democracy far and wide, Candidate Obama used rhetoric that President Obama largely has followed – with some exceptions – about acting only after a methodical, strategic decision is made about whether American interests are threatened in specific cases. In his previously referenced study, Nicolas Bouchet concluded Obama during his first term echoed Bush on promoting democracy. But, Bouchet found, he did so with “deliberately much toned-down rhetoric.” Another key difference is where Bush felt America after 9/11 possessed a responsibility to use its superior military for this cause, Obama has remained consistent in his skepticism of the fruits of that hallmark of the neoconservative philosophy. This measured approach shows the Obama’s philosophy departs sharply from the feelings of “responsibility” and absolutist approach touted by Kristol.

**OBAMA: HYBRID SITUATIONALIST**

Obama’s writings, campaign-trail rhetoric and later in his actions as commander in chief show he has talked and acted like a true international relations Realist. His insistence to continue aerial drone strikes in northwest Pakistan despite the public objections of senior leaders in Islamabad, as well as the May 1, 2011 Osama bin Laden raid that violated Pakistani sovereignty reflect classic Realist thinking. Yet, what one finds repeatedly in his campaign language and actions in office are pledges to “build consensus,” a

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169 Ibid
170 Ibid
rejection of the Neoconservatives’ collective “disdain for diplomacy,” a need to bring “allies to the tale,” and a promise to use non-military tools of American power\textsuperscript{171}.

There is an ongoing debate about just what constitutes the “Obama Doctrine,” or his foreign policy philosophy. Yet, a close read of the words he used in his writings as a United States senator, during the 2007-2008 campaign and a review of his actions during his first presidential term reveal a constituent philosophy. Obama’s philosophy consistently has been – and continues to be – a situation-specific hybrid of Realist and Liberal thinking. The roots of Obama’s philosophy can be traced back to days before he was a White House hopeful. In his 2006 book “The Audacity of Hope,” then-Sen. Obama writes about the necessity of American involvement around the globe, the need to sometimes deploy U.S. troops in armed conflicts, as well as his belief that American power has limits\textsuperscript{172}. The former reflects a Realist lens; the latter is a Liberal belief. The then-junior senator from Illinois also called for Washington to work more closely with and more often through international organizations, while also making clear his belief that the United States should always act to further its interests and protect its citizens – even stating his belief that “the United States, like all sovereign nations, has the unilateral right to defend itself against attack”\textsuperscript{173}. That is another Realist belief, as is his embrace of the diplomacy-first approach before the first Gulf War used by the George H.W. Bush administration\textsuperscript{174}.

Also present in the 2006 book are his Liberal foreign policy and national security beliefs. Obama explained his belief that the United States should “work with other countries to build up international institutions and promote international norms\textsuperscript{175}.” He endorsed “a willingness to show restraint in the exercise of [U.S.] power\textsuperscript{176}.” Yet, Obama warned that “any return to isolationism – or a foreign policy approach that denies the occasional need to deploy U.S. troops – will not work\textsuperscript{177}.” And Obama recalled in his book a speech he gave in 2002 during which he stated this: “I didn’t oppose all wars\textsuperscript{178}.” What’s more, Obama does somewhat contradict himself – revealing the complexity of his philosophy – when he writes

\textsuperscript{173} ibid, 285, 308 (direct quotation)
\textsuperscript{174} ibid, 309
\textsuperscript{175} ibid, 285
\textsuperscript{176} ibid
\textsuperscript{177} ibid, 303
\textsuperscript{178} ibid, 294
that “once we get beyond matters of self-defense, though, I’m convinced that it will almost always be in our strategic interest to act multilaterally rather than unilaterally when we use force around the world. 179”

And then-Sen. Obama broke with Realists when he declared the United States should avoid using its power in favor of following international standards 180.

In his 2006 book, then-Sen. Obama echoed Neoconservatives in stating this: “Like it or not, if we want to make America more secure, we are going to have to help make the world more secure 181.” It is apparent in the 2006 book where Obama declares America’s “most complex military challenge” likely will be “putting boots on the ground in the ungoverned or hostile regions where terrorists thrive 182.” Obama also declares there will be instances when the United States “must play the role of the world’s reluctant sheriff 183.” That hawkish tone reveals Obama harbors some philosophic similarities with the Neoconservative camp, which believes the country with the strongest military has a responsibility to use it.

Here, it is instructive to examine those comments from then-Sen. Obama in the 2006 book. Examining the philosophy he lays out shows no singular belief in any one philosophy. For instance, there are clear signs of Obama the Realist: He repeatedly states a belief that the United States has a right to defend itself – even if unilaterally – and to protect its interests. And his willingness to take a Realist approach is apparent when he describes arguments in the 1980s with “friends on left,” during which Obama called the Reagan administration’s Cold War military buildup “a sensible thing to do” given the Soviet Union’s military buildup 184. But, in vintage Obama hybrid fashion, he also shows a strong amount of a Liberal approach. This is most apparent in his numerous calls for the United States to work more closely with other nations to strengthen international institutions and develop international norms. Both goals are straight from the Liberal playbook, as discussed previously in this chapter. Obama’s writings on foreign policy and national security in “The Audacity of Hope” provide a view of the roots of the hybrid philosophy he later would espouse as a candidate for president.

In fact, a late-2007 speech Candidate Obama delivered could have been ripped from the pages of that book. “There are times where we're going to need to act militarily. We should not hesitate to act on
behalf of the national interest," Obama said in November 2007, striking a Realist tone – before immediately adding a dash of Liberalism: “But we have to understand that we've got more power than just the military at our, our disposal.” While the George W. Bush administration largely enacted a Neoconservative foreign policy that made military power Washington’s preferred tool and shunned international entities like the U.N., Candidate Obama and President Obama have embraced international entities and at time resisted using American military power. This reveals elements of Liberalism. Obama’s hybrid approach tailors aspects of Realism and Liberalism to respond to specific sets of circumstances and desired policy outcomes. The president largely has carried out the kind of foreign and national security policy described by the candidate. This finding is supported by a review of his campaign rhetoric and his first-term actions in Libya, Abbottabad, Yemen, Egypt and Northwest Pakistan. In short, the “Obama Doctrine” employs both Realism and Liberalism in ways that make him more of a foreign policy/national security Realist-Liberal “hybrid situationalist” than an ideologue guided only by just one philosophy. While one can argue every president uses parts of multiple philosophies, it is instructive to place a label on Obama’s philosophy to determine whether this new way of waging war altered his philosophy or not.

There have been ample expressions of confusion and disappointment from the political and scholarly left – mostly foreign policy/national security Liberals – about Obama’s decision to ramp up drone strikes and special operations missions against al-Qaeda. Left-leaning thinkers and politicians decried both during the George W. Bush administration’s tenure and assumed Obama would rely less on both. Several months before Sen. Rand Paul’s filibuster gave some Liberal Democratic senators a bit of political cover to criticize Obama’s drone-strike policy, there were some Liberals pressing the president about the policy. Then-Rep. Dennis Kucinich (D-Ohio) panned the administration for what he called a refusal to allow lawmakers to review describing its legal justification for the program. What’s more, Kucinich echoed other Liberals when he opined that drone strikes “increase radicalization among the population of the countries we use them in, violate the U.S. Constitution, kill innocent people and stain our nation’s moral consciousness.”

186 Ibid
187 Then-Rep. Dennis Kucinich, Press Release as reported by Houston Chronicle in “Ron Paul and Dennis Kucinich Team Up to Oppose Drones,” December 8, 2012
188 Ibid
A close examination of Obama’s campaign-trail rhetoric suggests Liberals should not be surprised that he dramatically expanded Bush’s drone and special operations tactics through May 2013. In August 2007, over a year before being elected, Obama was talking of a narrowed mission against al-Qaeda. In addition, Candidate Obama was rhetorically searching for a new focal point to carry out that narrowed mission, including the technologies with which he, if elected, would conduct it. Candidate Obama also was sending signals about his desired tools, saying he would emphasize military systems with greater stealth, agility, and lethality. Candidate Obama made clear his intention would be the Realist aim of capturing and killing terrorists – not the Neoconservative insistence on democracy promotion. “We need to recruit, train, and equip our armed forces to better target terrorists (emphasis added),” he said in 2007. The candidate also foreshadowed the CIA drone program he would later build by vowing to give the CIA a larger role in the fight against al-Qaeda, promising to “strengthen our intelligence.” Candidate Obama further foreshadowed the covert action-drone strike approach he later would employ as commander in chief, saying in that same speech the U.S. needed to “build our capacity to …carry out operations to disrupt terrorist plots and break up terrorist networks.” One of the five elements of his narrowed al-Qaeda strategy was to “develop the capabilities … to take out the terrorists (emphasis added).” This paper sides with Gerges’ conclusion that Obama’s philosophy – as a candidate and as a commander in chief – was not as different from standard U.S. foreign policy as was alleged. Yet, where Gerges argues “Washington has changed Obama far more than he has changed Washington,” this paper argues Obama and his philosophy – which predominantly mixes Realism and Liberalism -- has changed little since 2006.

**HYPOTHESIS**

The author argues the drone strike-covert action policy did not alter Obama’s philosophy. Obama has been a consistent “hybrid situationalist” since he became a national political figure, clinically blending Realism and Liberalism. Obama entered office searching for new tactics and weapon systems to help him carry out the kind of targeted, aggressive strategy against al-Qaeda he so often talked about. The drone targeted-killing program merely is a reflection of his hybrid, situation-specific approach: Once in office, Obama

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189 Obama, August 2007
190 Ibid
191 Ibid
192 Ibid
193 Ibid
194 Gerges, p299
decided those tactic were the best available tools to carry out his “narrow” strategy of dismantling al-Qaeda.

**CASE STUDY: PAKISTAN & YEMEN**

**Liberal Approach**

John Locke, Jeremy Bentham and Immanuel Kant helped develop a philosophy that believes countries typically will respect the rule of law and views the use of military force as avoidable. Unlike anarchy-driven Realists, “all Liberals agree that in the long run cooperation based on mutual interests will prevail.” Bentham is widely credited with fathering the term international law, on the basis that it was in the interests of states to ensure their foreign and security policies meshed with the tenets of international law. Liberals believe modern states will opt against the pre-1990s “option of high military expenditure” which they see as a “burden.” Further, Liberals believe modern states will increasingly rely on “an intensified international division of labour and increased interdependence.” Under such thinking, a Liberal American approach to the al-Qaeda presence in Pakistan and Yemen would feature a heavy diplomatic reliance on international institutions like the United Nations, and a reliance on global military organizations like NATO and regional military alliances. What’s more, an approach based mostly on the theories of Locke, Bentham and Kant would feature decreasing U.S. defense and national security spending. On both points, it is important to note Obama largely has acted alone or kept U.S. military power at the forefront of international uses of forces from Afghanistan to Pakistan to Iraq to Yemen to Libya. And on the issue of what Liberals call the burden of large military expenditures, Obama has kept annual U.S. defense spending near the record-high levels set by the Neoconservative/Realist Bush administration – and he has increased spending on his preferred tools: aerial drone aircraft and special operations forces.

Modern-day Liberal thinkers primarily view military force as “irrelevant,” largely because “power resources other than military ones are of increasing importance” in a new era of international relations. Jackson and Sørensen summarize modern Liberal philosophy as believing military force should take a backseat to economic and other tools, with leaders turning less often to the tools of military force and more

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394 Jackson and Sørensen
396 Jackson and Sørensen
397 Ibid
often to the tools of economics. Liberals also take a positive view of human beings, but Realists are more pessimistic. Under this kind of Liberal approach, one would expect an American strategy relying less on the use of force, and more on economic and diplomatic tools to coerce al-Qaeda leaders, their allies and would-be operatives to take actions that would make them a lesser threat to the United States and its interests.

Yet, Obama has taken the following actions: He kept tens of thousands of American troops in the Afghanistan-Pakistan region during his first term waging a counterinsurgency war on al-Qaeda; dramatically increased U.S. drone and special operations strikes in Pakistan; and established a new military front based on drone strikes in Yemen; and has used military assets to repeatedly violate the sovereignty of several nations. One also would expect a Liberal approach to use economic tools in an attempt to win the assistance of Pakistani and Yemeni leaders. Obama has employed such soft-power tools, sending aid dollars and other forms of assistance to Pakistan and Yemen. But the preponderance of the evidence shows Obama often relied less often on the Liberal philosophy in Pakistan and Yemen.

Neoconservative Approach

For an understanding of what a Neoconservative approach to Pakistan and Yemen would look like, it is instructive to return to the words of the philosophy’s patriarch: Irving Kristol. Multiple scholars have dubbed both countries nearly failed states with governments that fall short of Western democratic standards. As previously noted, Irving Kristol and other Neoconservatives believe because the United States possesses the world’s most powerful, best-funded and most technologically advanced military, it has a responsibility to use it to deliver democracy to oppressed peoples around the globe.\footnote{Irving Kristol} Neoconservatives believe the U.S. “always” will be “obliged” to use its military power when “a democratic nation [is] under attack from nondemocratic forces, external or internal.”\footnote{Ibid} This is, in large part, because Kristol and those of his philosophic ilk believe powerful nations have interests – ideological and material – spread around the world. Using this philosophy, one would expect a Neoconservative approach to feature U.S. military forces on the ground in both nations in operations targeting Pakistani and Yemeni leaders. The Neoconservative democracy agenda, therefore, likely would feature regime-change operations followed by stability and
likely counterinsurgency operations while Washington installed new governments in both capitals. Applying this reasoning to Obama, it is clear to see he abhors such costly, protracted operations and believes deeply there are ineffectual.

An examination of Obama’s writings and rhetoric, however, shows he harbors some of the beliefs that fuel the Neoconservative philosophy’s zeal about spreading democracy to further U.S. interests and goals around the globe. In a seminal 2009 foreign policy speech in Cairo, Obama delivered an endorsement of something the Neoconservatives have pushed for since Sept. 11, 2001: A more democratic Middle East. “I do have an unyielding belief that all people yearn for certain things: the ability to speak your mind and have a say in how you are governed; confidence in the rule of law and the equal administration of justice; government that is transparent and doesn’t steal from the people; the freedom to live as you choose. Those are not just American ideas, they are human rights, and that is why we will support them everywhere.” Obama continued that democratic governments “are ultimately more stable, successful and secure.” George Friedman notes “Obama seems to side with the Neoconservatives,” with both believing “democratic republics have common interests, so not only would they not fight each other, they would band together.” This shows Obama’s lack of a single traditional foreign policy and national security philosophy. To be sure, Obama through May 2013 reject most of the Neoconservative philosophy, and has made as much clear in his public comments and presidential actions. But he has, at times, adopted the spirit of its democracy agenda in situations such as the Arab Spring movement – though he has done little militarily to further it, as Neoconservatives would prefer. Still, Obama’s hybrid foreign policy and national security approach, through May 2013, adopted this fundamental element of the Neoconservative philosophy.

**Realist Approach**

To be sure, a Realist approach to Pakistan and Yemen would share some characteristics with a Neoconservative approach, particularly a willingness to use military force. Zeroing in on the tenets of Realism espoused by Thucydudes, Machiavelli and Thomas Hobbes, one finds the trio considered national

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interest and survival paramount. This shines a light on how Realists would respond to a situation where the nation’s top national security threat, al-Qaeda, plots, plans and trains inside unstable nations where they have established safe havens. Under the principles of Thucydides, Machiavelli and Hobbes, one would expect a Realist approach would lead a nation’s leader to take whatever actions necessary to protect that nation’s crucial interests and ensure its survival. Yet, one crucial element complicates such conclusions about a Realist approach to engaging al-Qaeda leaders and operatives inside Pakistan and Yemen: the sovereignty of both nations.

To this end, one finds some answers by studying Realist philosopher Hans Morgenthau. As Jackson and Sørensen note in summarizing Morgenthau’s philosophizing, Realists believe “all states must be prepared to sacrifice their international obligations on the altar of their own self-interest if the two come into conflict.” When a nation’s global political power, security and self interests are threatened, Morgenthau believed all treaties and agreements between nations become “merely expedient arrangements which can and will be set aside if they conflict with the vital interests of states.” In short, as espoused by Machiavelli, in times such as when Nation X’s top enemy is using sovereign nations – even if those nations are Nation X’s allies and/or strategic partners – as its operational home, a Realist approach dictates the following: “There are no international obligations in the moral sense of the word … between independent states. … The only fundamental responsibility of [leaders] is to advance and to defense the national interest.”

The May 1, 2011, special operations raid ordered by Obama that killed al-Qaeda mastermind Osama bin Laden in Abbottabad, Pakistan was conducted without prior notification of Pakistan officials. The second U.S. commandos, racing toward the compound where bin Laden was hiding in specially designed stealth helicopters, entered Pakistani airspace, America was in violation of its sovereignty. Obama did this because he lacked trust in Pakistani leaders to approve the mission and ensure the American commandos’ safety. This is classic Realist philosophy because in their anarchic world, in which power and security of the state is paramount, trust between nations simply cannot exist.

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202 Ibid
203 Jackson and Sørensen
204 Ibid
Finally, in searching Obama’s own words for evidence of a Realist approach, his comments about philosopher Niebuhr are very instructive. “I take away [from Niebuhr that] the compelling idea that there’s serious evil in the world, and hardship and pain.” Obama’s use of this word conjures up the Neoconservative- and Realism-influenced rhetoric of the George W. Bush administration. Yet, in the same interview Obama toggles between these hawkish philosophies and the softer tone of Liberalism: “And we should be humble and modest in our belief we can eliminate those things.” The then-candidate went back to a more-Realist tone indicating he believes a nation’s interests and security are more important: “But we shouldn’t use that as an excuse for cynicism and inaction.” An examination of Obama’s use of covert drone strikes in Pakistan and Yemen shows his use of a Realist approach, in large part because he is shunning international norms to further his nation’s interests and ensure its security.

**CASE STUDY: IRAN**

**Liberal Approach**

One would expect a Liberal approach to solving the Iranian nuclear question to feature several ingredients, including: a belief that war with Tehran can be avoided, a determination to work with other nations and through international institutions, and working within a Moravcsik-like model. Echoing his 2007-2008 campaign rhetoric, President-elect Obama made clear he intended to avoid the much of the Realist and Neoconservative approaches the Bush administration had used toward Iran. In early 2009, he said he would employ “a new approach” based on a belief that “engagement is the place to start.” Obama signaled his intention to employ a partially Liberal philosophic approach toward Iran, saying his policy would be built on “a new emphasis on respect and a new willingness on being willing to talk.” Such an approach clearly shows Obama’s Liberal foreign policy instincts in regard to defusing the Iranian nuclear threat. Yet, as this paper argues, ever the hybrid situationalist, Obama immediately injected a bit of Realism to add some diplomatic muscle to his preferred approach, saying in the same interview that any diplomatic talks would make clear to Iranian leaders “that we also have certain expectations.”

205 Brooks
206 Ibid
207 Ibid
209 Ibid
Obama, during the timeframe examined in this chapter, repeatedly chose courses of action that resembled a Liberal philosophy by working through the United Nations to pressure Tehran, including pushing through that body several rounds of economic sanctions. What’s more, Obama also has worked with some of Iran’s top trading partners, like South Korea, to impose other economic sanctions. The goal is to “compel the countries to abandon their proliferation-sensitive nuclear activities.” This shows Obama has used Liberal tactics in his efforts to convince Iran to give up its nuclear arms development programs because he is seeking to compel rather than force the Iranian regime to do so. Applying a counterfactual lens shows if Obama used a purely Realist foreign policy and national security philosophy through May 2013, a strategy based mostly on forcing Iranian leaders to alter their behavior would be more likely.

Obama’s internationalist approach toward Iran reflects some of the founding principles Woodrow Wilson used in the rationale for the League of Nations. Andrew Moravcsik of Princeton University has written, the “first point” one should note is the League is Liberal. That’s because “Wilson explicitly identified a set of narrow preconditions under which collective security institutions could succeed” controlled an overwhelming proportion of global military power. But Realists believe only states matter on the global stage, adding collective security institutions like the U.N. are “far less important and or unimportant.” Here, Obama clearly breaks with Realist philosophy, opting instead to employ Liberalism. Obama the candidate and the president talked about forging a U.S.-Iranian relationship “based upon mutual interests and mutual respect.” Realists shun the notion that mutual interests can exist between and among powerful states. Obama touted his “willingness to take confidence-building steps along with others in the international community,” adding he believes a path exists on which Tehran could build “a more prosperous and productive relationship with the international community.” Here we find Obama again espousing a clear Liberal approach. If viewed through a counterfactual lens, one concludes that a Realist approach would reject such ideas because members of this camp base their entire philosophy on the belief

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211 Moravcsik
212 Ibid
213 Jackson and Sørensen
215 Ibid
there is no global community of states, only “international anarchy” that fuels conflict inside “an international hierarchy of states.”

**Neoconservative Approach**

William Kristol, son of the aforementioned necon icon Irving Kristol, has clearly and succinctly laid out this camp’s preferred approach, which often is activist and hawkish. Kristol and other Neoconservatives believe Iran has long been waging proxy wars against the United States in Iraq and Afghanistan – for instance, in 2011 Kristol wrote that Tehran “has the blood of American soldiers in Iraq and Afghanistan on its hands.” What’s more, Neoconservatives believe Iran should be punished because its regime is “a sponsor and facilitator of terror organizations that have killed innocent Americans, Israelis, Iraqis, Afghans, Argentines, and many others,” before turning to a veiled – yet classic – Neoconservative declaration of democracy promotion by noting the Iranian regime is “a brutal dictatorship.”

Neoconservatives, due in large part to their distrust of international organizations, oppose Obama’s use of economic sanctions to pressure Tehran. As Kristol has made clear, neocons believe such tactics will fail: “It’s long since been time for the United States to speak to this regime in the language it understands – force. And now we have an engraved invitation to do so.” Unlike leading Realists and Liberals, the Neoconservative leader even has offered a battle plan. “We can strike at the Iranian Revolutionary Guard Corps (IRGC), and weaken them. And we can hit the regime’s nuclear weapons program, and set it back.” Finally, a Neoconservative approach also would target “other regime elements that sponsor terror, and against the regime’s nuclear weapons program.” It is imperative to note the timing of Kristol’s call, which came in late 2011 amid increasing declarations that the Obama-pushed sanctions were beginning to influence the Iranian regime’s behavior. Neoconservatives’ approach to Iran, in short, likely would be constructed on the framework of military force first, and diplomatic actions never. During the examined timeframe, Obama rejected a Neoconservative philosophic approach to the Iran situation.

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216 Jackson and Sørensen
218 Ibid
219 Ibid
220 Ibid
221 Ibid
**Realist Approach**

The Realism of Thucydides, Morgenthau, Kissinger and others is built on beliefs that states always will act in the pursuit of their own interests, and conflict between states is inevitable. Such foreign policy and national security thinkers and practitioners believe nations will put their “survival” first and will do so “by maximizing their power, ultimately military power.” Here, one is reminded of the aforementioned definition of Realism offered by Jackson and Sørensen, who conclude Realists firmly believe “international conflicts [are] ultimately resolved by war.”

National security scholar Paul Bonicelli has closely examined Obama’s actions toward Tehran over its nuclear-arms ambitions, looking specifically for evidence of a Realist philosophy. Bonicelli takes this examination back to Obama’s decision to end the Iraq war without a status of forces agreement that would have allowed Washington to keep some troops there as a hedge against, among other things, Iranian meddling. Under this line of thinking, a Realist American administration would have worked harder to nail down such a pact with Baghdad in order to further a key tenet of Realism: “Better safeguard[ing] its interests in the region.” To Realists, an American president of their ilk would have ensured a close U.S.-Iraq relationship and a robust American military presence there. After all, to Realists, conflict is inevitable and the lone way to resolve such disputes is through military conflict. Realists also are critical of Obama’s top tactic (so far) against Iran: stiff economic sanctions. As previously discussed, Morgenthau-like thinkers believe global institutions do not work, and fail to allow a nation to pursue its goals and protect its interests. For these reasons, Bonicelli concludes “the [Obama] administration has failed to live up to the Realist moniker.”

While Bonicelli makes a convincing point, an objective analysis of Obama’s policy toward Iran cannot ignore some Realist-like actions. Many rejections of Obama’s Realist credentials in dealing with Iran fail to factor in some new-age tactics he has used to slow Tehran’s work on nuclear weapons. It is widely accepted that Obama launched neither bomber aircraft nor cruise missiles – which a hard-core Realist would have done – targeting Iranian nuclear facilities. He also did not send in elite commando units.

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223 Jackson and Sørensen
224 Bonicelli
225 Ibid
to attack them. But it is widely accepted as fact that Obama used a cyber attack to deliver a major setback to Iran’s nuclear program. “[Obama] secretly ordered increasingly sophisticated attacks on the computer systems that run Iran’s main nuclear enrichment facilities, significantly expanding America’s first sustained use of cyber weapons, according to participants in the program.” One leading national security journal described the alleged Stuxnet attack as using malware that was “designed to sabotage the Iranian nuclear programme by targeting industrial control systems.” Iranian officials have acknowledged the attack likely set back their nuclear program by two years. Make no mistake, it was a muscular act. One expert described the Obama-ordered Stuxnet attack this way: “I view Stuxnet as a weapons delivery system, like the B-2 bomber. It’s clear to me that the resources available to the authors of the worm were substantial. They designed it with high confidence that the warhead would do exactly what it was designed to do.” A B-2 bomber is a weapon of war. So, too, is a debilitating cyber attack. Sabotage is not a word associated with the Liberal philosophy; rather, it shows Obama’s “hybrid situational” philosophy in practice.

**CONCLUSION**

The case studies confirm the above hypothesis that Obama, from the campaign trail through May 2013, was a consistent foreign policy/national security “hybrid situationalist.” Identifying Candidate Obama’s philosophy and then tracking whether it changed as he ramped up the use of aerial drone strikes and commando raids was essential because it offers a chance to test whether there could be a causal relationship between the targeted-killing program and the change of a potentially anti-war Liberal candidate into a hawkish and Realist commander in chief. Because this paper found Obama’s philosophy remained consistent as a blend of several philosophies, this suggests the new way of waging war via drone strikes and elite commando raids did not change this incoming commander in chief’s foreign policy and national security philosophy. The Iran case study shows Obama mostly has employed courses of actions that are most closely in line with a Liberal approach to combating that nation’s nuclear-arms program. Obama has employed tactics most resembling a Liberal approach by using multinational entities to impose strict

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228 Michael Assante, President and CEO at the National Board of Information Security, as quoted by Collins and McCombie
sanctions on Iran. If Obama was a strict practitioner in the Realist philosophy during this period who believes, as Jackson and Sørensen put it, that “international conflicts [are] ultimately resolved by war,” he likely already would have launched a conventional military strike on Iran’s nuclear weapons facilities or secondary targets. However, the Realist-like Stuxnet cyber strike on Iranian nuclear program that is widely accepted as ordered by Obama shows his “hybrid situationalist” philosophy at work.

The Pakistan-Yemen case study shows Obama at times, through May 2013, fully embraced the Realist philosophy and its core tenet that a nation always will act in a manner to protect its survival and security. This case study shows, by expanding the drone strike-covert action program begun by the George W. Bush administration, Obama proved a firm believer during the examined timeframe that the Realist philosophy applies in certain situations. This is apparent in his willingness to violate the sovereignty of other nations by carrying out drone strikes and special operations missions on foreign soil without seeking permission from nor informing those nations’ leaders. Obama significantly increased the frequency of U.S. drone strikes, ordering 54 in 2009 and 122 the next year in Pakistan alone – up from 36 during Bush’s final year in office. As explained in the Pakistan-Yemen case study, this policy is quintessentially Realist. The drone strike/covert action policy shows Obama’s philosophy through May 2013 was one part Realist because he often makes paramount America’s security and interests – even if that means ignoring Liberal tenets he espoused like diplomacy and using international entities.

In the aforementioned 2007 interview with columnist David Brooks, Obama remarked that a commander in chief must avoid making decisions by “swinging from naïve idealism to bitter Realism.” What this chapter shows is President Obama, through May 2013, matched the rhetoric of Candidate Obama by clinically using aspects of Liberalism and Realism in specific situations, using what he calculates best matches sets of circumstances and is most likely to bring about his desired policy. This shows the new way of waging war via drone strikes and special operations raids did not alter the new president’s foreign policy and national security philosophy. James Kloppenberg has called pragmatism “a philosophy for skeptics, a philosophy for those committed to democratic debate and the critical assessment of the results of political

229 Jackson and Sørensen
231 Brooks
decisions, not for true believers convinced they know the right course of action in advance of inquiry and experimentation.”

As this chapter shows, Candidate Obama and later President Obama is no “true believer” of any single foreign policy/national security philosophy. Rather, as his campaign-trail rhetoric foreshadowed, he is a calculating commander in chief committed to applying core tenets of Realism or Liberalism – and even, on rare occasions, Neoconservatism – to specific circumstances in the pursuit of his desired outcome. And it is imperative for future scholars to build on the finding that the targeted-killing program he inherited and ramped up did not alter his philosophy. The conclusions of Blake, who found the foreign policy/national security philosophy of Obama’s 2008 campaign and first presidential term were driven by his Niebuhr-like desire to “balance idealism with Realism,” support the two-part hypothesis: The targeted-killing program Obama inherited and expanded did not alter his philosophy, and Obama has been a consistent IR Realist-Liberal “hybrid situationalist.”

232 Blake


Barack Obama, Remarks in Washington, DC: "The War We Need to Win," August 1, 2007, via University of California at Berkley, 


Fawaz A. Gerges, “The Obama approach to the Middle East: the end of America's moment?,” International Affairs 89, no. 2, p299, 2013,EBSCOhost


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http://www.whitehouse.gov/the-press-office/statement-president-barack-obama-iran


Michael Assante, President and CEO at the National Board of Information Security, as quoted by Collins and McCombie


CHAPTER THREE

ABOVE THE LEGAL LIMIT?

MEASURING THE LEGALITY OF OBAMA’S TARGETED-KILLING PROGRAM

RESEARCH QUESTION

What aspects of the Obama administration’s targeted-killing program using armed drones and covert raids are legal, considering the intent of the U.S. Constitution and existing U.S. laws and standards, as well as historical precedents set during wartime and emergency conditions?

INTRODUCTION

President Barack Obama has been called the “drone warrior” due to his reliance on missile strikes launched from armed drone aircraft to kill senior leaders of al-Qaeda’s core cell in Pakistan and affiliated groups in the southern Middle East and North Africa. But this moniker fails to paint an accurate portrait of the commander in chief who reportedly carries a “kill list” in the breast pocket. A more poignant description of Obama, after hundreds of drone strikes and numerous covert commando raids, is that of “the covert commander in chief.” Obama’s style running America’s war against al-Qaeda has been called “relatively subdued” and “opaque,” and the research conducted for this paper and portfolio reveal a president who uses a clinical approach. James Clapper, director of national intelligence and a longtime veteran of intelligence work, has called the president “a phenomenal user and understander of intelligence.”

Senior intelligence officials have said they must bring along additional materials each morning when they deliver Obama his daily intel briefing. Obama clearly possesses an insatiable appetite for intelligence information. “Intelligence is certainly an area where the president appears confident and bold,” writes Washington Post columnist and foreign policy expert David Ignatius, adding: “This is a president, too, who prizes his authority to conduct covert action.” Obama and senior members of his national security team have called the targeted killing program – especially the armed drone program – a resounding

233 Mark Bowden, “Drone Warrior: Has it become too easy for a president to kill?,” The Atlantic magazine, September 2013
236 Ibid
237 Ibid
238 Ibid
success that has dramatically weakened al-Qaeda’s core leadership in Pakistan and diminished affiliate
cells in Yemen, Somalia and elsewhere. But there is a second edge to this lethal sword, one that raises
crucial questions about America’s targeted killing of al-Qaeda members in faraway places.

Studying the legality of Obama’s use of drone strikes and covert raids under the intent of the
Constitution and American laws might seem, at first glance, a straightforward project addressing a
straightforward question. But, in practice, doing so is a fuzzy analytical undertaking that involves peeling
back layers of decades-old legal canon and grasping the effects of years of historical precedent. Yet, the
importance of wading into this fuzzy area of analysis is not solely a legal task. It must engage other areas of
academic analysis, such as politics and security studies, in order to form a nuanced picture of the political
and historical precedents that would render Obama’s policy legal or illegal. It also must examine whether
or not it is a departure from the actions of past executives and their exercise of power during wartime.
While the author is not a legal scholar by training or trade, this paper is constructed as an examination of
American war powers and existing laws, which then will be used to judge the Obama targeted-killing
program. This paper is focused on the targeted killing program’s legality under the U.S. Constitution and
U.S. law, given the intent of that legal canon and historical precedents. This politicized debate likely will
rage for years to come, and the author aims to advance that debate and provide a foundation for future
academic work in this realm.

Ignatius’ description of Obama as the drone-striker-in-chief and the likelihood the use of drone
strikes and special forces raids are here to stay underscore the importance of scholarship examining the
things this paper does, and the issues examined in the first two chapters. The author hopes to add to a
growing body of scholarship examining issues related to the legality of Obama’s practice of flying
unmanned aircraft into sovereign airspace and firing missiles at targets onto sovereign soil, as well as
deploying teams of U.S. commandos into sovereign states. The intent of this work is to add to existing
scholarship by clinically examining whether the Obama targeted-killing program is legal under the U.S.
Constitution and other laws, while also factoring in historical precedents. The paper will focus on the intent
of U.S. wartime legal canon, and how those collectively have been affected by historical precedents from
times of war and national emergency. It also will feature a discussion of the intent of the Founding Fathers
and their intent in assigning war powers in the Constitution. Such a study will help future presidents, aides
and scholars answer unresolved questions about the program – including whether it is legal, should targeted killings continue – and, if so, with what, if any, potential reforms.

This paper also will add to and assist the work of presidential scholars, not just global security studies scholars. Scholars and pundits view Obama and his presidency with ample questions about his philosophies and actions on a list of domestic and foreign policy/national security issues. This third chapter provides insights into how Obama and members of his administration interpret the Constitution and justify their policies and actions on those interpretations. Obama was a Constitutional scholar before becoming a fulltime politician, and this chapter argues his Constitutional interpretations will play a major role in how future scholars judge his presidency. This author hopes to provide a foundation for such important scholarly work.

**METHODOLOGY**

After considering several methodologies to determine the legality of the Obama targeted-killing program, this paper will utilize what it dubs the “Constitutional-Reasonable Criteria.” A study of an Executive Branch-orchestrated targeted-killing program largely is an examination of U.S. war and emergency powers. Those stem from the U.S. Constitution, which means the criteria must be weighted in a manner that gives the authorities assigned by the country’s founding document the most value. This paper argues that any study of war and emergency powers must examine historical precedent, and a review of how Constitutionally-assigned authorities have shifted and morphed over time. A major portion of the historical examination will be weighing scholar Richard Posner’s belief that U.S. laws should be bent and adjusted – but never ignored – during times of wars and emergencies. Does Posner’s point have merit, and does it adequately apply to the targeted-killing program? Historical changes to war and emergency powers will be taken into account next. Because the Obama administration continues to assert the 2001 Authorization of the Use of Military Force to justify its drone strikes and covert raids, it will receive the next most weight. The criteria will then factor in the need for war and emergency powers and laws to bend – but never break – during times of war and emergency. Finally, the Lieber Code’s standards will be factored in; this will receive the least amount of value because it merely is a non-binding standard.
This paper will begin with a discussion of the war and emergency powers the Founding Fathers assigned to the Legislative and Executive Branches – and, just as importantly, a look at how those powers have changed and shifted over time. This chapter will examine Posner’s view that U.S. laws should be bent and adjusted during times of wars and emergencies. Much of the debate surrounding the U.S. targeted-killing program has swirled around its legality. This paper argues such an approach is too rigid. A review of existing scholarship on U.S. executives’ interpretations of war and emergency powers, and historical precedent of the behavior of the Legislative and Judicial branches’ reactions to those interpretations makes clear there is nearly nothing rigid about how such powers have been interpreted over time and put into practice.

Here, it is instructive to describe how this chapter will measure legality. Doing so largely is a matter of establishing nuanced boundaries, then determining whether the policy – or parts of it – fall outside those parameters. As Jordan Paust has noted, “when applying principles of reasonable necessity and proportionality with respect to use of drones for targeting, one should consider all relevant features of context.” Such factors reasonably should include a policy that falls within the intent of the Founders and the Constitution, and is not in direct conflict with the intent of existing relevant U.S. legal cannon. Legality also would reasonably fall in line with historical trends and precedents on the interpretation of war powers and laws. Paust cites ICRC expert Nils Melzer, who found this kind of nuanced definition must include examination of “the actual level of control exercised over the situation by the operating state,” which, in part, can help determine whether “a general standard of ‘reasonableness’ exists in the Obama administration’s execution of its targeted killing policy. Notably, the scholarship examined later in this chapter will show that U.S. laws and standards long have been treated as elastic, rather than rigid, in times of war. This will be considered in rendering a verdict on the program’s legality. In order to set a baseline for how these treaties and laws will be evaluated, it is important to clearly define a criteria for doing just that. This paper will use the approach used in the 1969 Vienna Convention on the Law of Treaties. As

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240 Nils Melzer, as cited in note 11, pp575-576
described by scholar and author Michael Byers, this approach “requires that provisions be interpreted in accordance with the “ordinary meaning of the terms”241.”


Literature reviewed trace the modern Laws of War that have long governed how the United States fights its enemies to the “Lieber Code,” a Civil War-era set of guidelines crafted at the behest of President Lincoln and top U.S. generals. Enter scholar Francis Lieber, who along with four senior military officials were tasked with crafting “amendments or changes to the Articles of War, and a code of regulations for the government of armies in the field, as authorized by the laws and usages of war242.” A review of scholarly work on the legality of war and related issues shows the importance of the Lieber Code is difficult to overstate. This is how one Civil War scholar summarized Lieber’s lasting impact, underscoring why it is important to apply its guidelines to a study of the legality of Obama’s targeted-killing program:

“The Lieber Code may be said, without undue exaggeration, to be something of a legal masterpiece -- a sort of pocket version of Blackstone's famous Commentaries on the Laws of England, though confined to the particular subject of the laws of land warfare. It is not simply a list of rules, as might be implied by the label ‘code.’ It was, in addition, a miniature commentary on those rules, explaining, if only in the briefest terms, the basic principles underlying the specific commands and prohibitions. As such, it made a lasting contribution to the development of the subject243.”

Along with its influence, the Code’s contents cover a number of issues at the core of the raging debate about the legality of the Obama drone-and-covert raid program. Its articles cover matters such as what should be considered military necessities, protections for noncombatants (including women and children), murder and assassinations, as well as a strong endorsement for a country’s right to use military force as retribution. The latter, discussed in two Lieber articles, is key to determining the Obama targeted-killing program, which is a retaliation to the 9/11 attacks. Critics of the program have harshly entered into the


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debate about it charges that innocent people, including women and children, have been slaughtered by U.S. drone strikes. Aspects of the Lieber Code will be factored into the paper’s criteria for determining whether the targeted-killing program is legal. Because the Lieber Code is built upon reams of evidence about actual government practices, meaning how governments acted during armed conflicts – as opposed to how Lieber felt they should act – it provides a practical set of guidelines against which to judge Obama’s targeted-killing program. Several articles define what is legally acceptable under “military necessity.” Article 19 suggests military commanders notify an area’s inhabitants when a bombardment is imminent, with the aims of protecting noncombatants – especially women and children. The alleged killing of noncombatant Pakistani citizens, including women and children, is at the core of the debate about the legality of the Obama program.

The modern Laws and Articles of War, along with the Lieber Code, were constructed on a foundation that believes wars must be won by destroying one’s foe(s). Sitaraman and others note doing so requires use of a “kill-capture” model that is in practice as straightforward as its moniker. Using armed drones to kill U.S. foes and teams of commandos to capture or terminate them fits well within Lieber’s focus. To be sure, the “covert commander in chief” himself echoed such sentiments in a May 2012 speech: “Our goal is to destroy al-Qaeda.” Collectively, the above means the Liber Code still applies to U.S. operations like the targeted-killing program.

Liber defines military necessity as “those measures which are indispensable for securing the ends of the war, and which are lawful according to the modern law and usages of war.” The Code also allows “all direct destruction of life or limb of armed enemies, and of other persons whose destruction is incidentally unavoidable in the armed contests of the war; it allows of the capturing of every armed enemy … or of peculiar danger to the captor.” As Sitaraman and other scholars note, the Code did not endorse

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244 Lieber Code, Prepared by Francis Liber, Issued by President Abraham Lincoln on April 24, 1863 as General Orders No. 100, republished online by The Avalon Project at Yale University Law School, http://avalon.law.yale.edu/19th_century/lieber.asp
245 Multiple sources including Lieber Code
247 Ignatius
248 The White House, Office of the Press Secretary, “Remarks by President Obama in Address to the Nation from Afghanistan,” As delivered on May 1, 2012 from Bagram Air Base, Afghanistan, http://www.whitehouse.gov/the-press-office/2012/05/01/remarks-president-address-nation-afghanistan
249 Lieber Code, Article 14
250 Lieber Code, Article 15
cruel tactics “but it permitted expansive kill-capture operations.” Notably, Sitaraman found two camps in the debate, one that believes the laws of war do not apply to the U.S. war on terrorism. He summarizes their basic belief this way: “Laws of war do not explicitly cover the global nature of terrorism is, on this reading, fortunate, because it enables the kill-capture strategy to go forward unhindered.” The second group he sees contains several sub-groups, but as a whole hold this belief: “The laws of war and criminal law are each adequate to handle contemporary global terrorism.” This first belief suggests the Obama targeted-killing program – and just about anything else – is legal. The second, if adopted, likely would raise questions about whether certain parts of the program are legal. Alas, Sitaraman suggests the differences are, for the purposes of this work, moot. That’s because each camp “sees the kill-capture strategy as central to the war on terror.” Sitaraman engages in a lengthy discussion of various legal rationales for the war on terror that have been advocated by stakeholders. To be sure, the differences sometimes are stark. Yet, “although the legal innovators recognize that terrorism differs from both crime and conventional war, they simply assume that the kill-capture strategy is the primary, or even only, way to increase security and defeat terrorism.” This strongly suggests the Obama program, with some likely single-mission exceptions, largely is acceptable under the Lieber Code and other recognized Laws of War.

Following that likelihood, a brief analysis of several of the Code’s other applicable provisions seems to uphold the program’s legality under Lieber. For instance, the Code forbids “the wanton devastation of a district.” To be clear, U.S. drone strikes have been linked to civilian casualties. “The U.S. government has described drone airstrikes in operations outside declared theaters of armed conflict as surgical and causing minimal civilian casualties. Analysis of air operations in Afghanistan, combined with a review of open-source reports for drone strikes in Pakistan, suggest that these fell short of intended goals.”

Such figures should and will continue to be receive ample scrutiny in future scholarly work on the Obama drone-strike program, especially because, as Rizzo predicts, it is likely to be continued by future

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251 Sitaraman, p1754
252 Ibid, p1760
253 Ibid, p1760
254 Ibid, p1771
255 Ibid, p1764
256 Lieber, Article 16
commanders in chief. But an effort to determine whether the targeted-killing program is legal, a narrow view is required. The Code specifically forbids acts that would destroy a rather large swath of inhabited territory. It is clear the U.S. program has killed civilians, including women and children, based on the work of many credible sources and verified eye-witness accounts. But the Code prohibits the “wanton destruction” of areas. Senior Obama administration officials, including the commander in chief, have made repeated assurances that the United States goes to great lengths to minimize civilian casualties. “It is a hard fact that U.S. strikes have resulted in civilian casualties, a risk that exists in every war,” Obama said in a landmark May 2013 speech. This is hardly an unreasonable conclusion about warfare, and one that has been recognized by scholars, generals, analysts, and many anti-war thinkers over many centuries.

“Before any strike is taken, there must be near-certainty that no civilians will be killed or injured – the highest standard we can set,” Obama said, alluding to what military and national-security officials have described as an intensive intelligence review tailored to minimize civilian casualties.

Obama also described his decision-making process in green-lighting drone strikes, saying he “weigh these heartbreaking tragedies” (read: civilian causalities) “against the alternatives. To do nothing in the face of terrorist networks would invite far more civilian casualties -- not just in our cities at home and our facilities abroad, but also in the very places like Sana’a and Kabul and Mogadishu where terrorists seek a foothold.” Obama is asserting America’s right to self-defense and laying out a decision-making process that appears in line with Lieber’s standards in a range of areas, including retaliation, even if just within the Code’s somewhat subjective boundaries. Here, it is important to note scholars and citizens lack access to classified data, meaning any verdict made in part based on Lieber would be made without access to some pieces of the puzzle. Still, this section shows one possible determination is the targeted-killing program is legal under Lieber.

**Got Targets? There’s an AUMF for That**

In September 2013 – some twelve years after al-Qaeda operatives flew airliners into buildings in New York and Washington – U.S. forces conducted what the Pentagon described only as a “targeted...
operation” against Abdikadir Mohamed Abdikadir in Somalia. Notably, the Pentagon’s own statement about the unsuccessful attack on the alleged member of al-Shabab cited the September 2001 as the legal underpinning for the strike. That same statement, however, did not directly tie Abdikadir to the 9/11 plot or the core al-Qaeda call in the Afghanistan-Pakistan region that orchestrated it. The Pentagon, however, did note the 2001 use-of-force measure authorizes lethal action against “against al-Qa’ida and its associated forces.” This single example provides a telling example of how the Obama administration has used the September 2001 measure to justify drone strikes and covert commando raids against al-Qaeda and affiliated groups outside of the Afghanistan-Pakistan region – the area in which the post-9/11 measure was crafted to authorize U.S. operations.

The U.S. Congress on Sept. 18, 2001, just seven days after Islamic extremists drove airliners into buildings in New York and Washington, passed a measure authorizing the office of the president to use “all necessary and appropriate force” in response. A careful examination of the Authorization of the Use of Military Force reveals a brief document that is chock full or murky phrases that make the true intent of the law unclear. Written during an emotional and confusing time in American history, the lawmakers and George W. Bush administration officials who crafted it could not have known at the time that the country’s fight against the attacks’ perpetrators who span more than a decade or raise even the possibility of lethal American force in so many states in Southwest Asia, the Middle East and North Africa. The measure never directly refers to al-Qaeda or the Taliban, then the ruling regime in Afghanistan that allowed the extremist organization to operate there. Rather, the law clears the president to use force against unidentified “nations, organizations, or persons” deemed to have “planned authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001.” An examination of the measure and a review of news accounts published as it was being written in those chaotic days shows the primary intent of the law is focused on what has come to be known as “core al-Qaeda,” located in Afghanistan and later Pakistan, as well as the Taliban. This means one possible outcome is a determination that the 2001 AUMF fails to legally cover

262 Ibid
264 Ibid
Obama-ordered drone strikes and commando raids in places like Yemen, Somalia and Libya. But the 2001 law’s intent and scope is fascinatingly complex, especially for a document that fills less than one 8.5-inch by 11-inch page. And that means a deeper analysis is required.

The 2001 law represents merely another example of the Legislative Branch’s tendency to hand the Executive Branch almost exclusive war and emergency powers. To this point, two key passages in the AUMF must be examined. The first is its declaration that “the President has authority under the Constitution to take action to deter and prevent acts of international terrorism.” This passage suggests the intent of the law was to arm Presidents with the legal cover to use force wherever and whenever necessary to target al-Qaeda or any similar group that might be planning terrorism acts in the United States. By citing the Constitution in an use-of-force law it passed, Congress – perhaps inadvertently during a chaotic period – appears to have lessened its own Constitutional wartime and emergency powers, and handed the Executive Branch carte blanche. The second passage to this point states “the President is authorized to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons.” The operative phrase in that passage is “he determines,” which hands the President seemingly unilateral authorities to conduct a war against al-Qaeda, other such groups, the Taliban, and anyone who aids or abets them.

As will be discussed in a coming section, a historical review shows the Legislative Branch consistently has handed the Executive Branch more and more wartime and emergency powers. Together, this precedent and the language of the AUMF means one possible outcome is the Executive Branch – and, more specifically, the Office of the President – has over time and within the AUMF been handed enough wartime and emergency powers to render a verdict that the Obama targeted-killing program is legal. Yet, another possible conclusion is the parts of the law that point specifically to targeting those responsible for the 9/11 attacks, as well as those who harbored them, are so specific that the measure only authorizes force against al-Qaeda and the Taliban in Afghanistan and Pakistan since that was the focus as of September 18, 2001.

265 Ibid
266 Ibid
There also are similarities between the 2001 AUMF and the 1945 United Nations Charter, perhaps the piece of international legal canon most often cited by critics and advocates in the targeted-killing policy and legality debate. Specifically, parts of the 2001 law resemble Article 51 (Chapter 7) of the U.N. Charter, which scholars on both sides of the targeted-killing debate have described as a loophole designed to protect the U.N.’s most powerful members. It states that no part of the Charter should “impair the inherent right of individual or collective self-defense if an armed attack occurs against a member (emphasis added)”\(^\text{267}\).” The AUMF signals an intent to authorize the President to invoke the U.N.-stated right, calling the use of force in response to the 9/11 strikes “necessary and appropriate” and using language similar to that of the international charter: “…such acts render it both necessary and appropriate that the United States exercise its rights to self-defense and to protect United States citizens both at home and abroad.” This signals an intent by the drafters of the 2001 force measure to make clear the President’s ability to conduct a war against al-Qaeda, similar groups and any states/regimes that give them assistance or harbor them. The broad nature of this AUMF passage appears to give the President, once again, wide latitude and authority in the fight against al-Qaeda – in fact, this paper argues the 2001 AUMF expands Presidential wartime and emergency powers.

Finally, it also is instructive to zero in on perhaps its most glaring contradiction of the AUMF. At one point, the law specifically authorizes the use of U.S. force against those who “planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001…”\(^\text{268}\).” The intent in that language is very straightforward, raising major questions about whether those who crafted the law intended for it to be used to justify U.S. operations beyond those against al-Qaeda and the Taliban in Afghanistan and Pakistan. That means one possible outcome is all Obama-ordered drone strikes in any state other than those two would be illegal barring a new congressional force-authorization measure. However, the manner in which that same passage ends brings up a conundrum: “…in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons\(^\text{269}\).”


\(^{268}\) 107th Congress, Public Law 107-40

\(^{269}\) Ibid
One must focus on the passage’s use of three key words: “prevent” and “future” and “such.” The first clearly underscores the President’s powers as granted by the Constitution as commander in chief during wartime, and suggest the authors’ intent was to allow for the AUMF to make legal any U.S. actions aimed at stopping another 9/11-like attack on the United States. This suggests a possible outcome is that single word underscores significant intent to deem the drone-commando program legal under the AUMF. The second word, future, suggests lawmakers’ and then-Executive Branch officials’ intent was that the law could and would be used to justify unknown operations to come in unknown states. This suggests the same possible outcome, as does the measure’s usage of such in regards to al-Qaeda. Such suggests the law’s authors – and each member who voted in favor of it – intent was to allow Presidents to use the measure to justify any necessary actions against groups like al-Qaeda’s core in Afghanistan and Pakistan. Applying widely agreed-upon descriptions of individuals and groups operating in Yemen, Somalia and Libya, the AUMF seems to suggest a legal verdict for the Obama-ordered drone strikes and commando raids, based on the 2001 law.

One ongoing debate centers around whether or not the use-of-force measure passed shortly after the Sept. 11, 2001, terrorist attacks is outdated. A review of literature on this topic reveals some scholars raise important questions about the post-9/11 AUMF, arguing its legal foundation is weakening with time. For instance, the authors of a recent Stanford University paper argue the 2001 measure “is increasingly obsolete”270.” The authors call for a totally new force-authorizing measure or changes to the current one271. The authors of this piece, echoed by other reviewed literature, argue the existing force resolution cannot be legally applied to an al-Qaeda organization that has changed dramatically since September 2001, nor violent extremist organizations established since. “The main reason the AUMF is becoming obsolete is that the conflict it describes—which on its face is one against the perpetrators of the September 11 attacks and those who harbor them—is growing less salient as U.S. and allied actions degrade the core of al-Qaeda and the U.S. military draws down its forces fighting the Taliban in Afghanistan272.”

271 Ibid
272 Ibid
The scholars argue that some extremist groups that have been established since September 2001 have close associations with core al-Qaeda, and therefore, force against them is permissibly justified under the 2001 AUMF; specifically, the scholars place in this category al-Qaeda in the Arabian Peninsula (AQAP), which has been targeted by the Obama administration in Yemen. This suggests one could deem those U.S. drone strikes legal using the AUMF justification. But the Stanford scholars also concluded “this interpretive move is increasingly difficult as newer threatening groups emerge with dimmer ties, if any, to al-Qaeda. As a result, we are reaching the end point of statutory authority for the president to meet terrorist threats.” This raises questions about the legality of U.S. strikes and raids against al-Shabaab in Somalia and other Islamic extremist groups and individuals, like the aforementioned botched American commando raid in Libya.

What’s more, some members of Congress are interested in AUMF reforms, with several recently warning Pentagon officials against interpreting the post-9/11 measure “to fit everything” because “it doesn’t.” Notably, some of those very lawmakers were senior members of the military and intelligence oversight committees when the 2001 force-authorization was passed, and are regarded as the closest thing Congress has to national security experts. One is longtime Senate Armed Services Committee leader John McCain (R-Ariz.), who said in May 2013 that the 2001 resolution “clearly” needs to be revised “because of the changing nature of the fight against al-Qaeda. He continued: “It has spread throughout North Africa, throughout the Maghreb. The situation’s changed dramatically.” McCain’s comments came minutes after Michael Sheehan, assistant defense secretary for special operations and low-intensity conflict, and Acting Pentagon General Counsel Robert Taylor told the Senate panel that Obama administration and Pentagon officials interpret the AUMF in a way that covers any U.S. military action the president determines is one that targets al-Qaeda -- no matter where it such attacks might occur. McCain’s response: “For you to come here and say, ‘We don’t need to change it,’ I think, is disturbing.” Together, the Stanford scholars’ conclusions and McCain’s comments suggests a possible outcome would be to deem parts of the Obama

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273 Ibid
275 Ibid
276 Ibid
277 Ibid
278 Ibid
targeted-killing program illegal under the 2001 AUMF – specifically operations in Yemen, Somalia and Libya.

**Posner: Bend But Don't Break**

If the Legislative arm of the federal government has consciously handed the ability to conduct lethal actions without specific authorizing legislation, it would lend credence to the Obama administration’s assertion that its targeted-killing program is legal. But if this examination concludes the Legislative Branch retains the clear authority to authorize missions not covered by a decade-old force-authorization measure, the claims of targeted-killing opponents would be bolstered. This review of the history of U.S war and emergency powers will be conducted in tandem with an analysis of an equally essential question, as it is posed by Richard Posner. He falls into a camp that argues laws must bend under the pressures of wartime and emergency situations. This section of the paper will examine what Posner dubbed his “essential point: “One way or another, law must adjust to necessity born of emergency.” Is this a legal philosophy that is rooted in U.S. legal and wartime precedent? If so, is this a reasonable rationale under which to place the Obama administration’s targeted killing program, therefore making it legal based on existing precedent? This is merely one of many complex questions for which this paper will seek answers.

A debate has raged for decades – centuries, in fact – about the give-and-take between armed conflict and United States laws. That debate includes which laws should be interpreted and applied strictly during times of wars, and which ones should be adjusted – or simply be set aside until the conflict ends. Posner provides a succinct summary of one scholarly camp’s stance on which this section will focus: “The essential point is that, one way or another, law must adjust to necessity born of emergency.” Posner goes on to highlight eighteenth-century scholar David Hume, who stated “the safety of the people is the supreme law: All other particular laws are subordinate to it, and dependent on it: And if, in the common course of things, they be followed and regarded; it is only because the public safety and interest commonly demand so equal and impartial an administration.”

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280 Ibid  
281 David Hume, “An Enquiry Concerning the Principles of Morals 29, 1777, as cited by Posner
Posner describes an approach for how Constitutional matters should be treated in times of emergencies by using a metaphor of a balance. He calls it “pragmatic” that the Judicial Branch weighs concerns about security more heavily in times of emergency, and notes “pragmatism is a dominant feature … of the American judicial culture.” Posner also argues “a Constitutional right should be modified when changed circumstances indicate that the right no longer strikes a sensible balance between competing Constitutional values … and public safety” (emphasis added). This represents a weakness in Posner’s approach, and undercuts his essential point because, when a counterfactual lens is applies, it shows that if this approach were followed in every instance by policymakers and justices, it would create a hammer-and-nail scenario under which it would become too acceptable to modify laws – or simply ignore them. If this aspect of Posner guided U.S. national security law and policymaking, there would be no debate about Obama’s targeted killing program. Notably, Posner’s essential point is less absolutist in tone than the Latin phrase *inter arma leges silent* – or, “in times of war, law is silent.” Here, it is instructive to note the very fine line between the Posner’s point and the Latin phrase, a line that quickly – and dangerously – could be crossed during the slippery slope conditions of wartime. If Obama has crossed this line, one outcome for would be to rule the targeted-killing program illegal due to a violation of the intent of existing laws, the Constitution and warfighting standards that have influenced statutes for centuries.

This chapter argues that, at its core, assessing Posner’s point is a task that must focus on the legal bounds of Executive Branch emergency authorities. The Legislative Branch has repeatedly handed the Executive Branch many Constitutional war and emergency powers to which the former could stake a claim. And the Judicial Branch mostly has sought to avoid playing a major role. It is imperative early in this assessment of Posner’s essential point to underscore the distinction between an emergency and wartime. There is a difference between a war and an emergency. As Tushnet notes, the fight against al-Qaeda is widely viewed more as a “condition”; World War II is almost unanimously viewed a traditional war.

This distinction has important legal ramifications, which will be discussed later.

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282 Posner, pp.147-148
283 Posner, p.147
284 ibid
286 Tushnet, p.45
The Legislative Branch has abdicated many war and emergency powers to which it could stake a claim, and the Judicial Branch has seemingly sought ways to avoid playing a major role in wartime policymaking. For the purposes of brevity, this paper will primarily examine the work of Charles Lofgren and John Yoo on examining the Founders’ intent on emergency and wartime powers. Lofgren describes the war and emergency powers assigned by the Constitution to the branches of the federal government as murky. To illustrate this point, he describes differing views about the Constitution’s language espoused by two of its authors: James Madison and Alexander Hamilton. In a striking section of his piece, Lofgren found although Madison and Hamilton were deeply involved in writing the Constitution, the duo possessed “contradictory conclusions about the war and emergency powers it doled out. In 1798, for instance, Hamilton, in discussing American hostilities with France, stated “the Constitution narrowly constrained the President’s actions.” Therefore, he argued, then-President John Adams “might authorize the repelling of actual attacks, but he could not make reprisals without congressional approval.” Madison was at the forefront of an effort during the Constitutional Convention to strike from the document a passage giving Congress the authority to make war, substituting the word declare. Lofgren, citing Madison’s own notes, concluded “the change from ‘make’ to ‘declare’ was intended in some fashion to broaden the executive’s power in the war-making area.” Existing literature shows the Founding Fathers likely did not fully grasp the legal implications of the one-word change; it is not clear the Founders intended for the Executive Branch to possess the disproportional amount of war and emergency powers it has acquired over time. This suggests the Obama administration, as the Executive Branch, inherited a legal framework under which the Executive possesses the authorities it claims in justifying its targeted-killing program against al-Qaeda and affiliated groups.

Yoo acknowledges the Founders handed Congress specific war powers, mostly centered around raising armies. But Yoo argues the Founders made clear the Legislative Branch’s main war authorities

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288 NAVAL DOCUMENTS RELATED TO THE QUASI-WAR BETWEEN THE UNITED STATES AND FRANCE, 75-76, 1935, Letter from Hamilton to Secretary of War J. McHenry, May 17, 1798; See also id. at 78, Letter from Secretary of War J. McHenry to Captain R. Dale, USN, May 22, 1798, as cited by Lofgren, p 701
289 Lofgren, p675
and responsibilities would lie in the power of the purse. Yoo believes the Constitution “gives the President the initiative in war by virtue of his powers over foreign relations and the military.” Yoo notes the Legislative Branch has endorsed the expansion of Executive Branch war and emergency powers either by passing resolutions authorizing military operations or by providing the necessary funds (while stopping short of using its undisputed Constitutional power to formally declare war). Under Yoo’s thinking, by exercising its Constitutionally-assigned power of the purse in supplying the funds for Executive Branch-launched armed conflicts, the Legislative Branch has indirectly authorized those conflicts – and handed the Executive nearly unrestrained or checked war and emergency powers. Ample existing literature supports Yoo’s stance, suggesting Congress has – each year since 2009 (Obama’s first year in office) – indirectly authorized Obama’s targeted-killing program by passing annual military authorization and appropriations bills that allocate resources for the program.

Checks & Balances: Diminishing Returns?

To assess Posner’s point through the lens of a dominant Executive Branch, it is necessary to examine the state of checks and balances on the Executive. Norman Ornstein and Thomas Mann concluded the Legislative Branch should exercise a large role in foreign affairs and national security – the two areas most synonymous with emergencies. The duo argues that Congressional oversight began to atrophy during the William J. Clinton administration and essentially withered away completely during the George W. Bush administration. They determined – echoing Yoo – that Congress during the Bush years displayed a pattern of deciding not to employ the emergency/wartime authorities it was granted by the Constitution: The power of the purse. By providing the funds for some Bush administration emergency actions members of the Legislative Branch deemed questionable, Congress endorsed those actions; withholding funds, even until the Executive had nixed or corrected legally questionable aspects of an emergency/wartime policy, constitutes an effective form of oversight. Such Congressional actions are few and far between, however. This allows the Executive to bend laws with little of the Legislative involvement the Founders might have envisioned.

291 Yoo, p295
293 Ibid, p70
Another legislative shortcoming is the War Powers Act, crafted after the end of offensive U.S. military operations in Vietnam with the aim of preventing another protracted armed conflict without a formal war declaration or another form of congressional authorization. The intent of the War Powers Act is sound, and its authors clearly wanted Congress to re-assert itself in times of emergency – partly to ensure legal barriers were not demolished by an overzealous Executive. The law, however, is flawed. And Congress has a questionable track record of properly enforcing it. The law’s use of vaguely defined words like “consult” allow the Executive Branch merely to hold a few classified briefings on Capitol Hill that accomplish little other than checking the law’s congressional consultation box.

What’s more, by allowing a President to begin and wage military missions for 60 days before certain requirements kick in, Congress largely abdicated any emergency/war-making powers the Constitution handed it. The act fails to install meaningful checks on the Executive Branch’s emergency powers. When viewed alongside Congress’ subpar track record using the power of the purse to ensure laws are not adjusted too much and its inability to craft and pass alternate laws during emergencies, the resulting image suggests that because the law-making entity of government is unable or unwilling to act during emergencies, the Executive Branch, out of necessity, must react to emergencies by, at times, adjusting U.S. laws. This lends credence to Posner’s point; by extension, it means a possible outcome is a determination that the targeted-killing program is legal.

**Abdicating From The Bench**

Existing scholarly works make clear the Supreme Court has proven reluctant to overturn Presidential emergency/war powers. For instance, as discussed by Graber, the Supreme Court upheld a World War II-era workday law as Constitutional, ruling that Congress can regulate contracts in times of national emergencies. But it was President T. Woodrow Wilson who asked the Legislative Branch to act on such legislation – making the Court’s ruling, by extension, a leading example from the course readings of how the Judicial Branch repeatedly has given the Executive Branch ample leeway during times of emergency and war. This suggests one possible outcome would be to deem the Obama program legal.

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295 Mark A. Graber, Chapter titled “Counter-stories: Maintaining and Expanding Civil Liberties in Wartime,” as edited and included by Tushnet, p107
because the Court has time and again upheld the President’s war and emergency powers – even as they have changed over time.

In another landmark national-security decision, the Supreme Court in 1942 ruled the president possesses the authority to try unlawful combatants before military commissions, and that the one in question was lawfully constructed. The Court determined that Article III of and the Fifth and Sixth amendments to the Constitution do not extend the right to a trial by jury to individuals facing military trials. The High Court sided with the Executive Branch’s interpretation of Article III and the Fifth and Sixth amendments. The Court, in the same case, also endorsed Executive war and emergency powers.

More recently, the Supreme Court and other federal courts have, at times, ruled against the Executive Branch. During the post-9/11 era, in *Hamdan v. Rumsfeld*, the High Court ruled that the Legislative and Executive Branches both possess war-execution powers. That decision “significantly reject[ed] the Bush administration’s theory of unilateral executive power over war” and was taken by experts that the Court “would not automatically defer to the President in all matters related to national security.” In another recent case, *Boumediene v. Bush*, the Supreme Court again ruled against the Executive and Legislative Branches, ruling against the former’s denial of habeas corpus for terrorist suspects being held at Guantanamo Bay and against a law on the same subject passed by the latter. This is not to suggest the post-9/11 era has been limited to cases in which the Judicial Branch sided exclusively against the Executive Branch. For example, in a case with direct links to the targeted-killing program, *Al-Aulaqi v. Obama*, a U.S. District Court dismissed a case challenging the President’s authority to place a dual U.S.-Yemeni citizen on a kill list. And another, *Hamlily v. Obama*, a District Court sided with the Executive Branch’s contention that the 2001 AUMF allowed the United States to detain individuals deemed “part of” the groups targeted by the law, or members of “associated forces.” In short, post-9/11 terrorism court decisions have both ruled for or against the Executive.

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297 Ibid


But a review of post-September 11, 2001 terrorism cases suggests decisions that went against the Executive Branch have not hindered its ability to carry out the targeted-killing program discussed in these pages. Just because the country’s highest court ruled that the Executive Branch shares its war powers with the Legislative does not mean lawmakers have insisted Presidents treat America’s national security operations – those conducted by the Defense Department and Intelligence Community – as a joint arrangement. To that point, Obama has carried out hundreds of drone strikes without prior approval of the Legislative Branch, as discussed in this chapter. The same is true of rulings overturning the Executive Branch’s legal reasons for its policies governing the United States’ detention of terrorist suspects. Such decisions likely sent a message to Executive Branch officials, but appear to have had little substantive impact on their conduct of the targeted-killing program and their legal rationales for it. Therefore, this review of recent cases suggests the trend of an ever-more-powerful Executive Branch on national security issues has continued in the post-9/11 era.

This case, and others reviewed by existing literature, reveal the Court’s decades-old reluctance to plunge into America’s wars and emergencies. Time and again, the High Court has directly and indirectly upheld the Executive Branch’s authority to adjust laws during in times of war and emergency. This suggests Posner’s point is sound because the imperfect U.S. system of government makes necessary an Executive Branch-dominated legal and operational apparatus under which tactical and strategic legal decisions are made during times of war and emergency. When applied to the current program, it suggests a verdict of legality.

*Emergency Decision-Making: An Imperfect Science*

This section will examine whether it is legally acceptable to adjust U.S. laws during wars and emergencies because policymakers are forced to make decisions amid vastly imperfect conditions. It is undeniable that policymakers must make decisions in reaction to and in attempts to prevent incidents. And they often are forced to make decisions with incomplete information, under extreme stress, and when facing debilitating time crunches. A leading example of how American laws have been adjusted to respond to emergency circumstance came during the Civil War, when then-President Abraham Lincoln suspended the writ of habeas corpus. Law professor David Cole sounds a critical tone of such moves: “There is reason to think that as a general matter in times of crisis, we will overestimate our security needs and discount the
value of liberty. Former U.S. Supreme Court Justice William J. Brennan once noted that after “each perceived security crisis ended, the United States has remorsefully realized that the abrogation of civil liberties was unnecessary.” But Cole and Brennan sound resigned to the notion that U.S. laws must be adjusted in times of emergency. This suggests Posner’s approach described by his essential point is necessary, further suggesting any bending of the Law of Armed Conflict, Law of War and 2001 AUMF by the Obama administration would be legal.

Yet, the argument that policymakers must bend or ignore U.S. legal canon because they are making decisions amid imperfect conditions is flawed. As Tushnet points out, “decision making under uncertainty may be less difficult than it might seem, though.” Tushnet concludes that historical data “rather strongly suggests” that any “assumption” that U.S. policymakers are “doing the best they can to respond” to emergencies and threats “is often incorrect.” One example can be found in Tushnet’s examination of Korematsu. Like in other cases, there is little evidence the U.S. internment of Japanese-Americans during World War II played a major role in the war’s outcome. This suggests, in this case, U.S. officials adjusted the law in a legally questionable and unnecessary manner. Notably, Tushnet states his review of historical data shows “perhaps almost always” some of the policymakers involved in emergency decisions knew the adopted policies were flawed. This underscores the dangers inherent in a precedent of always adjusting laws during national emergencies. To be sure, this finding shows, at times, some adjustments of U.S. laws have proven unnecessary, raising legal questions about potentially unauthorized programs like all or parts of the Obama targeted-killing program.

War v. Emergency: What’s Normal?

Before rendering a final verdict on Posner’s essential point and how it applies or cannot be applied to the Obama targeted-killing program, a brief discussion of the distinction between wartime and a period of emergency – and the legal ramifications – is required. As noted earlier, Tushnet wrote the war on terrorism should be viewed as a “condition.” But, because it always was destined to have a clear ending,
World War II is the personification of a traditional war\textsuperscript{306}. This paper agrees with his stance that bending or waiving laws during a war, which will have a clear ending point, “is one thing” -- but doing the same for a condition like the war on terror could bring “the end of the rule of law itself\textsuperscript{307}.” Tushnet and other scholars believe war is more normal, and therefore, normal legal canons should apply\textsuperscript{308}. The weakness of any notion that the rule of law should be bent or totally set aside for an emergency condition is, as the “war on terrorism” has proved, such conditions can stretch into a second decade. In short, they become normal, meaning Tushnet is correct to argue normal rules should, therefore, also apply to emergency conditions\textsuperscript{309}. Existing literature shows most normal U.S. laws have been adjusted only in extreme situations like wars or emergencies, suggesting Posner’s point has merit.

For a historical precedent that provides a telling summary for the treatment of Constitutional powers, as well as U.S. laws, during times of emergency and war, it is instructive to closely study the words of former President Abraham Lincoln. The country’s 16th commander in chief put it this way: “The dogmas of the quiet past are inadequate for the stormy present\textsuperscript{310}.” Lincoln went on to add that “as our case is new, so we must think anew and act anew,” suggesting that in times of emergency, quick responses must – at least temporarily – push aside traditional policies and laws. Tushnet notes Lincoln’s view summarized a key aspect of legal scholarship: “Circumstances alter cases\textsuperscript{311}.” This lends additional credence to Posner’s point. Posner reasonably notes that Lincoln’s suspension of habeas corpus was just because it was a move made, in large part, because “the Union was in grave peril\textsuperscript{312}.” Again, the contents of this section lends credence to the notion that any bending of the laws and standards examined in this chapter to cover the Obama program – given the al-Qaeda threat – appears in line with U.S. precedents. When applied to Obama’s targeted-killing program, it seems to lend credence to its net legality – even if parts of the program, at times, exceed legal limits.

\textsuperscript{306} Tushnet, p45
\textsuperscript{307} Ibid
\textsuperscript{308} Ibid
\textsuperscript{309} Ibid
\textsuperscript{310} Abraham Lincoln, Annual Address to Congress, December 1, 1862, as cited by Tushnet
\textsuperscript{311} Tushnet, 40
\textsuperscript{312} Posner, 153
The Obama administration has provided key glimpses of how it interprets the laws and standards examined in this chapter. For instance, in a landmark December 2011 Justice Department white paper, for instance, the administration argues a president “has authority … arising from his constitutional responsibility to protect the country ... against this enemy”313. The legal rationale? The authorization of force against al-Qaeda passed by Congress in 2011 and “the existence of an armed conflict with al-Qa’ida under international law.” There is much scholarship about the Obama administration’s legal underpinning for the program. For instance, one scholarly work suggests replacing the White House’s prized 2001 measure with a completely new version315. The authors offer less-wholesale options, including adding new authorization language to the 2001 measure tailored for specific groups and locales, linking the post-9/11 measure to presidents’ Article II powers, or passing new language that simply would incorporate Obama’s targeted-killing program316.

In what is renowned in national security and scholarly circles as one of the landmark speeches of this presidency, Obama in May 2013 spoke at length about his targeted-killing campaign, declaring “America’s actions are legal317.” What followed that declaration was a window into the commander in chief’s thinking about the legality of his own program. In just a few sentences, Obama cited the 2001 AUMF, pointed to al-Qaeda, the Taliban “and their associated forces318,” being sure to stick close to the force resolution’s legal language. Obama worked in a veiled reference to the war and emergency powers handed to the President by the Constitution: “We are at war with an organization that right now would kill as many Americans as they could if we did not stop them first319.” Obama ended the telling passage by stating “this is a just war -- a war waged proportionally, in last resort, and in self-defense.” The President here is touting the use of advanced technology – drones – and special operations units to justify his program under the principles of proportionality, aiming to bolster his administration’s legal rationale by arguing it is not excessive; he also is invoking the state’s right to self-defense, a key part of international

314 Ibid
315 Ibid
316 Ibid
317 The White House, Obama at Fort McNair
318 Ibid
319 Ibid
war law cited in the 2001 AUMF. The revealing part of the seminal 2013 speech hits on themes from other administration speeches and documents that this section will examine, and then apply to the previously described criteria to each aspect of the Obama administration’s justification. This approach will allow the paper to render a final determination about the program’s legality.

**In War, An Elastic Executive**

When it comes to the war and emergency powers handed to each branch of the government by the Constitution, this chapter argues the Obama administration largely has followed most of those that came before it. That is to say it has exerted a belief in and willingness to exert a claim to broad Executive Branch powers – and, in some cases, expand them. Obama and his top aides, a review of speeches and documents show, are fervent believers in the interpretation of Constitutional war and emergency powers discussed previously. Time and again in public comments and internal memorandums, for instance, Obama and other officials use a rather strict interpretation of the Constitution to cover a large swath of legally broad land.

For instance, time and again, officials and documents use language similar to that found in a November 2011 Justice Department memo on the targeted killing program: “The President has authority to respond to the imminent threat posed by al-Qa’ida and its associated forces, arising from his constitutional responsibility to protect the country”[320]...” This comes from Article I of the Constitution, which mandates the Oath of Office, which includes the word “protect”[321].

A major problem with such an interpretation of a single word is it could be used by a President to justify a myriad questionable actions, including operations aimed at killing specific individuals the public is told is a senior member of al-Qaeda or group with similar ambitions. This paper argues, after applying the aforementioned metric, a justification based solely on Article II, Section I would fail to make the program legal. However, when viewed as part of a broader justification, the mandate to protect the people seems to add to a possible verdict that the program is legal. To be sure, the word has been used frequently in Obama administration officials’ speeches and in leaked public documents about the targeted-killing program.

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Memo’s primary focus is on justification for targeted killing of a U.S. citizen, but document contains ample discussion of the program writ large.

Obama administration officials have justified the targeted-killing program by echoing many legal scholars who “largely agree that presidents can order U.S. troops to fight when the country is attacked or attack appears imminent,” and then linking those the office’s Constitutional powers. The 2011 Justice Department white paper contains a lengthy discussion of how the administration defines an imminent threat, and how a President’s Constitutional powers clearly state the ability to respond to and prevent such a perceived threat. “The condition that an operational leader present an ‘imminent’ threat of violent attack against the United States does not require the United States to have clear evidence that a specific attack on U.S. persons and interests will take place in the immediate future.” The document cites the 9/11 attackers, stating the administration’s belief that the U.S. government would have to have evidence of a specific attack before taking actions to prevent said attack. Therefore, the government would lack “sufficient time to defend itself,” making targeted killings and snatch-and-grab operations using commando teams legal because the United States often will possess “only a limited window of opportunity.”

It is important to state clearly that the 2011 DOJ white paper focuses largely on the legality of the United States Government targeting a U.S. citizen who it believes to be an imminent threat due to his/her membership in al-Qaeda or an affiliated group. That subject is a complex one that deserves its own chapter or entire thesis project, and is beyond the scope of this research question. Still, the memo provides additional Obama administration legal justifications for the program. The memo argues any “lethal operation in a foreign nation” would meet legal standards for sovereignty if those missions were carried out “with the consent of the host nation’s government or after a determination that the host nation is unable or unwilling to suppress the threat posed by the individual targeted.” If the bulk of such operations fall under those categories, the targeted-killing program seems to comply with U.S. laws, historical precedents and warfighting standards. That is because, as described by the Justice Department memo, the President would be carrying out the office’s Constitutional duty to defend the country and prevent attacks. The Justice memo also argues any U.S. operation anywhere in the world would meet legal requirements because “the United States is currently in a non-international armed conflict with al-Qa’ida and its associated

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323 Department of Justice, p7
324 Ibid
325 Justice Department, pp1-2
forces,” citing a court decision that a conflict pitting a country against a transnational non-state actor occurring beyond the country’s territory is an armed conflict “not of international character.” The U.S. Government essentially argued “there were some armed conflicts to which no part of the [Geneva] Conventions could apply,” a position upheld by the U.S. Court of Appeals D.C. Circuit in July 2005.

This decision only adds to the historical precedent discussed previously in this chapter. Therefore, the Justice Department white paper makes a compelling legal case that there is ample judicial precedent and germane U.S. laws to determine the program is legal.

However, the white paper raises a list of legal questions. For instance, it suggests each and every individual targeted by a U.S. drone strike or special operations raid represents an “imminent threat” to the United States. The Obama administration has carried out hundreds of drone strikes in Pakistan and Yemen, killing seemingly thousands of members of al-Qaeda or associated groups. A strict reading of the Justice Department white paper would lead one to conclude that every militant targeted by those strikes — meaning believed by U.S. officials to be present at the to-be-struck site posed an “imminent” threat to America. As law professor Amos N. Guiora has written, such a determination in every case would mean striking any al-Qaeda target would justify large numbers of civilian deaths, casting aside long-established rules of proportionality during armed conflict. And that, Guiora concluded, leaves the targeted-killing program “not grounded in sufficient legal and moral footing.” Guiora also raises legal concerns about the white paper fueling the post-9/11 move toward an “unitary executive” and the possibility that it will lead commanders to make decisions that cause large numbers of civilian deaths. While both are issues worthy of close scrutiny and about which the White House has been less than forthcoming, neither make the targeted-killing program illegal under existing, relevant U.S. laws and standards. The unchecked Executive Branch point is valid, but as shown elsewhere in this paper, the Legislative and Judicial Branches for decades have allowed the Executive to take on ever-greater war and emergency powers.

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326 Ibid, p3
329 Ibid, p4
The administration’s stance is an elastic definition of imminent threat is needed when fighting an armed conflict against an enemy that is continually planning terrorist attacks. Here, the Obama administration aligns itself with Yoo, who argues the country’s founding document “gives the President the initiative in war by virtue of his powers over foreign relations and the military.” Like its justification of a Constitutional authority to protect the country, the Obama administration’s imminent threat justification is very broad. Together, this chapter argues the administration challenges boundaries of legality when it applies both to its targeted-killing program. However, the administration’s points about an enemy constantly plotting attacks on Americans, when viewed through a metric that includes a historical willingness to bend laws during wartime and in order to prevent attacks, means it is a net reasonable interpretation.

**AUMF: A Geographic Loophole**

As noted in a previous section, much of the debate about the legality of the targeted-killing program has focused on whether or not the United States – and the President – has the authority to carry out strikes in placed beyond the scope of its initial post-9/11 operations and the legislation that authorized it. Some scholars, as previously noted, call that measure outdated because al-Qaeda and similar groups have changed significantly since 2001, and are operating in countries far away from Afghanistan and Pakistan. What if an updated or entirely new force-authorization measure is needed? What if the Obama administration has identified a loophole in the 2001 resolution that authorized U.S. operations in retaliation for the 2001 terrorist attacks? And how would such a loophole affect the legality of the Obama program?

The Obama administration interprets the 2001 AUMF in many ways that align with that of the George W. Bush administration. That’s because Obama administration officials view it as authorizing a wide range of military and other operations in retaliation for the September 2001 attacks and to prevent future such attacks on the homeland. It is instructive to focus almost exclusively on the intent of those who crafted and voted for the 2001 force-authorization measure. The debate about the legality of the program has centered on whether the White House possesses the legal authority to carry out armed drone strikes and commando raids in sovereign countries beyond Afghanistan and Pakistan – the focus of the initial post-9/11 American military operations.

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330 Yoo, p295
The 2011 Justice Department white paper addresses this very issue, stating if one party to an armed conflict operates from “a new nation,” an operation to “engage” that enemy in the new location can be considered “part of the original conflict.” Such an interpretation is necessary, DOJ states, when fighting a terrorist organization because they frequently change countries from which they operate or operate from multiple countries. Due to the decades-long historical precedent of U.S. laws being bent in wartime, this argument is reasonable – even if the program, in some cases, challenges the boundaries of existing laws and authorities. One major reason is the Executive Branch’s clear authority to defend the country and prevent attacks on it. Some scholars, however, have written that the geographic loophole in the AUMF and cited by the 2011 white paper raises legal issues. After all, while its geographic limits seem non-existent, the AUMF remains limited to those involved in the 9/11 attacks and those who harbored them. And that means “the further the USA gets from targeting Al-Qaeda, the harder it is to squeeze those operations into the AUMF.” Yet, as shown elsewhere in this chapter, other provisions of the AUMF and language in the Constitution seem to provide the White House legal cover – and, notably, the Legislative and Judicial Branches have not challenged its interpretation of existing laws. This means the Obama administration’s contention that the 2001 measure features no geographic limits on Washington’s legally acceptable retaliatory actions becomes crucial to this paper’s aims.

The potential legal loophole has been mentioned in several administration speeches and documents, including the 2011 white paper and a March 2012 speech by Attorney General Eric Holder. In it, Holder declared “our legal authority is not limited to the battlefields in Afghanistan.” The government’s top lawyer then moved to the loophole, pointing out that “neither Congress nor our federal courts has limited the geographic scope of our ability to use force to the current conflict in Afghanistan.” He then referred to America’s fight against al-Qaeda “a war” – an important distinction, as previously noted – and stated the group often operates from different countries. “Over the last three years alone, al-Qaeda and its associates have directed several attacks – fortunately, unsuccessful – against us from
countries other than Afghanistan. Our government has both a responsibility and a right to protect this nation and its people from such threats.\(^{336}\) This comment highlights the importance the Executive’s right to act. It is important to return to the language of the 2001 AUMF. A review of that measure shows lawmakers indeed placed no geographic constraints on any use of force the President determines is necessary to prevent future terrorist attacks. This suggests a clear intent by the authors of the AUMF, and the lawmakers who voted in favor of it, to avoid legally handcuffing the Office of the President in conducting a war against al-Qaeda and associated organizations by including the names of specific countries. When applying this paper’s metric, it appears this justification is reasonable for several reasons: What the lack of a geographic limitation reveals about the AUMF’s intent; the United States’ clear precedent of allowing Presidents wide authority in wartime; and the precedent of bending laws in times of war and emergency. On the latter point, it is reasonable to conclude the administration’s geographic limitation language is no loophole; rather, it is a reasonable interpretation of the 2001 AUMF.

Reasonable would only equal legal in this category if some evidence exists of a commitment to restrain the Obama administration’s perceived right to act seemingly everywhere an al-Qaeda leader might reside on any given day. In the same speech, Holder suggested such restraints do exist: “This does not mean that we can use military force whenever or wherever we want. International legal principles, including respect for another state’s sovereignty, constrain our ability to act unilaterally.\(^{337}\)” That lends credence to a verdict of legality based on this paper’s metric. What’s more, Holder implied that Washington typically acts only after garnering the approval from the leaders of the state in which it launches drone strikes or inserts commando teams. “But the use of force in foreign territory would be consistent with these international legal principles if conducted, for example, with the consent of the nation involved – or after a determination that the nation is unable or unwilling to deal effectively with a threat to the United States.\(^{338}\)” While scholars and analysts, in many regards, must take senior U.S. officials’ at their word that such restraints are permanent parts of the program, his description lends some – if questionable – weight to a determination that this approach is legally acceptable.

\(^{336}\) ibid
\(^{337}\) ibid
\(^{338}\) ibid
CONCLUSION

The above study of existing scholarship reveals a substantial precedent in the United States of interpreting the Constitution’s war powers and adjusting existing laws to meet the specific demands of war and emergency periods. The Obama administration, as this paper shows, has done just this in its legal justification for the targeted-killing program. To render a verdict, one must examine the Founders’ decision to change Congress’s power from the ability to make war to the power to declare it. This point is key because it shows the ongoing debate about the legality of a wartime program like Obama’s use of drones and commando raids largely is one about Executive Branch powers. That means the changing of a single word in the Constitution appears responsible, more than any other piece of evidence cited by Lofgren, Yoo and other scholars, for the evolution of U.S. war powers to an Executive Branch-dominated legal arrangement. This paper argues there is more evidence both in existing scholarship and within historical precedent that most emergency and wartime powers lie with the Executive Branch. In short, to use a common phrase, in seeking a path from Obama’s targeted-killing program to a verdict of illegality, one cannot get there from here.

To study an Executive Branch war program is to study of the boundaries of Executive Branch war and emergency powers. It used an assessment of scholar Posner’s essential point that laws must be adjusted in war and emergency times. Posner’s point, as shown above, is embodied by the targeted-killing program, which pushes the boundaries of existing laws, historical precedents and standards. What’s more, the Legislative Branch has time and again abdicated what war and emergency powers it was granted by the Constitution. The Legislative Branch increasingly has proven unable – or unwilling – to perform its basic Constitutional and other basic functions, such as its power of the purse and oversight of the Executive Branch. This means Congress cannot be expected to swiftly produce new laws that keep America’s legal canon in lock-step with emergency situations and wars.

Further, the Judicial Branch has worked hard to avoid playing a major role in cases involving national security and Executive powers. This Tushnet passage on Korematsu is both telling and chilling: “Judges should refrain from giving in to an understandable urge to make exercises of emergency powers compatible with Constitutional norms.” Together, the previously referenced Ex Parte Quirin case on

339 Tushnet, p136
captured German agents’ treatment under U.S. law and Graber’s conclusions about the Supreme Court’s
workday ruling – along with other readings – show the Judicial Branch often actively has sought and found
ways to uphold the Executive Branch’s adjustment of U.S. laws during emergencies and wars on
Constitutional and statutory grounds. The Legislative Branch has poorly executed its war and emergency
powers, as shown above; the Judicial Branch has displayed an unwillingness to constrain the Executive
Branch’s ability to adjust laws during emergencies and wars. This suggests Posner’s point is sound because
the imperfect U.S. system of government makes necessary an Executive Branch-dominated emergency/war
framework under which American legal cannon is pragmatically adjusted.

This chapter argues it is legally acceptable for the intent of Constitutional powers and existing
laws to be adjusted – but never permanently changed without legislation or a court decision -- to fit the
complex circumstances of wars and emergencies. As this analysis revealed in its section on the Obama
White House’s interpretation of the intent of the Constitution and existing U.S. laws, the Obama
administration largely has taken a Posner-like approach in justifying its armed drone and commando raid
program. In 2009, very early into his first term, and just as his use of drone strikes and covert raids was
ramping up, Obama uttered this telling description of his view of how the Constitution should be applied to
national security issues: “It provides a foundation of principles that can be applied pragmatically; it
provides a compass that can help us find our way.” As Chapter Two argues, Obama’s true foreign policy
and national security philosophy is best described as a “hybrid situationalist,” meaning he applies aspects
of the Realist, Liberal, and lesser amounts of other philosophies to fit specific circumstances340. Obama’s
view of the Constitution as a compass embodies his justification for the targeted-killing program. The
“covert commander in chief”341 does not see the Founders’ intent, in modern terms, like dashboard-
mounted GPS. That kind of navigation system provides precise turn-by-turn instructions; a compass
provides broad directional parameters, leaving it up to the user to detect outer boundaries and decide the
proper steps to reach the destination.

Obama’s approach is consistent with Posner’s point, as well as the approach used by President
Lincoln and war scholar Benjamin Kleierneran. Lincoln’s argued circumstances alter legal cases.

341 ignatius
Kleinerman concluded the “Constitution should be understood as different during extraordinary times than during ordinary times”. The imperfect nature of the U.S. federal system means an Executive Branch-dominated emergency and war policymaking framework under which U.S. laws bend but rarely break – is indeed necessary. Using Posner’s point, which is the seed fodder of the metric described above, this paper concludes the Obama administration’s targeted-killing program is, therefore, overall legal.

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342 Posner, p157
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**Portfolio Conclusion**

Together, these three chapters have examined three crucial aspects of President Barack Obama’s controversial targeted-killing program using drone aircraft and special operations teams. This policy – and the ever-improving drone technology that drives most of it – raises a series of unresolved questions about how the United States will fight future armed conflicts, as well as the legally acceptable bounds of Executive war and emergency authorities. This series of papers has attempted to shine a light in areas where before murkiness prevailed via a number of policy analyses. By reaching informed conclusions and questioning conventional wisdom, this portfolio was intended to help future scholars and analysts – and perhaps even future officials – ponder and build upon its work. To ensure the targeted-killing program – especially the use of armed drones – is conducted in a legal and ethical manner for perhaps decades to come, it is the hope of the author that other scholars and analysts will challenge the finds made within these pages, and use the work done to complete this portfolio to take the next steps in analyzing the proper – and improper – next steps for this program, especially considering al-Qaeda continues to morph, metastasize, train and target.

It is instructive here to acknowledge some shortcomings of these papers. First and foremost, the author did not have access to classified operational military and CIA data, nor internal Executive Branch legal documents. Such documents could have clarified some points, and verified or challenged scholarly findings and studies of specific operations/internal debates that reside in a classified file – far away from public or scholarly scrutiny. Because the drone program could alter how Presidents conduct future armed conflicts for decades to come, it is incumbent on scholars and watchdogs – including the author – to press the relevant government agencies and the White House, when operationally feasible, to declassify important documents that will aid a proper debate about the targeted-killing program. Right now, a full debate and proper scholarly scrutiny simply is not possible. This is not a political statement, as two administrations of very different political and ideological stripes have both kept such documents behind a thick veil of secrecy. This is a statement rooted in concern about the possibilities of a runaway and dangerous policy that, if used haphazardly and without a functioning set of checks-and-balances, quickly could severely hinder U.S. national security and do far more harm than good.
That is not the lone issue or question these papers dredge up for future scholarship, however. The list is robust, in fact. One is, as paper No. 1 showed, the drone strike-commando raid approach had a net positive impact on the pursuit of U.S. national security in the Af-Pak region during the timeframe examined. Admittedly, paper No. 1 merely examined a moment in time. A more-complete analysis unbounded by the tight timelines of the RT I course would take more spend years examining the kinds of issues – and additional ones – examined in paper No. 1. A longer analysis would provide a more-complete picture of the program’s impact because relations between nations ebb and flow over time.

Other questions for future scholarship are unearthed by paper Nos. 2 and 3. The second paper, examining the targeted-killing program’s impact on President Obama’s national security and foreign policy philosophy, was aimed at helping the scholarly pursuit of the still-elusive “Obama Doctrine.” As more recent events have showed, Obama has failed to articulate or implement a coherent approach to challenges around the globe. Given the second paper’s finding that Obama essentially cherry-picked aspects of various philosophies, it raises questions about what might occur if a targeted-killing program free of real checks-and-balances and conducted by an Executive with ever-expanding war and emergency powers. Future scholars and analysts can build upon paper No. 2 by making informed projections about the scope of a targeted-killing program in the hands of a President who incorporates a philosophy more prone to using force to pursue the country’s foreign policy and national security goals.

As previously mentioned, paper No. 3 delves into perhaps the most hotly debated aspect of the Obama drone strikes-commando raids program: Its legal standing. In a country that prides itself on and chides the rest of the world about the rule of law, the issues examined in and raised by paper No. 3 are perhaps the most pressing for future scholars. It is on these issues, for these reasons, on which the bulk of this conclusion will focus.

As mentioned in paper No. 3, at its very core, is one of Executive Branch war and emergency powers. Therefore, Lofgren is correct in focusing on the Founders’ decision to change Congress’s power from the ability to make war to the power to declare it\textsuperscript{343}. The changing of a single word appears responsible, more than any other piece of evidence cited by Lofgren or Yoo, for the evolution of U.S. war powers to an Executive-dominated legal arrangement. This portfolio argues there is more evidence, both in

\textsuperscript{343} Lofgren
existing literature and ample historical examples, that Yoo’s conclusion that the most emergency and wartime powers lie with the Executive Branch\footnote{Yoo}.\footnote{Posner, p150}

It is a troubling and seemingly irreversible trend that Congress largely abdicated any emergency/war-making powers the Constitution handed it. Time and again on matters of national security, including Obama’s targeted-killing program, the Legislative Branch has failed meaningful checks on the Executive Branch’s emergency powers – and the Judicial Branch has opted to remain on the sidelines. When viewed alongside Congress’ subpar track record using the power of the purse to ensure laws are not adjusted too much and its inability to craft and pass alternate laws during emergencies, the resulting image suggests that because the law-making entity of government is unable or unwilling to act during emergencies, the Executive Branch, out of necessity, must react to emergencies by, at times, adjusting U.S. laws in troubling ways. This lends credence to Posner’s point, but raises dire questions about the state of congressional oversight, the prospect of a runaway Executive, and the onset of future conflicts using armed drones inside sovereign state that simply ignore any need for new congressional approval. Future scholars should examine what this means for the state of the republic.

Literature reviewed for this project also dredged up some crucial questions. For instance, Posner argues the Supreme Court should have a miniscule role in \textit{any} national security matters, including those during emergencies and wars. In a baffling passage, Posner states Justices possess “scant knowledge of national security,” calling this a “deficiency” that would lead them to rule against legally questionable emergency actions taken by the Executive Branch\footnote{Posner, p150}. This claim does not appear to be supported by most existing national-security legal scholarship reviewed for this portfolio.

An Executive Branch-dominated national security apparatus that either is forced to adjust laws to meet wartime realities due to an absentee Legislative Branch or eschews the idea of its role in such matters is troubling at best and dangerous at worst. The same is true of an Executive Branch that seems to eschew a Judicial Branch role in such decision- and policy-making, and a High Court seemingly unconcerned with asserting itself on murky legal matters pertaining to war policies. The system, as it has evolved over time, is careening toward one unrestrained by the very principle of checks and balances that is a foundational
aspect of the Constitution and U.S. governmental system. Therefore, while the U.S. Supreme Court has yet to address the Obama targeted-killing program, this paper argues it should resist any future potential temptation or legal reluctance to reject a case on it.

This portfolio found the drone strike-commando raid program conducted by President Barack Obama had a net positive impact on the pursuit of U.S. national security and foreign policy goals during a finite time in a specific region. It also was determined to not have had a major impact in altering a new president’s philosophy on such matters; a contrary finding would have been more alarming – still, similar examinations of future presidents’ use of the targeted-killing program will be essential. And it concluded, with some reluctance, given the intent of Constitutional war powers, existing laws and a historical precedent of adjusting all of the above in times of war and emergency, the targeted-killing program, as of May 2014, legal. In short, the program – as has been the case in past times of war and emergency – bends but rarely consistently breaks the intent of existing laws, Constitutional language, and other long-established standards. The author’s reluctance is rooted in a concern that the program has been implemented without a proper debate among lawmakers, officials, legal experts, and the scholarly community. Since it is expected the program will outlast the Obama administration, this debate is essential. Even though the paper acknowledges Executive Branch officials must make decisions on tight deadlines in an imperfect system that has created Executive-dominance-by-necessity, those very officials charged with overseeing this structure of necessity must avoid the slippery slope toward adopting the Latin phrase *inter arma leges silent* – or, “in times of war, law is silent***

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346 Tushnet, p124
CURRICULUM VITA

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