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Recently, President Obama stated: “Our systematic effort to dismantle terrorist organizations must continue. But this war, like all wars, must end.” I investigate America’s legal basis, its claim to self-defense in response to 9/11, and conclude that this claim is weakening rapidly due to the passage of time and military successes. Similarly, the case for drone strikes as pre-emption is fading due to the damage drone strikes have done to Al Qaeda’s capabilities. I conclude that overall US drone strikes follow the rules set by International Humanitarian Law (IHL). However, today America’s rationale for these missions is shifting away from defeating Al Qaeda towards deterring its members and sympathizers. In this case, the US would most likely be in breach of IHL. I complete the analysis by claiming that the recent recognition of Obama that “this war... must end” still lacks the need for a new legal framework for America’s counterterrorism efforts.

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I. INTRODUCTION

In mid-2013, President Barack Obama laid out US policy in regards to drones and targeted killings in a major policy speech. In it, he stated: “Our systematic effort to dismantle terrorist organizations must continue. But this war, like all wars, must end. That’s what history advises. That’s what our democracy demands” (Obama 2013). I will use this quotation as this investigation’s motto. Below, I argue that the US policy of using armed drones for targeted killings of Al Qaeda members or affiliates is becoming obsolete. More than a decade after 9/11, the claim to self-defense is weakening. Similarly, with US successes against Al Qaeda, the case for drone strikes as pre-emption is fading. Finally, a possible alternative, a switch to a long-term strategy of deterrence through targeted killings, is not allowed under International Law.

While the usage of drones for targeted killing has become seemingly routine under the administrations of George W. Bush and Barack Obama, critics of this policy have been questioning the soundness of the legal framework (Bowcott 2012). Does International Law allow for “targeted killing” and if so, under which circumstances? In the 21st century, the United States has become increasingly dependent on the use of aerial drones in its campaign to fight Al Qaeda and affiliated organizations. Although other states have added drones to their arsenals or are in the process of acquiring drones, the United States has been setting the agenda: it is far ahead in drone technology, has the largest arsenal, has been using drones at an unprecedented level, and has been using drones for surveillance as well as for lethal missions. In fact, it has been argued that armed drones have become the “signature weapon of the Obama administration” (Schmitt and Shanker 2011, 245). Therefore, the following analysis will be centered on the US, its policies and legal arguments. In this sense, this investigation is a single-a case study and is accordingly limited. The study will be further limited to the legal side of drone-based targeted killings. For reasons of space and analytical clarity, I will not cover other associated issues, first and foremost the questions of morality (Finkelstein, Ohlin, and Altman 2012; Guiora 2013).

Since the terrorist attacks of 9/11 in 2001, US drone missions are not limited to aerial surveillance, as was the case in the past, but they now often include the objective to kill a particular individual. After 9/11, CIA drones were modified to carry arms (Melzer 2008, 40-41). Since then, the US has been relying heavily on armed drone strikes in a worldwide “War on Terror.” This development has challenged International Law. Questions have been raised about the legality of drone strikes under domestic and constitutional as well as under International Law. The US has defended its policy in large part with legal justifications and made a general political and security argument of “necessity.” This study investigates these dimensions of US drone strikes since 2001 under International Law and