

“Licence to Kill”: The United States’ Illegal Drone Program and the Dark Legacy of Collective Punishment

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## ABSTRACT

### “Licence to Kill”: The United States’ Illegal Drone Program and the Dark Legacy of Collective Punishment

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This paper will investigate the use of drone strikes by the United States government in its ongoing counterterrorism efforts in the Middle East as part of the War on Terror. It will focus on the use of drones during the Obama administration and investigate the ways in which the program violates both international human rights law and international humanitarian law. It will then argue that the United States government’s drone program constitutes a form of collective punishment as outlined and prohibited in Geneva Convention IV. In arguing that the drone program constitutes a form of collective punishment, the paper hopes to emphasize the gravity of violations of international law that the United States is committing. It will examine why the United States has been allowed to continue violating international law with little repercussions, focusing on the lack of transparency and refusal to disclose information regarding its counterterrorist operation. Finally, it will provide suggestions as to how the international community can work towards holding the United States accountable to international law in order to maintain the credibility of international law and ensure that the basic human rights of all individuals are protected and upheld.

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## Introduction

*“I no longer love blue skies. In fact, I now prefer grey skies. The drones do not fly when the skies are grey. And for a short period of time, the mental tension and fear eases. When the skies brighten, the drones return and so too does the fear.”<sup>1</sup>*

*Zubair ur-Rehman, aged 13*

*North Waziristan, Pakistan*

On September 20<sup>th</sup>, 2001, nine days after the extremist terrorist group Al-Qaeda attacked the United States on its own soil, President George W. Bush publically and officially declared that the United States of America was at war. This war, which represented a new form of international armed conflict, was not declared against a specific group or nation state, but rather with an entire ideology in what is commonly known as the “War on Terror”. President Bush asserted, “Our war on terror begins with al Qaeda, but it does not end there. It will not end until every terrorist group of global reach has been found, stopped and defeated.”<sup>2</sup>. In doing so, President Bush initiated a global war that was not bound by the geographical or temporal boundaries that had characterized armed conflict in the past. Rather, the War on Terror served as a *carte blanche* for ongoing United States military operations in the Middle East, lasting for sixteen years and counting and profoundly affecting the politics of both the United States and the Middle East since 2001. This paper will investigate the use of unmanned aerial vehicles to target

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1. “Nabila and the Rehman Family”, *Reprieve U.S.: Drones Active Cases*

2. George W Bush. “Special report: terrorism in the US” *Address to a Joint Session of Congress and the American People*. 20 Sept 2001, United States Capitol, Washing D.C. Address.

enemy combatants in the United States' counterterrorist operations in the Middle East as part of the War on Terror.

The use of unmanned aerial vehicles, commonly known as drones, has come to typify the current engagement of the United States in several countries in the Middle East under the guise of the War on Terror. Although the use of drones was introduced during the Bush era, it is the Obama administration that has made drones their weapon of choice in their targeted killings of enemy combatants.<sup>3</sup> Under the Obama administration, the frequency of drone strikes has increased dramatically and expanded territorially to seven countries.<sup>4</sup> The significant increase in the use of drones by the United States government combined with indications that the frequency and capabilities of drone warfare techniques will grow demands that drone warfare be analyzed in terms of the ethical and legal considerations that arise surrounding the practice's adherence to international law.

This paper will examine the use of drone strikes by the United States government through the legal frameworks of both international human rights law and international humanitarian law to determine whether the practices of the Obama administration have adhered to and upheld the standards set forth in international law. It will demonstrate the ways in which the drone program has repeatedly violated international human rights law and international humanitarian law, with specific reference to the right to life as outlined in the International Covenant on Civil and Political Rights and the rules governing armed conflict outlined in the Geneva Conventions. It will argue that these violations of international law amount to a war crime in the form of

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3. Peter L. Bergen and Jennifer Rowland. "Decade of the Drone: Analyzing CIA Drone Attacks, Casualties, and Policy" in *Drone Wars: Transforming Conflict, Law, and Policy*, ed. Peter L. Bergen and Daniel Rothenberg (Cambridge University Press, 2015), 12-41.

4. Ibid.

collective punishment against populations in areas frequented by US drones as defined in Geneva Conventions IV. It will then argue that the need for increased transparency by the United States government in regards to its drone program is a requirement under international law. Lastly, it will argue that the increased transparency will facilitate increased accountability of the government towards international human rights law and international humanitarian law, thereby ending the impunity that the US has enjoyed thus far.

### *Obama's Weapon of Choice*

The first drone strike carried out by the United States government outside of Afghanistan as part of counterterrorist operations took place in Yemen in 2002 under the Bush administration and targeted and killed six Al-Qaeda operatives.<sup>5</sup> The practice was then expanded to Pakistan between the years of 2004 and 2007.<sup>6</sup> Despite launching the War on Terror and initiating the program of drone strikes, the Bush administration is responsible for only 12% of drone strikes carried out in Pakistan since 2001.<sup>7</sup> It was President Obama who drastically expanded the drone program and established drones as the weapon of choice in the War on Terror. The first drone strike ordered by the Obama administration took place on January 23<sup>rd</sup>, 2009, just three days after his inauguration, and killed three men, leaving several of their children injured in the attack.<sup>8</sup> The Bureau of Investigative Journalism reports that, to date 425 drone strikes have been carried out in Pakistan by the United States government, with the Obama administration

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5. "CIA 'killed al-Qaeda suspects' in Yemen", *BBC*, 5 Nov 2002.

6. Bergen and Rowland, "Decade of the Drone", 13

7. *Ibid.*

8. Spencer Ackerman, "Victim of Obama's first drone strike: 'I am the living example of what drones are'", *The Guardian*, 23 Jan 2016.



authorizing 376 of those strikes.<sup>9</sup> These 425 strikes have resulted in between 2,499 and 4,003 casualties, with high estimates of 966 civilians and 207 children killed.<sup>10</sup> Using these figures, civilian casualties account for 24-38% of the total number of those killed by US drones in Pakistan, with thousands more injured and adversely affected by the practice perpetrated by the United States government.

US drone strikes in Pakistan are largely concentrated to the region of North Waziristan, which shares a border with Afghanistan and is made up of tribal areas where the Taliban and Al-Qaeda are known to operate. While the United States government claims that these regions house most of the top leaders of the terrorist networks, as of December 2013 only 13% of drone strikes under the Obama administration have successfully targeted and killed a military leader and less than 2% of drone strikes have successfully eliminated high-profile enemy targets.<sup>11</sup> While the Bush administration employed a policy of very limited strikes to target only top military leaders, the Obama administration has expanded the use of drone strikes to target all militants and destroy the entire terrorist network in North Waziristan.<sup>12</sup>

For the purposes of this paper, the geographic focus will be North Waziristan in Pakistan. This will allow for a more specific and detailed scope through which to examine the United States' drone program. Despite this limited geographic focus, the analysis in regards to both international human rights law and international humanitarian law can be abstracted to the United States drone program more generally, since the policies and procedures employed by the

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9. Jack Serle and Jessica Purkiss, "Drone Wars: The Full Data", *The Bureau of Investigative Journalism*, 1 Jan 2017.

10. Ibid.

11. Bergen and Rowland, "Decade of the Drone", 15

12. Ibid.

United States government are not country-specific but general guidelines used in all of its counterterrorism operations in the Middle East in the War on Terror.

### *The Case for Drones*

While recent years have drawn a significant amount of public concern and criticism against the United States' policy of drone warfare, the majority of high-ranking government and military officials defend the practice on the basis that drones are the best option of several alternatives. Proponents of drone warfare claim that drones are the moral weapon of choice because of their advanced technological capabilities to carry out long-term surveillance from a strategic vantage point. They argue that these capabilities give drones increased accuracy in correctly identifying enemy targets as well as distinguishing between civilians and combatants.<sup>13</sup> Additionally, drones are able to reach and monitor areas that would be difficult to establish an on-the-ground presence in, and are therefore highly advanced in their intelligence gathering capabilities.<sup>14</sup> Proponents of drone warfare therefore emphasize that, strategically, drones are militarily advantageous to the drone-wielding power; in this case, the United States.

Proponents of drone warfare also argue that drones are an effective way to engage in military activity because they fall short of a full-scale ground operation.<sup>15</sup> Drones are seen as a responsible weapon in the sense that they are more limited and constrained as compared to a ground military intervention. President Obama has stated that the alternative to drones, which

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13. David True. "Disciplining Drone Strikes: Just War in the Context of Counterterrorism" in *Drone Wars: Transforming Conflict, Law, and Policy*, ed. Peter L. Bergen and Daniel Rothenberg, (Cambridge University Press, 2015), 285-299.

14. Ann Rogers and John Hill. *Unmanned: Drone Warfare and Global Security*. (Pluto Press, 2014).

15. Daniel Brunstetter and Megan Braun. "The Implications of Drones on the Just War Tradition". *Ethics and International affairs*, vol. 25, no. 3 (2011), 337-358.

would be a ground intervention, would result in “more U.S. deaths, more Black Hawks down, more confrontations with local populations, and an inevitable mission creep in support of such raids that could easily escalate into new wars”.<sup>16</sup> Given that, “drones seem to manifest a less obvious trespass than a manned incursion, making a lower imposition on national sovereignty”, advocates of drones defend the practice on the claim that drones uphold the principle of proportionality that is enshrined in international humanitarian law, a claim that will be disputed in this paper.<sup>17</sup>

Finally, drones are particularly useful to the United States government because of the separation factor that exists between the targets and the soldier. This separation factor means that there is no risk of physical harm present to the person carrying out the drone strike, which significantly reduces the number of American casualties as compared to ground combat and the deployment of troops.<sup>18</sup> The elimination of physical risk allows the United States to carry out its military operations in a more limited and less dangerous fashion without any risk to American life. This is also politically strategic in garnering public support, as drone warfare has become a widely supported alternative for military engagement amongst the American people, who are more likely to oppose the physical deployment of American troops to the Middle East.<sup>19</sup> Furthermore, advocates of drones argue that, by removing the individual responsible for firing the drone from a situation of combat, more caution and clarity of thought is exercised, which results in more accurate strikes that decrease collateral damage.<sup>20</sup>

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16. Barack H. Obama. “Remarks by the President at the National Defence University”. *National Defence University*, Fort McNair, Washington, D.C. 23 May 2013.

17. Rogers and Hill, *Unmanned: Drone Warfare and Global Security*, 2

18. Brunstetter and Braun, “The Implications of Drones”, 350

19. *Ibid.*

20. *Ibid.*, 351

This paper will challenge the assumptions made by proponents of drone warfare that drones represent a “moral weapon of choice” because of their increased ability to accurately identify enemy combatants, engage in limited warfare, or limit collateral damage to civilian populations. This paper will not argue that drones are inherently an illegal weapon under the framework of international law. Rather, it will focus on examining the specific policies, programs, and guidelines employed by the United States government under the Obama administration in order to show that the current program of drone warfare violates international human rights law and international humanitarian law by failing to uphold the human right to life, as outlined in Article 6 of the International Covenant on Civil and Political Rights adopted by the United Nations General Assembly on 16 December 1966. It will then argue that, beyond violations of the right to life, the drone program constitutes a form of collective punishment as defined and prohibited in the Geneva Conventions.

## International Legal Frameworks

In order for an accurate analysis of the United States' policy of drone warfare to be made, the international legal framework through which drones should be examined must first be established. The launch of the War on Terror in 2001 has since generated much discussion and controversy regarding the nature of the conflict and whether it may be regarded as an armed conflict. Establishing the nature of the engagement between the United States and Pakistan is crucial in determining whether international humanitarian law or international human rights law will apply.

In a speech made by Harold Koh, the Legal Advisor to the Department of State at the Annual Meeting of the American Society of International Law on March 25th 2010, Koh asserted that, "as a matter of international law, the United States is in an *armed conflict* with al-Qaeda, as well as the Taliban and associated forces, in response to the horrific 9/11 attacks, and may use force consistent with its inherent right to self-defence under international law".<sup>21</sup> Since the attacks of September 11th, 2001, the United States government has consistently asserted that it is engaged in an armed conflict with terrorist forces.<sup>22</sup> Although the legitimacy of this claim of armed conflict has been challenged for whether it adheres to the internationally established definition of armed conflict, for the purposes of this paper, it will be accepted that the United States of America is actively engaged in war, as it claims to be, and therefore, bound by international humanitarian law.

In accepting that the United States is engaged in armed conflict, the term "non-international armed conflict" is evoked to describe the nature of the armed conflict between the

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21. Koh, Harold Hongju. "The Obama Administration and International Law". *Annual Meeting of American Society of International Law*. 25 March 2010, Washington D.C. Speech. (italics mine)

22. Ibid.

United States and terrorist forces in Pakistan. Since the United States is not engaged in combat with the State of Pakistan, and instead is fighting terrorist forces that are independent but within the territory of Pakistan, the conflict is considered non-international in nature.<sup>23</sup> The notion of non-international armed conflict was first introduced in the Additional Protocol II to the Geneva Conventions, which expanded on the definition of war to include armed conflict with non-state actors.<sup>24</sup>

### ***International Human Rights Law vs. International Humanitarian Law***

The engagement in armed conflict does not, under international law, absolve States of their obligations under international human rights law. While traditional approaches to international law may have seen international human rights law and international humanitarian law as mutually exclusive frameworks, with the first being applicable to times of peace and the second governing the conduct of armed conflict, recent developments in international law stress that they are in fact concurrent frameworks of law<sup>25</sup>. A number of resolutions, court rulings, and customary law provisions establish that international human rights law and international humanitarian law overlap in their application in order to ensure the protection of human rights, regardless of the context.<sup>26</sup> International human rights law has now been established as a complimentary legal framework to international humanitarian law. This congruence, however, is not a bidirectional congruent application. While it has been established that international human

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23. Robert Barnidge. "A Qualified Defence of American Drone Attacks in Northwest Pakistan under International Humanitarian Law". *Boston University International Law Journal*, vol. 30, no. 409, (2012), 409-447.

24. *Ibid.*, 423

25. Shah, Sikander Ahmed. *International Law and Drone Strikes in Pakistan: The legal and sociopolitical aspects*. (Routledge, 2015).

26. *Ibid.*, 111

rights law continues to apply in situations of armed conflict, it is not the case that international humanitarian law can apply outside situations of armed conflict.<sup>27</sup>

The Additional Protocol II to the Geneva Conventions, in expanding on the definition of war to include non-international armed conflict with non-state actors, stresses the congruence of international human rights law and international humanitarian law. In the preamble, the obligation to uphold human rights treaties in times of conflict is reiterated, reading “Recalling furthermore that international instruments relating to human rights offer a basic protection to the human person”.<sup>28</sup> Several United Nations Security Council resolutions have also reaffirmed that international human rights law continues to apply in instances of armed conflict alongside international humanitarian law.<sup>29</sup> Furthermore, the International Criminal Court ruled that the rights outlined in the International Covenant on Civil and Political Rights and other human rights treaties continue to apply in armed conflict, writing that “the right not arbitrarily to be deprived of one’s life applies also in hostilities”.<sup>30</sup> The current customary international law conclusively holds that times of armed conflict do not absolve states of their obligation under international law to uphold human rights, both within their territory and within the territorial context of the enemy actors. One of these human rights that must be upheld even within the context of war is the right to life as outlined in Article VI of the International Covenant on Civil and Political Rights.

The United States government, as outlined in the Operational Law Handbook of the United States Army of 2015, maintains a strict policy position of non-extraterritoriality in

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27. *Ibid.*, 112

28. International Committee of the Red Cross (ICRC), *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)*, 8 June 1977, 1125 UNTS 609

29. Shah, *International Law and Drone Strikes in Pakistan*, 119

30. *Ibid.*, 116

regards to the International Covenant on Civil and Political Rights, despite a great deal of criticism from the international community and human rights organizations.<sup>31</sup> This means that the United States only recognizes its obligations to individuals who are both within the territory and jurisdiction of the United States but maintains that it has no obligations under international human rights law to uphold the International Covenant on Civil and Political Rights in regards to individuals who do not meet these two requirements. This effectively means that international human rights law “do[es] not create treaty-based obligations for U.S. forces operating outside U.S. territory” and that the United States has no obligation under international law to uphold the right to life in regards to individuals outside its territory in the areas in which they are militarily engaged in counterterrorist operations.<sup>32</sup> This interpretation of non-extraterritoriality is one that has been condemned by the United Nations Human Rights Committee, who has voiced disagreement and reaffirmed that international human rights treaties apply to individuals both within and outside of United States’ territory, including in instances of armed conflict.<sup>33</sup>

The Human Rights Committee has consistently emphasized the extraterritorial applicability of core human rights treaties, including the International Covenant on Civil and Political Rights, in times of conflict.<sup>34</sup> General Comment 29 of the Human Rights Committee explicitly states that, “The Covenant requires that even during an armed conflict measures derogating from the Covenant are allowed only if and to the extent that the situation constitutes a threat to the life of the nation... On a number of occasions the Committee has expressed its concern over States parties that appear to have derogated from rights protected by the Covenant,

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31. “Operational Law Handbook”, *International and Operational Law Department: The Judge Advocate General’s Legal Center and School, U.S. Army* (Charlottesville, Virginia, 2015)

32. *Ibid.*, 52

33. UN Human Rights Committee (HRC), *CCPR General Comment No. 29: Article 4: Derogations during a State of Emergency*, paragraph 3, 31 August 2001, CCPR/C/21/Rev.1/Add.11

34. Shah, *International Law and Drone Strikes in Pakistan*, 126



or whose domestic law appears to allow such derogation in situations not covered by article 4".<sup>35</sup> Additionally several United Nations bodies have repeatedly expressed concern for the United States' lack of concern for the International Covenant on Civil and Political Rights and violations of the right to life through their use of drone strikes.<sup>36</sup> The refusal of the United States to acknowledge the extraterritoriality of the International Covenant on Civil and Political Rights and other core human rights treaties, and accept their obligation to uphold these treaties in their counterterrorism operations, is a violation of international law.

This section has established that international human rights law and international humanitarian law are mutually applicable in situations of armed conflict like the one that the United States is currently engaged in as part of the War on Terror. Given that human rights treaties continue to be binding in situations of armed conflict and create obligations on states beyond their sovereign territory, it follows that the United States is obligated under international law to uphold the International Covenant on Civil and Political Rights while conducting its program of drone warfare, despite its refusal to recognize this obligation. The next section will focus on investigating the manner in which the Obama administration's drone program fails to respect and uphold international human rights law and international humanitarian law with particular reference to the "right to life" as outlined in Article IV of the International Covenant on Civil and Political Rights.

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35. UN Human Rights Committee, General Comment 29, para. 3

36. Including but not limited to the Human Rights Council and Special Rapporteur on extrajudicial, summary and arbitrary execution, the United Nations

## Drones and the Right to Life

Article VI of the International Covenant on Civil and Political Rights states that, “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life”.<sup>37</sup> The Human Rights Committee, which is the treaty body of the International Covenant on Civil and Political Rights, further elaborated on the right to life in General Comment 6, which states, “The Committee considers that States parties should take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces.”<sup>38</sup> As has previously been established, the International Covenant on Civil and Political Rights is an extraterritorially binding treaty that continues to apply in instances of armed conflict. Therefore, it is legally binding under international law that the United States government upholds the right to life and the right to not be arbitrarily deprived of life in its use of drone strikes as part of the War on Terror.<sup>39</sup>

Despite the claims by proponents of drone warfare that drones are technologically advanced with increased capabilities of identification, making it easier to differentiate between civilians and combatants and thereby prevent civilian casualties, the international community has expressed concern regarding the ease with which drones allow force to be used. In a report on the use of drones to the General Assembly, the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions expressed concern that, “drones make it not only physically easier to dispatch long-distance and targeted armed force, but the proliferation of drones may lower social barriers in society against the deployment of lethal force and result in attempts to

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37. UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, Article VI

38. UN Human Rights Committee (HRC), CCPR General Comment No. 6: Article 6 (Right to Life), 30 April 1982, paragraph 3

39. Shah, *International Law and Drone Strikes in Pakistan*, 126

weaken the relevant legal standards”.<sup>40</sup> The concern is that, due to the little to no risk posed to American life and the ease with which drone strikes can be used to target and kill enemy combatants, drones encourage the use of lethal force in instances in which lethal force would otherwise be unacceptable, thereby violating the principle of proportionality of international humanitarian law. The report of the Special Rapporteur also expresses concern at the use of drones to undermine international human rights law and emphasizes once again the applicability of human rights treaties in situations of armed conflict. In reference to drone warfare in particular, the report states that “States are bound to ensure the realization of the right to life when they use force, whether inside or outside their borders”.<sup>41</sup>

The United States’ program of drone warfare to target and eliminate terrorist forces has raised serious legal concerns within the international community regarding its ability to adhere to the principle of the right to life. Concerns stem from the use of drones to conduct targeting killings of enemies, which may, under certain circumstances amount to extrajudicial killings. The Special Rapporteur defines targeted killings as, “the intentional, premeditated and deliberate use of lethal force, by States or their agents acting under colour of law, or by an organized armed group in armed conflict, against a specific individual who is not in the physical custody of the perpetrator.”<sup>42</sup>

Targeted killings are a legitimate and accepted aspect of international humanitarian law and are legally defensible in times of armed conflict. There are, however, certain provisions and

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40. United Nations General Assembly, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions*, 13 Sep. 2013, A/68/382, Section III para. 17

41. *Ibid.*, Section III, para. 43

42. United Nations Human Rights Council, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Addendum : Study on targeted killings*, 28 May 2010, A/HRC/14/24/Add.6, paragraph 1

principles that govern the use of targeted killings and the use of lethal force against enemy combatants. The two principles that govern the use of targeted killings in times of armed conflict are the principle of discrimination and the principle of proportionality.<sup>43</sup> The next section will examine the specific programs and guidelines employed by the United States government in identifying enemy combatants to be targeted through a closer investigation into these two principles. First, however, it will be examined whether or not the United States holds a legitimate claim to self-defence in its use of targeted killings.

### *Just Cause*

In his speech to the National Defence University in May 2013, President Obama stated, “America’s actions are legal. We were attacked on 9/11. Within a week, Congress overwhelmingly authorized the use of force. Under domestic law, and international law, the United States is at war with al Qaeda, the Taliban, and their associated forces. We are at war with an organization that right now would kill as many Americans as they could if we did not stop them first. So this is a just war - a war waged proportionally, in last resort, and in self-defence.”<sup>44</sup>

Since the terrorist attacks of 9/11, the United States government has consistently invoked its right to self-defence under international law to justify the War on Terror and the accompanying practice of drone strikes. Article 51 of the United Nations Charter upholds a State’s right to self-defence, stating, “Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until

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43. United Nations Human Rights Council, *Summary of the Human Rights Council interactive panel discussion of experts on the use of remotely piloted aircraft or armed drones in compliance with international law*, 15 Dec 2014, A/HRC/28/38, Section III, para. 23

44. Obama, “Remarks by the President”, 2013

the Security Council has taken measures necessary to maintain international peace and security.”<sup>45</sup>

While the right to self-defence is protected under international law, there are certain criteria that must be met in order for the claim of self-defence to be legitimate. There are several different types of self-defence that hold differing levels of legitimacy in customary international law. Firstly, it is accepted that Article 51 protects the right of States to respond with force not only to an armed attack that has already occurred, but also to an anticipated attack.<sup>46</sup> This form of self-defence, known as anticipatory self-defence, is protected if a threat is proved to meet the requirements of immediacy and imminence. If there is evidence to suggest that an armed attack by an enemy force is both immediate and imminent, then a state may rightfully invoke their right to anticipatory self-defence under Article 51 of the United Nations Charter.<sup>47</sup> While both the requirements of immediacy and imminence were arguable met in the immediate aftermath of the terrorist attacks of 9/11, neither of the two criteria can legitimately be met fifteen years after the attacks in order to justify continued anticipatory self-defence.

Rather, the United States under the Bush administration invoked its right to *pre-emptive* self-defence. Pre-emptive self-defence refers to the use of force against a threat that is present but may not meet the requirements of immediacy and imminence.<sup>48</sup> In his National Security Strategy Address of 2002, President Bush claimed, “Given the goals of rogue states and terrorists, the United States can no longer solely rely on a reactive posture as we have in the past. The inability to deter a potential attacker, the immediacy of today’s threats, and the magnitude of potential harm that could be caused by our adversaries’ choice of weapons, do not permit that

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45. United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI, Article 51.

46. Shah, *International Law and Drone Strikes in Pakistan*, 31

47. *Ibid.*

48. *Ibid.*, 45

option. We cannot let our enemies strike first” and that “To forestall or prevent such hostile acts by our adversaries, *the United States will, if necessary, act pre-emptively*”.<sup>49</sup>

This invocation of the right to strike pre-emptively became known as the Bush Doctrine and has characterized the United States government’s approach to warfare since. The current drone strikes of the War on Terror are no longer self-defence of an immediate and imminent attack, but rather pre-emptive self-defence. However, this notion is not explicitly or implicitly protected under Article 51 as, “the right to attack another state on the basis of anticipatory or pre-emptive self defence is not available under the UN Charter” or anywhere else in international law.<sup>50</sup> Other defences of the United State’s drone strikes in Pakistan have claimed the right to *preventive* self-defence, which refers to the use of force to eliminate the possibility of an enemy force mounting the capability to launch an attack.<sup>51</sup> Preventive self-defence refers to preventing a threat before the threat can even materialize. This form of self-defence is largely rejected by the international community and considered illegal under international law as it mounts to a form of aggression.<sup>52</sup> Therefore, the claim to legitimate self-defence on the basis of both pre-emption and prevention by the United States government in its use of targeted drone strikes are not considered legitimate under international law as they fail to meet the requirements of immediacy and imminence that are required for anticipatory self-defence, thereby making the claim to self-defence of the United States government contestable in its legitimacy.<sup>53</sup>

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49. George W Bush. “U.S. National Security Strategy: Prevent Our Enemies From Threatening Us, Our Allies, and Our Friends with Weapons of Mass Destruction” 20 Sept. 2002 (italics mine)

50. Shah, *International Law and Drone Strikes in Pakistan*, 15

51. Craig Martin, “Going Medieval: Targeted Killing, Self-Defence and the *Jus ad Bellum* Regime” in *Targeted Killings: Law and Morality in an Asymmetrical World* ed. Claire Finkelstein, Jens David Ohlin and Andrew Altman (Oxford: Oxford University Press, 2012), 223-252

52. *Ibid.*, 244

53. *Ibid.*, 247

The Special Rapporteur on extrajudicial, summary or arbitrary executions voiced concern regarding the prolonged use of self-defence to justify the drone program and counterterrorism efforts of the United States, writing that, “The right to self-defence persists only for so long as it is necessary to halt or repel an armed attack and must be proportionate to that aim...States are not entitled to continue to act in self-defence until the absolute destruction of the enemy is achieved, such that the enemy poses no long-term threats.”<sup>54</sup> The use of the claim to pre-emptive and preventive self-defence cannot be used under international law to justify the drone program of the United States government.

It is important to challenge the claim to legitimate self-defence used by the United States government in order to demonstrate the flaws and lack of credibility of this claim, thereby challenging the entire claim that underpins the drone program and continued War on Terror. Despite the lack of legitimacy of this claim of self-defence, the United States has continued to allow it to define the policies and practices that it uses to target supposed enemy combatants. These policies and practices will be the focus of the next section of this paper.

### ***Discrimination***

The principle of discrimination during armed conflict is one of the most essential principles of international humanitarian law. The principle of discrimination holds that, in accordance with Common Article 3 of the Geneva Conventions, persons not actively engaged in armed conflict, including former combatants no longer participating in conflict, shall not be

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54. United Nations General Assembly, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions*, Section III, para. 90

deprived of their right to life or be targeted for military purposes.<sup>55</sup> It is based on the underpinning belief that individuals hold inalienable rights to life and liberty even within the context of war and that measures must be taken by all warring parties to protect these rights.<sup>56</sup> Proponents of drone warfare advertise drones as the moral weapon of choice largely for their supposed advanced ability to distinguish between combatants and non-combatants, thereby making drones better at avoiding civilian casualties and adhering to the principle of discrimination as opposed to more direct and traditional forms of warfare.<sup>57</sup>

This section will refute this claim, arguing that drone warfare fails to meet the essential requirement of international humanitarian law of discrimination between combatants and non-combatants for three reasons; firstly, the “drone myth” that drones are better at distinguishing and identifying combatants, secondly, the separation factor that encourages the use of lethal force against combatants and by extension civilians, and finally, the definition of a combatant used by the United States government and its prolific use of “signature strikes”. Drone warfare raises concerns regarding the principle of discrimination in relation to the specific regulations, definitions, and policies employed by the United States government when identifying and targeting enemy combatants.

The nature of the armed conflict that the United States is engaged in already raises concerns regarding discrimination, and this is compounded by the lack of transparency surrounding the practice of drone strikes. The Obama administration’s current policy is to consider everyone remotely affiliated in some way or another with either Al-Qaeda or the

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55. International Committee of the Red Cross (ICRC), Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), 12 August 1949, 75 UNTS 287, Common Article III.

56. Michael Walzer. *Just and Unjust Wars: A Moral Argument with Historical Illustrations*. 5<sup>th</sup> ed., (Basic Books, 2015), 136.

57. Brunstetter and Braun, “The Implications of Drones”, 339



Taliban as an enemy combatant, even those not engaged actively in threatening terrorist activities.<sup>58</sup> The United States government under Obama has consistently maintained that terrorist organizations have, “no non-military wing, so all members, whether bomb makers, propagandists or drivers are fair game, and the list of targets grows ever longer, covering threats so far down the command chain that they are likely not threats at all”.<sup>59</sup> This failure to distinguish between active combatants and individuals that are peripherally connected to a terrorist organization who do not pose a legitimate threat is a violation of the principle of discrimination under international humanitarian law.

In an article published in *The New York Times*, information from several officials of the Obama administration revealed that the definition of a combatant used to authorize lethal drone strikes was extremely vaguely defined, and that the Obama administration, “in effect counts all military-age males in a strike zone as combatants...unless there is explicit intelligence posthumously proving them innocent.”<sup>60</sup> This information, coupled with the fact that the United States refuses to disclose the criteria that it employs to identify enemy combatants that are then put onto a ‘kill list’ raises serious concerns regarding the principle of discrimination and the ethical conduct of the United States government in its use of drone strikes.<sup>61</sup> Using a broad and ambiguous definition of combatant, such as the one stated above, allows the US to re-categorize many civilians as combatants and manipulate the definition of combatant in order to circumvent

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58. Roger and Hill, *Unmanned: Drone Warfare and Global Security*, 94

59. *Ibid.*

60. Joe Becker and Scott Shane. “Secret ‘Kill List’ Proves a Test of Obama’s Principles and Will”. *The New York Times*. 29 May 2012.

61. Sarah Holewinski. “Just Trust Us: The Need to Know More About the Civilian Impact of US Drone Strikes” in *Drone Wars: Transforming Conflict, Law, and Policy*, ed. Peter L. Bergen and Daniel Rothenberg, (Cambridge University Press, 2015), 42-70.

62. Shah, *International Law and Drone Strikes in Pakistan*, 181

its obligation to be discriminatory in its targeted drone strikes. This is illegal under international law as it strips many civilians of their civilian status and thereby denies them the rights and protections given to them under international humanitarian law.<sup>62</sup> Particularly, by taking away their civilian status and classifying them as combatants that can be legitimately targeted, the United States government is violating the right of these civilians to not be arbitrarily denied of their life, which violates the right to life as articulated in Article VI of the International Covenant on Civil and Political Rights.

The methodology used by United States officials in determining targets is a further cause for concern. The majority of drone strikes are classified as ‘signatory strikes’, denoting that individuals are targeted on the basis of behaviour, rather than confirmed identity.<sup>63</sup> Personality strikes, which make up the minority of authorized drone strikes, target individuals whose identities are known and have been confirmed. These types of strikes are usually used to target high profile enemy combatants and the United States government is typically quite transparent in their use of personality strikes.<sup>64</sup> Signature strikes, on the other hand, constitute the majority of drone strikes and involve the authorized use of lethal force against supposed enemy combatants despite having no confirmation of the individual’s identity.<sup>65</sup> Signature strikes “target individuals simply because they exhibit a behaviour the US considers threatening”.<sup>66</sup> The observed behaviour of the enemy target is deemed to be significant enough to warrant lethal force. However, the United States refuses to disclose the behavioural criteria by which an individual is

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63. “The Civilian Impact of Drones: Unexamined Costs, Unanswered Questions” *Center for Civilians in Conflict, Columbia Law School*. Human Rights Clinic, 2012. pp. 32

64. Holewinski, “Just Trust Us”, 45

65. Ibid.

66. Rogers and Hill, “Unmanned: Drone Warfare and Global Security”, 111

deemed a significant enough threat to justify lethal action.<sup>67</sup> The use of signature strikes greatly increases the probability of civilians being either mistaken for combatants or deliberately targeted in drone strikes given that the definition of a combatant employed by the United States allows for a great deal of ambiguous middle ground.

This policy of signature strikes has come under scrutiny by various United Nations bodies for its failure to uphold the principle of discrimination under international humanitarian law and for the lenience that it gives the United States government in selecting individuals to be targeted. The report of the Special Rapporteur on extrajudicial, summary or arbitrary executions writes of signature strikes, “This is not a concept known to international humanitarian law and could lead to confusion... Insofar as the term “signature strike” refers to targeting without sufficient information to make the necessary determination, it is clearly unlawful”.<sup>68</sup>

The Human Rights Council further reported concerns that the prolific use of signature strikes, in addition to violating the principle of discrimination “takes no account of the principles of necessity and proportionality in the use of force”.<sup>69</sup> This policy of signature strikes that constitutes the main method by which individuals are selected for targeting by drone strikes raises several concerns regarding the principle of discrimination under international humanitarian law and facilitates the targeting of civilians that cannot legitimately be considered enemy combatants. In this way, the use of signature strikes violates the right to life as articulated in Article VI of the International Covenant on Civil and Political Rights.

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67. Holewinski, “Just Trust Us”, 46

68. United Nations General Assembly, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions*, Section III, para. 72

69. United Nations Human Rights Council, *Summary on the Human Rights Council interactive panel*, Section III, para. 17

### *Proportionality*

The principle of proportionality in international humanitarian law governs the kinds of force that are ethically permissible within the context of war. It is intended to limit the damage that occurs within armed conflict and ensures that the force employed is proportional to the threat posed.<sup>70</sup> The section will show that the current program of drone strikes by the United States fails to adhere to the principle of proportionality by examining the high civilian death toll as reported by several human rights organizations and United Nations bodies. As previously stated, nearly 1000 civilians have been killed in drones strikes in North Waziristan alone, 207 of which were children.<sup>71</sup> Furthermore, only 13% of drone strikes authorized by the Obama administration have successfully targeted and eliminated military leaders of terrorist organizations.<sup>72</sup> The high death toll amongst civilian populations is justified by the United States as being collateral damage, which is an unfortunate but inevitable consequence of any war that is protected and recognized under international humanitarian law.<sup>73</sup> The question, however, is whether the civilian cost can be justified under international humanitarian law through the principle of proportionality.

The principle of proportionality holds that the damage to a civilian population must not exceed the relative benefits that would be achieved in a military operation and that there must be an imminent threat that justifies the damage to civilians.<sup>74</sup> As iterated in the report of the Special

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70. Maiese, Michelle. "Jus n Bello: Fighting Well and Limited War". *Beyond Intractability*. June 2003.

71. *The Bureau of Investigative Journalism*

72. Bergen and Rowland, "Decade of the Drone", 15

73. Barnidge, "A Qualified Defence of American Drone Attacks", 440

74. Maiese, "Jus n Bello: Fighting Well and Limited War"

Rapporteur on extrajudicial, summary or arbitrary executions, the principle of proportionality in times of armed conflict states that, “it is prohibited to carry out an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated”.<sup>75</sup> This principle includes an assumed requirement that all measures will be taken to ensure that proper distinction is made between civilians and combatants. Given that it has been established in the previous section that the United States government not only does not take all proper precautions, but also actively employs definitions and policies that allows it to expand the definition of combatant, and thereby does not adhere to the principle of distinction, this threatens its ability to adhere to the principle of proportionality.

One of the key advancements in the use of drone technology is the facilitated ability to deploy lethal force remotely. Drone technology allows for increased ease in military operations targeting enemy combatants because they involve little to no risk to the wielding power. However, given the indication of increased use of drone warfare in the future, this has raised concerns regarding the principle of proportionality; specifically, whether the ease with which drones are used to eliminate targets violates the principle of proportional use of lethal force. The use of drones may, “lower social barriers in society against the deployment of lethal force and result in attempts to weaken the relevant legal standards”.<sup>76</sup> It is an established facet of the principle of proportionality under international humanitarian law that lethal force not be used

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75 . United Nations General Assembly, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions*, Section III, para. 75

76. *Ibid.*, para. 17

except in the case that the target presents an imminent and immediate threat to other individuals or to the state that requires the deployment of deadly force.<sup>77</sup>

In cases in which the target does not pose an imminent and immediate threat, it is expected that other non-lethal methods be used to capture or neutralize the target. However, in many cases of drone strikes, it has been found that, “armed drones were often not used to counter an imminent threat or where there were no other alternatives” and that there had been “dozens of drone strikes in North Waziristan where there was no evidence that the individual killed posed an imminent threat to another individual, or to the State”.<sup>78</sup> Furthermore, as stated earlier, only 13% of drone strikes under the Obama administration have successfully targeted and killed a military leader and less than 2% of drone strikes have successfully eliminated high-profile enemy targets.<sup>79</sup> This leaves the vast majority of drone strikes as failing to eliminate targets that pose an imminent and immediate threat, thereby failing to adhere to the principle of proportionality. This failure to use only proportional force means that the civilian impact of drones has far exceeded the military benefit incurred. The high civilian death toll as a result of failure to use proportional force violates both international humanitarian law and international human rights law and constitutes a violation of the right to life.

The first section of this paper has focused on outlining the different policies and practices of the United States’ drone warfare program and the way in which several different aspects of this program violate the fundamental right to life as outlined in Article VI of the International Covenant on Civil and Political Rights. To do so, it first examined the legal framework through which drone strikes must be examined and established that international humanitarian law and

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77. United Nations Human Rights Council, *Summary on the Human Rights Council interactive panel*, Section III, para. 16

78. *Ibid.*

79. Bergen and Rowland, “Decade of the Drone”, 15

international human rights law are congruent legal frameworks and that human rights treaties, including the International Covenant on Civil and Political Rights, continue to be legally binding and obligatory on states in times of armed conflict. It established that, despite the position of the United States military, the United States government is obligated under international law to adhere to the provisions outlined in the International Covenant on Civil and Political Rights because human rights treaties must be applied extraterritorially. This means that the right to life must be upheld by the United States while conducting drone strikes as part of their counterterrorism program.

The paper then investigated the different factors of international law that must be considered when examining the legality of drone strikes. Firstly, it considered the claim to self-defence that gives the United States a just cause and the right of self-defence as outlined in Article 51 of the United Nations Charter. It showed that, given that the right to pre-emptive self-defence is not protected under international law, the claim to self-defence by the United States government does not legitimate or justify their practice of drone warfare. Furthermore, this paper considered the requirements of discrimination and proportionality under international humanitarian law as fundamental requirements for respecting the right to life. It showed that the definitions and policies employed by the United States government in identifying and targeting supposed enemy combatants often violates the principle of the right to life. The next section of this paper will argue that these violations of international law constitute a form of collective punishment as defined in the Geneva Conventions.

## **Drones as a form of Collective Punishment**

Recent years have witnessed a rise in the amount of attention that Obama's drone program has received from the international community. For the first several years of his presidency, Obama's prolific use of drone strikes as part of American counterterrorism efforts received very little public attention from both the international and domestic community. However, following the killing of American citizen Anwar Al-Awlaki in September of 2011 and the killing of his American son two weeks later, the American public and the international community became increasingly aware of the drone program and the accompanying high civilian death toll that it was leaving behind.<sup>80</sup> Since then, the legality (or lack thereof) of the United States government's drone program and counterterrorism activities have come under an increasing amount of criticism and scrutiny by the United Nations and accompanying international bodies, and human rights organizations. There is also a vast body of literature that has analysed and documented the human rights abuses and violations of international law that the United States has engaged in over the last decade. The Obama administration's drone program is widely regarded in the international community as violating international human rights law and international humanitarian law and several United Nations reports have explicitly condemned the actions of the United States government and called on them to uphold their obligations under international law.

The existing literature and international documentation of violations of international law, however, continue to treat the United States government's repeated human rights violations as a group of individual instances of abuses rather than attempting to provide a more structural analysis of what has become an ongoing pattern of violations of human rights and blatant

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80. Conor Friedersdorf, "How Team Obama Justifies the Killing of a 16-Year-Old American", *The Atlantic*, 24 Oct 2012.



disregard for international law. The following section of this paper will argue that the drone program should not be seen simply as a number of instances of violations of international law in the context of armed conflict but rather as part of a larger and more serious violation of international humanitarian law. It will expand on the previous section, which showed that the drone program violates the right to life as outlined in Article VI of the International Covenant on Civil and Political Rights, by arguing that the United States' drone program and the civilian impact that it has constitutes a form collective punishment as defined and prohibited in Geneva Convention IV. It will argue that the failure to take proper measure to distinguish between civilians and combatants, the failure to adhere to the proportional use of lethal force, and the deliberate targeting of civilians through double-tap strikes and strikes against civilian gatherings constitute collective punishment against the residents of areas frequented by United States drones. It will then further expand on the adverse civilian impact of drone strikes to support this claim. Finally, it will argue that, through framing it as a form of collective punishment, the international community must recognize the gravity of the situation and demand an end to the impunity enjoyed by the United States government.

Article 33 of Geneva Convention IV of 1949 clearly prohibits the practice of collective punishment, stating “No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited.”<sup>81</sup> The prohibition of collective punishment is reaffirmed again in both Additional Protocol I and Additional Protocol II to the Geneva Conventions, adopted in 1977, which both state, “All persons who do not take a direct part or who have ceased to take part in hostilities, whether or not their liberty has been restricted, are entitled to respect for their person,

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81. ICRC, Fourth Geneva Convention, Article 33

honour and convictions and religious practices” and then continues to say that “the following acts against the persons referred to in paragraph 1 are and shall remain prohibited at any time and in any place whatsoever”, listing collective punishment specifically as one of the acts that is strictly prohibited.<sup>82</sup>

As has been established in the previous section, the United States’ drone program routinely violates international human rights law and international humanitarian law with specific regards to the right to life. Additionally, there is evidence and documentation to suggest that these instances of violations of the right to life are not accidental and cannot be classified under the term “collateral damage” in times of armed conflict because it often involves a deliberate targeting of non-combatants. While the United States government claims to only target combatants involved in hostile activities, various reports by human rights organizations suggest otherwise. Furthermore, many nation states have expressed disapproval at the current practice of drone strikes, saying that “the deaths of civilians could not be qualified as ‘collateral damage’” and that “no threat to security could justify such attacks”.<sup>83</sup>

### ***Deliberately Targeting Civilians***

International humanitarian law requires that warring parties not only not intend to harm civilians, but actively take measures to ensure that the damage to civilian populations will be limited.<sup>84</sup> There is evidence that suggest that the United States government has deliberately targeted civilians in drone strikes in attacks on a mosque, a funeral, and eleven reported cases of

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82. ICRC, Additional Protocol I and Additional Protocol II to the Geneva Conventions, Part II Article 4

83. United Nations Human Rights Council, *Summary on the Human Rights Council interactive panel*, Section III, para. 42

84. UN Human Rights Committee, *CCPR General Comment 6 (Right to Life)*

double-tap strikes targeting first responders and rescuers after the first strike.<sup>85</sup> Double-tap strikes refer to the practice of following one drone strike that may have targeted militant forces with another subsequent strike that targets those that are the first responders to the scene of the strike. The first responders are mostly made up of those rushing to help or rescue the injured and the grieving of those killed. Double-tap strikes are typically employed in warfare as a method of neutralizing the enemy. However, this practice functionally targets the civilians that respond to the attack and is therefore a violation of international humanitarian law that stipulates that civilians must not be the targets of military activities.<sup>86</sup>

The use of double-tap strikes to target civilian first responders constitutes not only a violation of international humanitarian law, but also a war crime as defined in the Geneva Conventions.<sup>87</sup> The Special Rapporteur on extrajudicial, summary or arbitrary executions expressed concern at the use of double-tap drone strikes as part of counterterrorist programs and reaffirmed their illegality under international law saying, “Where one drone attack is followed up by another in order to target those who are wounded and hors de combat or medical, personnel, it constitutes a war crime in armed conflict and a violation of the right to life, whether or not in armed conflict.”<sup>88</sup> Residents of North Waziristan admit that, when a drone strikes, they no longer rush to the scene to aid the victims because they are afraid of being targeted in a double-tap strike.<sup>89</sup> The Bureau of Investigative Journalism has documented at least six cases of civilians being targeted in double-tap strikes in North Waziristan, killing tens of civilians and those

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85. *The Bureau of Investigative Journalism*

86. ICRC, Fourth Geneva Convention, Common Article III

87. Rogers and Hill, “Unmanned: Drone Warfare and Global Security”, 98

88. United Nations General Assembly, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions*, Section III, para. 73

89. “Will I Be Next? US Drone Strikes in Pakistan” *Amnesty International*. Oct 2013. pp. 29

rushing to the scene to provide medical assistance.<sup>90</sup> The widespread human rights implications of this practice will be discussed the next section of this paper.

There is further evidence as documented by both the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Human Rights Council that indicates that the United States government has repeatedly used drone strikes to target civilian centres and gatherings. The Human Rights Council has documented the cases of at least three separate drone strikes between 2006 and 2009 in which civilians were deliberately targeted. In these three cases on a madrasa (school), which killed 80 schoolchildren as young as age 7 were killed, on a funeral at which another 80 civilians were killed, and on a village council meeting in which 40 attendees were killed, not a single enemy combatant or militant was killed.<sup>91</sup> The use of drone strikes to deliberately target civilians and the use of lethal force against non-combatants constitutes a war crime and violates several key tenants of international humanitarian law and international human rights law.<sup>92</sup> The targeting of civilians violates the right to life by depriving civilians of the right to not be arbitrarily deprived of life despite not being involved in any kind of direct military or terrorist activities that would legitimate them as targets. The Special Rapporteur on extrajudicial, summary or arbitrary executions therefore concluded that “the current use of drones in Pakistan threatened and undermined the right to life and the rule of law more broadly”.<sup>93</sup> The use of drone strikes to deliberately target civilian populations in the form of double-tap strikes targeted strikes against civilian centres constitutes both a war crime in the form of collective punishment and a

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90. *The Bureau of Investigative Journalism*

91. United Nations Human Rights Council, *Summary on the Human Rights Council interactive panel*, Section III, para. 17

92. ICRC, Fourth Geneva Convention

93. United Nations Human Rights Council, *Summary on the Human Rights Council interactive panel*, Section III, para. 17

gross violation of the right to life as stipulated in Article VI of the International Covenant on Civil and Political Rights.

### *Social, Political, and Economic Effects*

The damage done to civilian populations living in regions frequented by the United States' drone strikes surpass death tolls and civilian casualties. The civilian consequences of drone strikes extend far beyond the immediacy of death, injury and destruction to touch almost every single aspect of civilian life in these areas. In order to provide a comprehensive and accurate depiction of the way in which drone strikes violate both international human rights law and international humanitarian law and function as a form of collective punishment, these civilian consequences will be explored further.

The use of double-tap strikes has caused civilians in the vicinity of drone strikes to refrain from going to the scene of the strike in order to rescue and assist the injured because of a fear that they will be the targets of a second strike.<sup>94</sup> Civilians in North Waziristan cited this fear of double-tap strikes and stressed that it, “inhibited the provision of emergency medical assistance from humanitarian workers”.<sup>95</sup> Double-tap strikes deter both community members and professional aid workers from providing the necessary assistance to victims of drone strikes, thereby compounding the injuries and deaths that a single drone strike can cause. According to one humanitarian worker, there is a six-hour mandatory delay before which it is prohibited to

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94. “Living Under Drones: Death, Injury, and Trauma to Civilians From US Drone Practices in Pakistan” *International Human Rights and Conflict Resolution Clinic, Stanford Law School and Global Justice Clinic, NYU School of Law* (Sept. 2012), 74

95. *Ibid.*, 75

report to the scene of a drone strike to avoid being targeted in a subsequent strike.<sup>96</sup> This is further exacerbated by the United States' policy of signature strikes, which, as previously mentioned, target individuals on the basis of behaviours rather than confirmed identity. Signature strikes make it so that civilians rushing to the scene of an attack may be seen as members of the same terrorist group as those targeted in the first strike, thereby becoming targets for another double-tap strike.<sup>97</sup> In one instance documented by Amnesty International, a double-tap strike on 6<sup>th</sup> of July 2012 was used to target the first responders and rescuers, killing at least six more individuals and injuring many more.<sup>98</sup>

The use of double-tap strikes violates several principles of international humanitarian law, including the principles of discrimination and proportionality, as well as the right to life under international human rights law. More than that, the practice of double-tap strikes actually functions as a form of collective punishment against an entire population of civilians who live in constant fear that, despite their civilian status and lack of involvement in any hostile enemy activities, may be the target of a US drone strike. This targeting of civilians and first responders constitutes a war crime and violation of common article III of the Geneva Conventions because they are being punished for an offense that they did not commit or take any part in orchestrating.<sup>99</sup> To compound the actual deaths and injuries that result from the use of double-tap strikes, the fear that has come to characterize the lives of the people living in North Waziristan also raises other human rights concerns, as discussed below.

Drone strikes have a profound effect on the socioeconomic and psychological wellbeing of the populations they target, often preventing them from exercising certain political, social, and

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96. *Ibid.*, 76

97. "Will I Be Next? US Drone Strikes in Pakistan" *Amnesty International*. Oct 2013. pp. 28

98. *Ibid.*, 29

99. "Living Under Drones" Stanford Law School and NYU School of Law, 76

economic rights.<sup>100</sup> The constant overhead presence of drones and the possibility of a strike at any time violates the right to assembly and movement of civilians, as many residents of North Waziristan report being afraid to gather in large groups for fear of being targeted due to suspicious activity.<sup>101</sup> One local reported to Amnesty International that, “People are scared of the drone attacks, they don’t walk together; they sit only in pairs and if they gather in large groups, it would be only for a very short time. When the drone plane comes and we hear the sound of ‘ghommm’ people feel very scared. The drone plane can launch missiles at any time.”<sup>102</sup> Particularly, locals pointed out the fear of gathering for prayer in mosques, for fear that the act of praying may conflated with suspicious activity or sympathy with terrorist forces.<sup>103</sup> The people of North Waziristan face a constant security threat to their wellbeing and livelihood because of the frequency with which United States drone strikes kill civilians. This knowledge that, at any moment, an innocent civilian may realistically be the target or the collateral damage of a drone strike, creates an environment of constant fear that affects the ability of residents to exercise their other rights freely and the fullest extent.<sup>104</sup>

Additionally, drone strikes enact destruction against community structures, often destroying homes, health care facilities, and schools and rendering many families homeless and unable to maintain an adequate standard of living.<sup>105</sup> Given that the majority of drone strike victims are men, the death or maiming of the dominant male figure often means that the family loses its primary breadwinner.<sup>106</sup> This often renders families financially insecure in the long-term

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100. Shah, *International Law and Drone Strikes in Pakistan*, 146

101. “Will I Be Next?” Amnesty International, 32

102. *Ibid.*, 29

103. *Ibid.*, 32

104. Shah, *International Law and Drone Strikes in Pakistan*, 146

105. “The Civilian Impact of Drones”, Columbia Law School, 25

106. *Ibid.*, 20

and unable to provide its members. Often, in such cases, children must be pulled out of school by parents in order to work to economically provide for the family, which is particularly the case with young boys who assume the burden of responsibility following the death of the male breadwinner.<sup>107</sup> This hinders the ability of many children to receive an education, as they become burdened with other responsibilities as a result of drone strikes. Furthermore, in many instances, it was reported that parents voluntarily pulled their children out of school in fear that the school may be destroyed in a drone strike.<sup>108</sup> As previously stated, the United Nations has documented at least one instance of the United States deliberately targeting a school in North Waziristan, killing 80 school children, with the victims as young as seven years old.<sup>109</sup> This blatant disregard for civilian and child life has led many parents in North Waziristan to fear for the lives of their children and the possibility that they may be killed in a drone strike while attending school.

Furthermore, families often do not have the financial means to rebuild their destroyed homes, forcing them to move into the homes of relatives and community members and further impeding their right to a decent standard of living.<sup>110</sup> These effects are all compounded by the United States government's refusal to acknowledge the adverse effects of their counterterrorism operations and the civilian toll, thereby not providing any kind of compensation to the victims.<sup>111</sup> The refusal of the United States to provide reparations will be discussed in subsequent sections of this paper. The presence of the United States military drones in North Waziristan has resulted in community fracturing and distrust amongst civilians, who live in fear of being targeted not

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107. *Ibid.*, 21

108. *Ibid.*

109. United Nations Human Rights Council, *Summary on the Human Rights Council interactive panel*, Section III, para. 17

110. FIND CITATION

111. United Nations Human Rights Council, *Summary on the Human Rights Council interactive panel*, Section III, para. 28



only by drone but also by terrorist networks, who often accuse civilians of spying for the United States and providing information regarding terrorist operations.<sup>112</sup>

### *Psychological Effects*

The psychological effects of drone strikes on the populations living under them are immense and raise serious concerns regarding the use of drones as a ‘moral’ weapon of choice. Civilians living in areas frequented by drone strikes live in constant fear that an attack can occur at any moment, with drones buzzing over their heads 24 hours a day.<sup>113</sup> Civilian populations have seen drone strikes hit innocent civilians and destroy the lives of thousands of non-combatants, and are fearful that they may be targeted on the basis of wrong information or as collateral damage at any moment. According to local doctors and residents, many people in North Waziristan are plagued with intense anxiety of drone strikes and are unable to go to sleep at night without using sleeping pills to ease their fear.<sup>114</sup> One resident of North Waziristan told Amnesty International, “I have mental tension and anxiety during the night time because of the drone attack. I keep tablets under my bed in order to get sleep at night.”<sup>115</sup>

The psychological effects of drone strikes are particularly detrimental for children, who are terrified of the constant whizzing of drones overhead and who often witness traumatic scenes of destruction by drones. Another resident of North Waziristan, Nabeel, outlines the psychological dangers of drone strikes on children, telling Amnesty International: “Children have lost their mental balance, they are afraid all the time. After seeing the body parts and hearing the screaming of the victims [of the 6 July 2012 drone strike that killed 18 people], my

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112. “Will I Be Next?” Amnesty International, 33

113. *Ibid.*, 31

114. *Ibid.*

115. *Ibid.*

young nephew is always scared and crying, running towards his mother saying the drone could come and strike again.”<sup>116</sup> In a report conducted by the International Human Rights and Conflict Resolution Centre of Stanford Law School and Global Justice Centre of New York University found that the constant threat of drone attacks triggered post-traumatic stress disorder in many residents of North Waziristan. It reads:

“In addition to feeling fear, those who live under drones—and particularly interviewees who survived or witnessed strikes—described common symptoms of anticipatory anxiety and post-traumatic stress disorder. Interviewees described emotional breakdowns, running indoors or hiding when drones appear above, fainting, nightmares and other intrusive thoughts, hyper startled reactions to loud noises, outbursts of anger or irritability, and loss of appetite and other physical symptoms. Interviewees also reported suffering from insomnia and other sleep disturbances, which medical health professionals in Pakistan stated were prevalent. A father of three said, “drones are always on my mind. It makes it difficult to sleep. They are like a mosquito. Even when you don’t see them, you can hear them, you know they are there.” According to a strike survivor, “When the drone is moving, people cannot sleep properly or can’t rest properly. They are always scared of the drones.”<sup>117</sup>

The aim of this section was to expand the concept of proportionality to understand the impacts of drones on civilian populations beyond casualties and injuries. When considering whether or not the United States’ drone strikes adhere to the principle of proportionality, one must take into account the detrimental effect of drones on the social, political, and economic rights of civilian populations. The serious and widespread consequences of drone strikes suggest that drones penetrate several spheres of community life in regions targeted by drones and that the damage caused by drones is hardly proportional to the benefits of using drones, especially when one considers that large portion of the damage is inflicted upon individuals who pose little to no threat to the United States, and therefore cannot be justified under the principle of proportionality.

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116. *Ibid.*, 33

117. “Living Under Drones” Stanford Law School and NYU School of Law, 82-83

As has been demonstrated, the effects of drone strikes must be understood as extending past the immediate consequences of deaths and injuries. Drone strikes violate fundamental social, economic, and political rights of civilian populations. The vast and far-reaching effects of drone strikes must be highlighted in order to demonstrate to the international community that drones affect numerous aspects of lives for civilians in areas like North Waziristan, and the adverse effects that they have compound to constitute a form of collective punishment. Civilian populations are punished in many different ways by drone strikes, which impede on their social, political and economic rights. The use of drones by the United States to perpetuate these adverse consequences against civilian populations is evidence of how drones function as a tool of collective punishment. The next section of this paper will focus on explaining and elaborating on the reasons behind the relative impunity enjoyed by the United States government and the failure of the international community to hold the United States accountable to international human rights law and international humanitarian law, even as their counterterrorism operations amount to collective punishment and war crimes.

## Impunity in the Face of War Crimes

The current policies of the United States government in their authorization of drone strikes raise serious concerns within the framework of international human rights law and international humanitarian law. All indicators suggest that drones will continue to be the weapon of choice for the United States going forward, and that drone warfare will become an increasingly prevalent military endeavour globally, with over 70 countries currently in possession of drone technology.<sup>118</sup> Therefore, the need to demand transparency from drone wielding governments and develop an adequate international legal framework that is equipped to limit and govern the use of drones accordingly must be a pressing concern for the international community. The aim of this paper was not to suggest that drones are inherently an immoral weapon; in fact, it has been acknowledged by the international community that, if used in a manner consistent with international human rights law and international humanitarian law, drone technology has the potential to present a more limited and precise form of engaging in armed conflict.<sup>119</sup> Rather, it was the aim of this paper to illuminate how the current manner in which drone strikes are being employed by the United States government routinely violates the human rights of those that live in areas frequented by drone strikes, with particular reference to the right to life. It further argued that the drone program of the Obama administration constitutes a form of collective punishment, which is outlawed under international humanitarian law.

Drone strikes could, in theory, be used morally and present a more limited and discriminatory form of force under specific circumstances.<sup>120</sup> However, there are a number of factors that currently stand in the way of making this theoretical use of drones in an ethical

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118. Rogers and Hill, “Unmanned: Drone Warfare and Global Security”, 2

119. United Nations General Assembly, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions*, Section III, para. 13-14

120. Rogers and Hill, “Unmanned: Drone Warfare and Global Security”, 100

manner into a reality. The next section of this paper will aim to explore how the United States has been allowed to persist in its illegal and unethical drone program for over a decade with virtually no consequences, despite the fact that the drone program amounts to a war crime in the form of collective punishment. It will investigate the way in which the lack of transparency regarding its drone program has hindered and precluded any attempts at international accountability. It has facilitated the United States to continue its gross violations of international humanitarian law and international human rights law with virtually no repercussions. This paper will argue for the requirement for transparency during armed conflict as outlined in Article 51 of the United Nations Charter and that the United States government is obliged under international law to disclose information regarding their drone warfare program.

### ***A Clandestine Drone Program and the Need for Transparency***

The majority of United States drone operations are conducted covertly through the Central Intelligence Agency, who, “refuses to even officially acknowledge its drone programs anywhere in the world, let alone describe the rules and procedures it applies for preventing, mitigating and investigating potentially unlawful deaths or ensuring compliance with international law”.<sup>121</sup> This lack of transparency has hindered any investigation into the legality of United States drone operations and the, “extensive secrecy surrounding counter-terrorism practice in general, and the drone program in particular, has stymied attempts to ensure accountability for human rights violations committed in the context of such operations”.<sup>122</sup> There is concern by the Special Rapporteur that the more limited nature of warfare presented by drones, and the use of drones as a clandestine weapon, facilitate a “relative ease with which details about

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121. “Will I Be Next?”, *Amnesty International*, 49

122. *Ibid.*

drone targeting can be withheld from the public eye and the potentially restraining influence of public concern”.<sup>123</sup> Therefore, drone warfare requires a heightened sense of vigilance and scrutiny in order to ensure an adherence to international law. The Human Rights Council has repeatedly stressed the need for increase transparency, reaffirming, “the importance of transparency as a precondition to accountability” given that, without adequate information regarding the drone program, it becomes incredibly difficult for the international community to hold those responsible for violations of international law accountable for their actions.<sup>124</sup>

The lack of transparency and the refusal of the United States to disclose the mechanisms through which it targets individuals for drone strikes has allowed it to continue to collectively punish entire populations of people with impunity and virtually no consequences. The first step in ending this impunity is for the international community to demand that the United States government disclose more information regarding their drone policy; a requirement of the United States government under Article 51 of the United Nations Charter. Article 51 of the United Nations Charter, which protects the right of member states to self-defence, also makes it incumbent upon states to be transparent in their military operations. It states that, “Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.”<sup>125</sup> This clause is considered to be the underpinning of the requirement in international law of transparency, which is an integral

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123 .United Nations General Assembly, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions*, Section III, para. 18

124. United Nations Human Rights Council, *Summary on the Human Rights Council interactive panel*, Section III, para. 22

125 .United Nations, *Charter of the United Nations*, Article 51

factor in holding governments accountable and responsible to their obligations under international human rights law and international humanitarian law.

Disclosing information regarding their practices in relation to human rights and international law is necessary to allow the international community to evaluate and deliberate the legality, or lack thereof, of the actions of a State. Particularly, transparency is important in allowing the international community to hold the United States government accountable to its use of targeted killings by providing a checking mechanism to ensure that “killings are lawful and justified, and the accountability mechanisms that ensure wrongful killings are investigated, prosecuted, and punished”.<sup>126</sup> This is particularly important when discussing the right to life and the use of targeted killing operations; the United States government is required by international law to disclose more information regarding these practices in order to provide the international community with the information necessary to restrict and properly govern the use of lethal force.<sup>127</sup> A report by Philip Alston, the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions written in 2010 expanded on the requirement of transparency as it applies to drone warfare and targeted killings, stressing that States have an obligation under international law to ensure that there is adequate information regarding the target, including reliable evidence on the effects of the drone strike on civilian populations, the number of civilians present in an area and the effects of each individual attack.<sup>128</sup>

The United Nations Human Rights Council has expressed concern for this lack of transparency that results in a lack of accountability. It has stressed that the disclosure of information is required under international law and has called upon states to provide

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126. United Nations Human Rights Council, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions*, para. 87

127. *Ibid.*, 88

128. *Ibid.*, 89

transparency regarding their policies.<sup>129</sup> The result of a lack of transparency on behalf of the United States government is cause for deep international concern because it results in an unrestricted and ungoverned use of force by the United States with virtual impunity for these violations of international human rights law and international humanitarian law. The Special Rapporteur emphasizes the gravity of the situation, concluding that, “the lack of transparency provides the United States government, “a virtual and impermissible license to kill”.<sup>130</sup>

The resulting lack of accountability not only allows the United States to continue in what has been demonstrated to be an illegal conduct of drone operations, but also limits access to justice and effective reparations for those affected by drone strikes. In order to end the current impunity enjoyed by the United States government in regard to its policy of drone strikes, the international community must demand that the United States release information regarding the targets, methods of identification, and casualties of drone strikes.

There are three consequences of the refusal of the United States to reveal critical information regarding its drone warfare program; firstly, it hides from the international community the criteria by which the United States targets individual enemy combatants, thereby making it difficult to evaluate these criterion in regards to international law; secondly, it means that the identities of those killed in drone strikes are manipulated or left unknown, which skews the accuracy of reporting on civilian casualties; and thirdly, it allows the United States to continue engaging in collective punishment and grave violations of international law with impunity for those responsible and no compensation for victims.

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129. United Nations Human Rights Council, *Summary on the Human Rights Council interactive panel*, Section III, para. 26

130. United Nations Human Rights Council, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions*, para. 88



*Criteria: The “Playbook”*

In August of 2016, after years of campaigning and demands by various human rights organizations and a lawsuit filed by the American Civil Liberties Union in 2013 demanding that the United States government release the standards used to conduct drone strikes, the Obama administration finally released a document that outlines the standard operating procedure, known as the Presidential Policy Guidelines.<sup>131</sup> The document, written in May of 2013 and entitled, “Procedures for Approving Direct Action Against Terrorist Targets Located Outside the United States and Areas of Active Hostilities”, provides a redacted version of the guidelines employed by the United States government. However, despite the promise of increased transparency in counterterrorism operation and the Freedom of Information Act filed by the American Civil Liberties Union, the Obama administration has continuously refused to release the actual Presidential Policy Guidelines, commonly referred to as the “Playbook”.<sup>132</sup>

The released document has several redacted sections and provides little information regarding how individuals are identified and targeted for drone strikes.<sup>133</sup> Furthermore, it is clear that several of the outlined guidelines found in the document are not being properly adhered to by the Obama administration. For example, the document states that, “the United States prioritizes, as a matter of policy, the capture of terrorist suspects as a preferred option over lethal action and will therefore require a feasibility assessment of capture options as a component of any proposal for lethal action. Lethal action should be taken in an effort to prevent terrorist attacks against U.S. persons only when capture of an individual is not feasible and no other

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131. “U.S. Releases Drone Strike ‘Playbook’ in Response to ACLU Lawsuit” *American Civil Liberties Union*, 6 Aug 2016.

132. *Ibid.*

133. Karen DeYoung. “Newly declassified document sheds light on how president approves drone strikes”. *The Washington Post*. 6 Aug 2016

reasonable alternatives exist to effectively address the threat.”<sup>134</sup> However, there is little evidence to suggest that the United States adheres to this standard, and in few instances has the United States actually prioritized capture of terrorist suspects, opting rather for the use of lethal force, as has been previously discussed.<sup>135</sup> This willingness and frequency with which the United States resorts to lethal force is the topic of much international concern, which has condemned the fact that the United States seems to use lethal force in instances in which there is “no evidence that the individual killed posed an imminent threat to another individual” and yet no attempt was made to capture rather than kill.<sup>136</sup>

The document also delineates three types of targets and the circumstances in which they may be targeted. It distinguishes between high-value targets that may be targeted for lethal force and non-high value targets that, in certain circumstances, can also be the targets of lethal force but only if they pose an imminent threat.<sup>137</sup> In reference to the conduct of direct action, the document states, “Also absent extraordinary circumstances, direct action will be taken only if there is near certainty that the action can be taken without injuring or killing non-combatants. For purposes of this PPG, non-combatants are understood to be individuals who may not be made the object of attack under the law of armed conflict.”<sup>138</sup> While this initial statement of distinction seems to adhere to the principle of discrimination under international humanitarian law, the document goes on to clarify the specificities of non-combatant status, stating, “The term “non-combatant” does not include an individual who is targetable as part of a belligerent party to an

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134. “Department of Defence Implementation of the Presidential Policy Guidance on ‘Procedures for Approving Direct Action Against Terrorist Targets Located Outside the United States and Areas of Active Hostilities. *United States Department of Justice*. 6 Aug 2016.

135. United Nations Human Rights Council, *Summary on the Human Rights Council interactive panel*, Section III, para. 16

136. *Ibid.*

137. “Presidential Policy Guidance”, *United States Department of Defence*, 1

138. *Ibid.*

armed conflict, an individual who is taking a direct part in hostilities, or *an individual who is targetable in the exercise of national self-defence.*”<sup>139</sup>

This paper has already problematized the use of self-defence as an ongoing justification by the United States government for its extensive counterterrorism operations. Self-defence cannot and should not be used to consistently violate international human rights law and international humanitarian law. The lack of clarity in the quoted statement regarding exactly what makes an individual targetable in the exercise of self-defence raises concerns that the United States government may manipulate this phrase in order to violate the principle of discrimination and the right to life. Furthermore, there is abundant evidence to suggest that the United States government regularly violates not only international law, but also the guidelines it has established for itself by targeting and killing civilians who present no imminent or immediate threat and are taking no part in hostilities.

The glaring discrepancy between, on the one hand, the standards and guidelines outlined in the document about the PPG and, on the other hand, the extensive reporting on abuses of international human rights law and international humanitarian law by the United States government implies that the United States government, despite claiming to adhere to international law, regularly ignores and violates both international and domestic standards in regards to drone strikes and counterterrorism efforts. Even the Deputy Legal Director of the American Civil Liberties Union Jameel Jaffer said himself that, “This [document] doesn’t provide any more clarity about the substantive standards the government is using.”<sup>140</sup>

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139. *Ibid.*, (italics mine)

140. DeYoung, “Newly declassified documents”, *The Washington Post*

*Discrepancies in Reporting on Civilian Casualties*

Discrepancies in the reporting on civilian casualties by the United States government and various independent sources and human rights organizations raise concerns regarding the validity and honesty of the reporting of the Obama administration as well as the adherence of the definitions employed by the United States with international humanitarian law. As previously stated, the definition of combatant employed by the United States labels all “military-age males” within a target zone as combatants unless they are posthumously explicitly proved to not be so.<sup>141</sup> This definition already violates the principle of discrimination under international humanitarian law, which requires that all measures be taken prior to the use of lethal force to distinguish between combatants and civilians. This further allows the United States government to define a large number of civilians as combatants, which is evidenced by the significantly reduced number of civilian casualties it reports as compared to various other sources. The Obama administration officially reported that, between 2009 and the end of 2015, it had launched a total of 473 counterterrorism strikes in Pakistan, Yemen, Somalia, and Libya, killing a total of 2,436 individuals.<sup>142</sup> The crucial information, however, was that it was reported that only between 64 and 116 of these individuals were reported to be non-combatants, or civilians.<sup>143</sup> The Bureau of Investigative Journalism, on the other hand, reports the number of individuals killed in total by counterterrorism strikes by the United States in these four countries to be 2,753, over 300 more than was reported by the Obama administration.<sup>144</sup> More concerning, however, is the fact that the Bureau reports the number of civilian casualties to be between 380 and 801,

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141. Becker and Shane. “Secret ‘Kill List’”, *The New York Times*

142. Jennifer Williams. “From torture to drone strikes: the disturbing legal legacy Obama is leaving for Trump”, *Vox*, 10 Jan 2017.

143. *Ibid.*

144. *The Bureau of Investigative Journalism*

averaging six times the number of civilian casualties reported by the United States government.<sup>145</sup>

The failure to accurately and honestly report the number of civilian casualties that have been caused by the use of drone strikes in counterterrorism efforts constitutes a violation of international human rights and international humanitarian law by the United States government. The requirement of accurate reporting of information is critical in ensuring that violations of international law, such as the consistent violation by the Obama administration of the right to life of civilians living in areas targeted by drones, do not go unaddressed. Transparency as a cornerstone of accountability requires that adequate and accurate information be provided to the international community, allowing it to ensure that targeted killings are conducted in a legal manner and that these violations of international law are investigated, addressed, and prevented in the future.

#### *Lack of Recourse and Justice for Victims*

The lack of transparency and refusal of the United States government to release accurate and adequate information surrounding its drone program and counterterrorism operations raises concerns not only in regard to the ability of the United States to continue its routine violations of international human rights law and international humanitarian law, but also in its obligation to retroactively provide proper recourse, justice, and compensation to those that have been the victims of drone strikes. International law requires that violations of human rights be properly investigated and that those responsible for the violations be held accountable under international

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145 .Ibid.

law.<sup>146</sup> The requirement of transparency applies to the process of investigation of human rights abuses just as much as it does to the decision-making and targeting process.<sup>147</sup> The Human Rights Council has expressed concern that, the, “lack of transparency also obstructed the right to a remedy and reparation, as well as the requirement to hold persons criminally accountable for crimes under international” and that it potentially constituted, “a violation of common article 51 of the Geneva Conventions, which prohibited any contracting party from absolving itself of any grave breach of the Conventions”.<sup>148</sup>

The United States refuses to disclose the identity of those killed in its drone strikes, making it extremely difficult for international organizations and human rights advocates to accurately identify the identity of victims.<sup>149</sup> This refusal to disclose the identity of those killed is not only a violation of international humanitarian law, but also allows the United States to not properly account for the violations of human rights. By not being transparent about whether or not those killed were civilians, the Obama administration excuses itself of the need to provide reparations for civilian casualties. In fact, it has been reported by the Human Rights Council that, “not a single victim in over 350 drone strikes had been compensated, nor had any information been released as to why those individuals had been targeted”.<sup>150</sup> This has, effectively, resulted in a situation in which the United States government can consistently violate international law, committing war crimes in the form of collective punishment, without any repercussions. Not only do those responsible for grave violations of human rights go unpunished, but also justice

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146. United Nations Human Rights Council, *Summary on the Human Rights Council interactive panel*, Section III, para. 22

147. *Ibid.*

148. *Ibid.*, para. 24

149. *Ibid.*, para.26

150. *Ibid.*, para. 28

cannot be served to the victims because the United States refuses to acknowledge the vast civilian impact of their drone program.

## Conclusion

*“The death and destruction that costs the US so little to mete out is being recorded in the cultures and on the bodies of those who are forced to live under the conditions created by US national security policy since 9/11.”*<sup>151</sup>

In his time in office, President Obama authorized a total of 563 drone strikes, killing up to 807 innocent civilians and injuring several thousand more.<sup>152</sup> Despite the demonstrated high civilian toll that accompanies the United States government’s drone program as part of the War on Terror, there is little evidence to suggest that the drone program will relent with the introduction of a new governing administration under President Trump. Rather, all indicators suggest that drones will continue to be the preferred weapon of military engagement in United States counterterrorism operations in the Middle East.<sup>153</sup> In fact, the first months of the Trump administration have witnessed a massive and disturbing increase in the frequency of United States drone strikes in the region, with President Trump authorizing at least 75 drone strikes within his first 74 days in office, a rate of just over one drone strike per day.<sup>154</sup> This presents a troubling escalation of drone warfare as compared to the Obama administration, which authorised an average of one drone strike every five days for the duration of his presidency.<sup>155</sup> In his first ten days in office, President Trump authorized three drone strikes and a US military raid in Yemen, reported to have killed up to 30 civilians, including women and children.<sup>156</sup> More

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151. Rogers and Hill, “Unmanned: Drone Strikes and Global Security”, 97

152. *The Bureau of Investigative Journalism*

153. Micah Zenko. “The (Not-So) Peaceful Transition of Power: Trump’s Drone Strikes Outpace Obama”, *Council on Foreign Relations*, 2 Mar 2017.

154. *Ibid.*

155. *Ibid.*

156. Gabriel Samuels. “Donald Trump’s first US military raid ‘kills 30 civilians, including 10 women and children’”, *Independent*, 30 Jan 2017.



recently, US airstrikes in the Iraqi city of Mosul between March 17<sup>th</sup> and 23<sup>rd</sup> have reportedly killed another 200 civilians, including more innocent women and children.<sup>157</sup> The War on Terror and United States counterterrorism operations continue to result in a troublingly high number of civilian casualties.

The aim of this paper has been to demonstrate and outline the ways in which the current military engagement of the United States government in the Middle East as part of the War on Terror in the form of drone strikes violates both international human rights law and international humanitarian law. It has shown that the United States regularly violates the basic human rights of civilians in areas frequented by drone strikes and that the civilian toll of drone strikes extends far beyond casualties and injuries to affect almost every aspect of life in regions like North Waziristan in Pakistan. Using this analysis, this paper further argued that the current program of drone strikes by the United States government constitutes a form of collective punishment as outlined and prohibited in the fourth Geneva Convention. Through illuminating the repeated and widespread human rights violations by the United States government, and arguing that these violations amount to war crimes in the form of collective punishment, this paper intended to emphasize the gravity and magnitude of the violations of international law that the United States government has been allowed to perpetrate. The final section of this paper emphasized the need for increased transparency as the prerequisite for accountability and the urgency with which the international community must take steps to address these atrocities.

Nearly sixteen years after the War on Terror was declared by President Bush, global terrorism continues to be rampant and there is no indication that the War on Terror has been particularly successful in countering violent extremism. Those that bear the burden of the War on

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157. Ghazi Balkiz and Angela Dewan. "US-led strike caused civilian deaths in Mosul, Iraqi official says", *CNN*, 26 Mar 2017.

Terror and the United States' counterterrorism operations continues to be the innocent civilians that live in areas frequented such as North Waziristan that are frequented by US drones and military operations. These civilians pay the ultimate price for a crime that they did not commit. The collective punishment by the United States against innocent civilians must become a pressing and urgent concern of the international community, and the failure to ensure accountability sets a dangerous precedent for future military engagement using drones, undermining the legitimacy and credibility of the entire system of international law that safeguards human rights.

If the international community fails to hold the United States accountable to its actions, then the United States will continue to collectively punish innocent civilians and commit gross violations of both international human rights law and international humanitarian law. The international community must stand up for the fundamental human rights of the most vulnerable populations, including the residents of North Waziristan and other drone-frequented areas, and this can only be done by asserting to the United States that it does not have a license to kill and that it cannot get away with killing whoever it wants, whenever it wants, without any kind of repercussions. Only then can the international community live up to the spirit of the Universal Declaration of Human Rights, and affirm, "the equal and inalienable rights of all members of the human family".<sup>158</sup>

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158. United Nations General Assembly, Universal Declaration of Human Rights, 10 December 1948, Preamble, para. 1

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