

Non-Credible Strategy No More: Droning Drug Dealers to Stop Cartel Violence

CONNOR W. REESE*

ABSTRACT

Mexican Cartels have engaged in a relentless onslaught against American citizens for more than a decade, wreaking havoc on families across the country. This cycle of destruction has only increased in recent years with the advent of deadlier drugs and profit-focused practices by the Cartels. Violence manifests itself both through the delivery of dangerous drugs and specific violent conduct meted out directly against American citizens, with government officials and regular Americans being targeted alike. Despite their existential threat to the safety and security of the United States, past Presidential administrations have been hesitant to escalate this tense conflict, preferring to refer any enforcement actions to de-fanged law enforcement agencies instead of the military.

The focus of this note is on the legal analysis and implications that would undergird any potential decision to use lethal drone strikes inside Mexican territory against the Cartels. Because the actions and violence perpetrated by the Cartels is inflicting constant devastation against vulnerable populations in the United States, it is imperative for a new operational paradigm to be embraced in order to prevent a further cycle of violence. Without appropriate action, the Cartels will continue to inflict wanton violence against Americans citizens both home and abroad. The trail of devastation left in the Cartels' wake is momentous, with total direct and adjacent costs from Cartel activity costing the United States hundreds of billions of dollars annually. Current anti-Cartel strategies focus on law enforcement mechanisms in an attempt to stop the harm, but these solutions do not stem the problems at their root causes; to achieve genuine progress, lethal drone strikes should be used to target and destroy Cartels leadership, drug production facilities, and other related drug supply chain assets.

TABLE OF CONTENTS

I. INTRODUCTION	700
II. MEXICAN CARTELS' TRAIL OF DEATH	704
A. Mexico: A Modern-Day Narco-State	704

* Georgetown University Law Center, J.D., 2024; Notes Editor, *Georgetown Law Technology Review*, Volume 8; Staff Editor, *Georgetown Journal of Law & Public Policy*, Volume 22; University of Michigan, A.B., 2021. Thank you to Professor David Koplow for his advice and expertise that helped to guide the writing process for this piece.

<i>B. Cartels Kill Thousands of Americans</i>	707
III. LETHAL DRONE STRIKES HAVE ALWAYS BEEN CREDIBLE	711
<i>A. Pre-Cold War Battlefield Surveillance</i>	711
<i>B. Post-Cold War</i>	712
<i>C. Post-9/11</i>	713
IV. DRONE STRIKES WOULD WORK AGAINST CARTELS	715
<i>A. Drones, the Constitution, and the President</i>	716
<i>B. Drone Strikes and International Humanitarian Law</i>	719
1. The Republic of Nicaragua v. United States	720
2. Self-Defense & Armed Conflict Principles	721
3. Territorial Sovereignty	723
4. Applying IHL to Mexican Cartels	725
5. Mexico is Unable & Unwilling to Restrain Cartels	727
<i>C. Saving Lives with the Targeted Killing Program</i>	731
V. DRONE DRAWBACKS AND POTENTIAL CRITICISM	734
<i>A. International Irritability</i>	735
<i>B. Domestic Complaints</i>	738
VI. CONCLUSION	742

I. INTRODUCTION

The United States’ southern border, inner cities, and wide-spread suburbs are all under siege by an onslaught of the Mexican Cartels. Just in 2022, hundreds of thousands of pounds of illegal methamphetamine alone crossing the southern border was seized by law enforcement agents before the drugs managed to contribute to further crime and cycles of violence in the United States.¹ If counting all drugs seized along the southern border, this number would balloon to over a quarter million pounds.² Nearly ninety seven percent of the heroin seized by law enforcement

1. *Drug Seizure Statistics FY2023*, U.S. CUSTOMS AND BORDER PROTECTION (Apr. 14, 2023), <https://www.cbp.gov/newsroom/stats/drug-seizure-statistics> [<https://perma.cc/G5V4-AF2Z>].

2. *Id.*

agencies in the United States originated from Mexican Cartels.³ While these numbers are staggering, it is important to highlight that these numbers only reference the pounds of *seized* drugs. Unsurprisingly, the actual amount of drugs successfully crossing the southern border is meteorically higher, and has been high for decades.⁴ Some estimates place the Mexican Cartels as the factory working to supply nearly 90% of all illicit drugs entering the United States.⁵ Mexican Cartels also disrupt the United States' southern border through their burgeoning human trafficking business, exploiting people trying to reach the United States with exorbitant fees, and fueling a process that often ends in dangerous encounters with American law enforcement. Mexican Cartel violence threatens American citizens living abroad in Mexico or simply visiting as tourists. This violence often has deadly ends, as thousands of US citizens, including diplomats and government personnel, have died directly at the hands of the Cartel over the past decade.⁶ On top of this, more Americans are now killed by Cartel drugs each year than the number of American personnel killed fighting for freedom from communist authoritarianism in Vietnam or the number of American servicemen killed during the deadliest year of the second World War.⁷

These criminal activities, while technically originating in Mexico, contribute to spillover violence in the United States. Spillover violence, as related to the Cartels, is defined as deliberately planned attacks on US assets that may be

3. See *International Narcotics Control Strategy Report*, U.S. DEP'T OF STATE BUREAU OF INTERNATIONAL NARCOTICS AND LAW ENFORCEMENT AFFAIRS, pp. 168 (Mar. 2022), <https://www.state.gov/wp-content/uploads/2022/03/22-00767-INCSR-2022-Vol-1.pdf> [<https://perma.cc/BA6Z-KRDL>].

4. See U.S. Gov't Accountability Office, *Drug Smuggling: Large Amounts of Illegal Drugs Not Seized by Federal Authorities*, U.S. DEP'T OF JUSTICE OFFICE OF JUSTICE PROGRAMS (1987), <https://www.ojp.gov/ncjrs/virtual-library/abstracts/drug-smuggling-large-amounts-illegal-drugs-not-seized-federal> [<https://perma.cc/29GM-P38Q>]; see also Oriana Zill and Lowell Bergman, *Do the Math: Why the Illegal Drug Business is Thriving*, FRONTLINE PBS (1998), <https://www.pbs.org/wgbh/pages/frontline/shows/drugs/special/math.html#:~:text=That%20is%20the%20dope%20business,to%2040%25%20of%20cocaine%20shipments> [<https://perma.cc/PQN2-U2UN>].

5. Samuel Henkin & Marcus A. Boyd et al., *Major Cartel Operational Zones in Mexico*, U.S. DEP'T OF HOMELAND SEC. SCI. & TECH. CENTERS OF EXCELLENCE OFFICE OF UNIVERSITY PROGRAMS (Jun. 2020), https://www.start.umd.edu/pubs/JointCOEProject_TrackingCartels01_OperationalZonesMexico_ResearchBrief_June2020.pdf [<https://perma.cc/5VP7-YFWN>].

6. See, e.g., Ted Galen Carpenter, *Corruption, Drug Cartels and the Mexican Police*, CATO INSTITUTE (Sep. 4, 2012), <https://www.cato.org/commentary/corruption-drug-cartels-mexican-police> [<https://perma.cc/J2B6-J8JA>].

7. See *Vietnam War U.S. Military Fatal Casualty Statistics*, NAT'L ARCHIVES, <https://www.archives.gov/research/military/vietnam-war/casualty-statistics#:~:text=April%2029%2C%202008.-,The%20Vietnam%20Conflict%20Extract%20Data%20File%20of%20the%20Defense%20Casualty,casualties%20of%20the%20Vietnam%20War> [<https://perma.cc/HHW3-F2YJ>]; see also Ashley Welch, *Drug overdoses killed more Americans last year than the Vietnam War*, CBS NEWS (Oct. 17, 2017 6:14 p.m.), [https://www.cbsnews.com/news/opioids-drug-overdose-killed-more-americans-last-year-than-the-vietnam-war/\(highlighting that more Americans were dying every year \(nearly 65,000\) than were killed during Vietnam \(about 60,000\) starting in 2017\)](https://www.cbsnews.com/news/opioids-drug-overdose-killed-more-americans-last-year-than-the-vietnam-war/(highlighting%20that%20more%20Americans%20were%20dying%20every%20year%20(nearly%2065%2C000)%20than%20were%20killed%20during%20Vietnam%20(about%2060%2C000)%20starting%20in%202017%29); <https://www.wsj.com/articles/the-us-must-defeat-mexicos-drug-cartels-narco-terrorism-amlo-el-chapo-crenshaw-military-law-enforcement-b8fac731>. see also William P. Barr, *The U.S. Must Defeat Mexico's Drug Cartels*, THE WALL ST. J. (Mar. 2, 2023 1:04 p.m.), <https://www.wsj.com/articles/the-us-must-defeat-mexicos-drug-cartels-narco-terrorism-amlo-el-chapo-crenshaw-military-law-enforcement-b8fac731> [<https://perma.cc/9P54-6XED>].

classified as civilian, law enforcement, or military.⁸ This has included Cartel members threatening officers of local law enforcement agencies to stop intercepting drug shipments or face deadly consequences.⁹ Mexican Cartels have established working relationships with many of the US' most dangerous street gangs, further exacerbating domestic law enforcement issues and endangering innocent civilians.¹⁰ This exports Cartel violence from Mexican to American streets, and is particularly prevalent on the Southwestern border, where criminals associated with the Cartels often engage in shootouts and other dangerous activities, again endangering bystanding Americans.¹¹

American politicians should not stand idly by and allow Mexican Cartels to take advantage of vulnerable populations within our country and expand their criminal networks further into the country. The relatively porous southern border and the United States' chronic underuse of law enforcement and military assets to eliminate the threat Cartels pose have allowed Mexican Cartels to operate essentially free of consequences with surprising impunity. Without increased strategic involvement, the United States will continue to suffer devastating losses to a preventable scourge, the Cartels. Preventing this continuing devastation is a policy choice that can no longer be accepted, especially when the United States has viable military solutions readily available.¹² Make no mistake, these Cartels have been waging a war against the United States for decades, endangering the US' security, safety, and wellbeing: it is high time that the United States stop this cycle. While American law enforcement has put up a long and valiant fight with limited resources and constrained policy restricting their ability to fight the Cartels, it is time for the American military to step into this void to protect American interests and American lives, both domestic and abroad.

This note proposes a novel military action that could strategically disable Mexican Cartels' operations through systematic targeting of Cartel drug laboratories, bases of operations, and Cartel members themselves with lethal drone

8. Kevin L. Perkins & Anthony P. Placido, *Drug Trafficking Violence in Mexico: Implications for the United States*, Hearings Before the U.S. Senate Caucus on International Narcotics Control, 111th Cong. (2010), <https://archives.fbi.gov/archives/news/testimony/drug-trafficking-violence-in-mexico-implications-for-the-united-states> [<https://perma.cc/UDT9-MFXB>].

9. See Ray Sanchez, *Arizona Cops Threatened by Mexican Drug Cartel*, ABC NEWS INTERNET VENTURES (Jun. 23, 2010 2:22 p.m.), <https://abcnews.go.com/US/mexican-drug-cartels-threaten-police-arizona/story?id=10995661> [<https://perma.cc/7FGA-UUJL>].

10. See *Cartels and Gangs in Chicago Joint Intelligence Report*, DEA CHICAGO FIELD DIVISION & FBI & THE CHICAGO POLICE DEP'T (May 2017), pp. 7–10. <https://www.dea.gov/sites/default/files/2018-07/DIR-013-17%20Cartel%20and%20Gangs%20in%20Chicago%20-%20Unclassified.pdf> [<https://perma.cc/7K6E-FD6Q>].

11. See DEA Strategic Intelligence Section, *2020 Drug Enforcement Administration National Drug Threat Assessment*, U.S. DEP'T OF JUSTICE DRUG ENFORCEMENT ADMIN., p. 69 (Mar. 2021), https://www.dea.gov/sites/default/files/2021-02/DIR-008-21%202020%20National%20Drug%20Threat%20Assessment_WEB.pdf [<https://perma.cc/EZ7C-W54W>].

12. See generally, *Medal of Honor recipient David Bellavia on America's warrior class*, AMERICAN LEGION (Aug. 20, 2019), <https://www.legion.org/magazine/246813/medal-honor-recipient-david-bellavia-americas-warrior-class> [<https://perma.cc/SMZ2-ATUG>] (highlighting how America's military might is primed to take on any opponent that threatens Americans' safety).

strikes. Mexico's Cartels have flourished and brought death and violence to middle America. This is despite the increased focus on these issues by policymakers, and the problem is further compounded by Mexico's abdication of responsibility. While Mexico has historically attempted to curtail the flow of drugs into America's backyard, the current Mexican government, spearheaded by a populist intent on forgiving criminal activities as sins borne of societal conditions,¹³ has refused to take concrete law enforcement actions against the Cartels, only acting in the most extreme of exigent circumstances.¹⁴ And even when taking action, the new reformed (allegedly) Mexican military often is defeated in battle by the better-armed Cartels.¹⁵ In fact, President Andres Manuel Lopez Obrador declared that his country's drug war was concluded when he ascended to office, despite the reality that kidnappings, deadly massacres, and other vicious atrocities continue to take place every day, with Americans not infrequently caught in the crossfire or the victims of the violence themselves.¹⁶ More likely, President Obrador understands that he is fighting a losing battle if he continues the drug war considering Mexican law enforcement's rampant corruption and distorted incentives from the top down.¹⁷

In Part II of this note, I explain the contemporary history of Mexican Cartels and their contribution to death and violence in the United States, including their increased activities interfacing and cooperating with terrorist groups based around the globe. I further describe the recent trends in Cartel violence, including their increasingly bold criminal activity that has infected America's streets and alleyways. In Part III, I explore the recent usage of drones in the war on terror, specifically focusing on President Barack Obama's increased reliance on drones in the Afghanistan war to rely on fewer boots on the ground and enable greater

13. See Casey Quackenbush, 'There Is Officially No More War.' Mexico's President Declares an End to the Drug War Amid Skepticism, TIME USA (Jan. 31, 2019), <https://time.com/5517391/mexico-president-ends-drug-war/> [https://perma.cc/XH7W-T7TN].

14. See generally Mexico is Losing the Fight Against Drug Violence, THE WASHINGTON POST (Sept. 27, 2022 4:30 p.m.), https://www.washingtonpost.com/business/mexico-is-losing-the-fight-against-drug-violence/2022/09/27/68dff846-3e64-11ed-8c6e-9386bd7cd826_story.html [https://perma.cc/U3JM-MKF6] (highlighting the boundless cartel violence that exists daily in Mexico). President Obrador has frequently given cartels the upperhand, retreating from violent encounters where tangible anti-cartel activity could have been achieved. See also Lucia Suarez Sang, Mexican president defends retreat of security forces, release of El Chapo's son, FOX NEWS (Oct. 18, 2019 12:35 p.m.), <https://www.foxnews.com/world/mexico-president-el-chapo-son-cartel-gunfight> [https://perma.cc/BQ53-8GH5].

15. See generally Mexico army gives drug cartels free rein as critics claim 'non-aggression pact,' THE GUARDIAN (Nov. 8, 2021 1:06 p.m.), <https://www.theguardian.com/world/2021/nov/08/mexico-army-drug-cartels-michoacan> [https://perma.cc/B263-CVG8] (demonstrating the Mexican military's hesitance to intervene in cartel violence because of the cartel's perceived technological and weapon advantage).

16. See Quackenbush, *supra* note 14; see also Center for Preventive Action, Criminal Violence in Mexico, COUNCIL ON FOREIGN RELATIONS (Jan. 6, 2023), <https://www.cfr.org/global-conflict-tracker/conflict/criminal-violence-mexico> [https://perma.cc/9BQH-UJC8].

17. Jennifer Peltz, Mexico's former top cop took drug cartel bribes, prosecutors say in New York trial, LOS ANGELES TIMES (Jan. 23, 2023 4:37 p.m.), <https://www.latimes.com/world-nation/story/2023-01-23/mexicos-former-top-cop-took-drug-cartel-bribes-prosecutors-say-in-new-york-trial> [https://perma.cc/UP4F-6AGK].

flexibility and safety for United States' military personnel. In Part IV, I evaluate the strategic importance of destroying Cartels at their root and how lethal drones could serve a cost-effective and ultimately life-saving purpose; further, I investigate how contemporary interpretations of the domestic legality and the constitution enable the President to unilaterally conduct these drone strikes. I also explain how international law and norms would hinder, but in no way prevent, the United States from undertaking lethal drone strikes against Mexican Cartels in Mexico. I argue that even if international law and norms would disagree with a forceful American intervention, the United States possesses both the international political capital and military might to challenge these international guardrails. Finally, in Part V, I address some drawbacks to using lethal drone strikes and rebut likely criticisms of this strategy.

II. MEXICAN CARTELS' TRAIL OF DEATH

The United States, while relatively safe from facing down multiple existential national security threats that some other countries in the world face on a daily basis, does share a border with what many would consider a failed democracy turned narco-state. Mexican Cartels have developed into transnational criminal organizations that more closely resemble modern narco-terrorist groups and can no longer be handled with a law enforcement only focus. As national security experts have pointed out, Cartels are taking increasingly bold actions along the Southern border that seem to rise to the traditional definition of terrorism.¹⁸ The Cartels are shipping death through drugs to the doorsteps of everyday Americans, and have contributed to a destruction of more than 5% of America's yearly GDP because of the drug epidemic's toll on Americans that narco-terrorists have actively worked to encourage.¹⁹ Mexico's current Presidential administration has also abandoned any semblance of security cooperation, and now seem to seek to insulate the Cartels and corrupt government officials instead of bringing them to justice.

A. Mexico: A Modern-Day Narco-State

Five years ago, Mexican President Andres Manuel Lopez Obrador was elected on the promise to reduce cartel-related violence. His proposed strategy? “[H]ugs,

18. See generally <https://www.rand.org/pubs/commentary/2023/03/should-mexicos-drug-cartels-be-designated-foreign-terrorist.html#:~:text=Drug%20cartels%20could%20easily%20turn,well%2C%20provoking%20further%20American%20responses> [<https://perma.cc/K9T5-UR58>]; see also Javed Ali, *Declaring s cartels as terrorists could help combat threats to US national security*, MICHIGAN NEWS UNI. OF MICH. (Mar. 8, 2023), <https://news.umich.edu/declaring-mexican-cartels-as-terrorists-could-help-combat-threats-to-us-national-security/> [<https://perma.cc/36GT-LPFJ>].

19. See William P. Barr, *The U.S. Must Defeat Mexico's Drug Cartels*, *supra* note 8; see also *Morbidity and Mortality Weekly Report*, CTRS. FOR DISEASE CTRL. AND PREVENTION (Apr. 16, 2021), <https://www.cdc.gov/mmwr/volumes/70/wr/mm7015a1.htm> [<https://perma.cc/9SSR-TMK8>] (demonstrating that over \$1 trillion of dollars of GDP were lost to the costs of healthcare, criminal justice, lost productivity, and other societal negative externalities as a result of the drug epidemic. Considering this report was authored in 2017, these numbers are likely higher today).

not bullets.”²⁰ Unsurprisingly, this strategy has failed miserably. One US military analysis has conservatively estimated that over one third of Mexico is essentially “ungoverned space.”²¹ As expected, Mexican Cartels have filled this power vacuum, creating dangerous areas throughout Mexico where homicides, rape, and kidnappings are commonplace. President Obrador’s strategy of acquiescence and abdication of responsibility has only served to embolden Cartels in recent years, and deadly clashes between Mexican military forces and Cartel forces have led to thousands of deaths.²² In 2019, the streets and alleyways of Culiacan, capital of the state of Sinaloa, became the scene of a battlefield more reminiscent of the early invasion of Iraq; Sinaloan forces, numbering over 700 soldiers, directly confronted Mexican military forces after they had captured a drug lord high in the leadership structure.²³ After hours of devastation, the Cartel forces took dozens of hostages, both civilian and military, and pressured President Obrador into releasing the captured drug lord, effectively caving in to the demands of terrorists.²⁴ In late 2022, violent clashes between armed gangs and suspected Cartel members killed over 200 hundred people dead and left dozens of businesses ransacked.²⁵

President Obrador’s policies also established a new National Guard, which he claimed would rid security forces of the rampant bribery and corruption that has plagued Mexico since its inception as a nation.²⁶ Instead of using this National Guard against the existential threat of the Cartels, President Obrador has instead used them to forcefully detain migrants from other Central American and South American countries. Increasingly, the National Guard has been used as a force to crush dissent and civil disobedience and has allegedly used lethal force against peaceful protestors numerous times since its inception merely five years ago.²⁷

Over the past couple decades, the United States and Mexico have often cooperated to work against the spread of the Cartels. Even when relations grew tense, like under President Trump’s administration, cooperation continued even in unofficial capacities, as small groups of tenacious Mexican law enforcement groups

20. See *Mexico is Losing the Fight Against Drug Violence*, *supra* note 15.

21. See *id.*

22. See *id.*

23. See Ioan Grillo, *How the Sinaloa Cartel Bested the Mexican Army*, TIME USA (Oct. 18, 2019 7:39 p.m.), <https://time.com/5705358/sinaloa-cartel-mexico-culiacan/> [<https://perma.cc/3UWG-Y6LM>]; see also Kate Linthicum, *Cartel lays siege to Mexican city after recapture of the son of ‘El Chapo,’* LOS ANGELES TIMES (Jan. 5, 2023 5:35 p.m.), <https://www.latimes.com/world-nation/story/2023-01-05/lafg-mexico-el-chapo-son-captured> [<https://perma.cc/E9RD-ZNXX>].

24. See Grillo, *supra* note 24.

25. See *Mexico is Losing the Fight Against Drug Violence*, *supra* note 15.

26. See Shannon K. O’neil, *AMLO’s ‘Hugs Not Bullets’ Is Failing Mexico*, COUNCIL ON FOREIGN RELATIONS (Oct. 23, 2019 12:00 p.m.), <https://www.cfr.org/blog/amlos-hugs-not-bullets-failing-mexico> [<https://perma.cc/T4QZ-P9BM>].

27. See *Mexico’s new National Guard is breaking its vow to respect human rights*, AMNESTY INT’L (Nov. 8, 2020), <https://www.amnesty.org/en/latest/news/2020/11/mexicos-national-guard-breaking-vow-respect-human-rights/> [<https://perma.cc/D9RT-WBCK>].

still informally passed information with American counterparts.²⁸ This led to many arrests, successfully capturing numerous mid-level Cartel leaders; however, this cooperation has now dried up, and continues to fade as President Obrador has repeatedly falsely claimed that Cartels contribute none of the drugs that kill American citizens.²⁹ These pronouncements have killed cooperation between agencies like the DEA and Mexican law enforcement; the Mexican government itself has been explicitly denying requests for joint raids or surveillance cooperation from the United States.³⁰ Likely because of the changes that President Obrador has embraced, and his outright hostility toward bilateral security cooperation with the United States, Mexico continues to be plagued by Cartel violence. Mexico houses eight of the ten most dangerous cities in the world, and violent crime rates have skyrocketed over his presidency.³¹ More Mexicans are also being displaced because of Cartel violence, with nearly 50,000 Mexicans fleeing their homes out of fear of violence in 2021 alone, a 500% year over year increase.³² President Obrador's drastic redirection of funds previously earmarked for military and law enforcement operations directly contributed to this violence, and continues to contribute to the lack of security and growing status of Mexico as a failed state.³³ These instances of violence are not new; the Cartels have inflicted substantial violence on Mexico and its citizens for decades. However, the level at which the violence is being perpetrated is unprecedented, even when compared to previous record-levels of violence in previous years.³⁴ Despite the facts on the ground, President Obrador continues his string of untruths, claiming that Mexico is a safer country than the United States and that any criticisms of his reforms were simply xenophobic racists.³⁵

President Obrador has also discarded democracy, abusing the rule of law and circumventing legal requirements to implement his authoritarian socialist agenda.³⁶ Although President Obrador gave passing attention to democratic norms during his campaign and at the start of his presidency³⁷, this effort to

28. Brian Mann, *U.S.-Mexico Efforts Targeting Drug Cartels Have Unraveled*, *Top DEA Official Says*, NPR (May 3, 2021 9:51 p.m.), <https://www.npr.org/2021/05/03/993059731/u-s-mexico-efforts-targeting-drug-cartels-have-unraveled-top-dea-official-tells-> [<https://perma.cc/W2Z2-ZLWM>].

29. See Ken Dilanian, *Drug war cooperation between the U.S. and Mexico is at its lowest point in decades. What went wrong?*, NBC UNIVERSAL (Mar. 17, 2023 3:30 a.m.), <https://www.nbcnews.com/politics/national-security/no-cooperation-us-mexico-drug-war-rcna75093> [<https://perma.cc/S4NC-KVMV>].

30. See *id.*

31. See *Mexico is Losing the Fight Against Drug Violence*, *supra* note 15.

32. See *id.*

33. See O'Neil, *supra* note 27.

34. See Perkins & Placido, *supra* note 9.

35. See Carlos Santiago, *Lopez Obrador says Mexico is safer than the U.S.*, NBC UNIVERSAL (Mar. 13, 2023 12:05 p.m.), <https://www.nbcnews.com/news/latino/lopez-obrador-says-mexico-safer-us-rcna74727> [<https://perma.cc/MVW6-UH3V>].

36. See Shannon K. O'Neil, *Mexico's Democracy is Crumbling Under AMLO*, COUNCIL ON FOREIGN RELATIONS (Mar. 10, 2022 12:26 p.m.), <https://www.cfr.org/article/mexicos-democracy-crumbling-under-amlo> [<https://perma.cc/WAG6-AWFJ>].

37. See O'Neil, *supra* note 37.

window-dress the decline of Mexican democracy has not hidden the reality of the situation. President Obrador has worked to systematically dismantle independent public agencies critical for maintaining the rule of law and transparency in Mexico's government. This includes cutting entire budgets for numerous regulatory and watchdog agencies, along with appointing loyalists into positions in institutions without going through official, and required, confirmation processes.³⁸ In just one example of this, President Obrador led an overhaul of the National Electoral Institute, the main election watchdog, slashing its budget, reducing staffing, and effectively forcing the closure of many of its offices around Mexico.³⁹ President Obrador has also used his platform and office for personal vendettas, releasing personal data on journalists who investigate the opulent living situations that his family enjoys in Mexico and abroad.⁴⁰ He has also turned a blind-eye towards rampant corruption that permeates his government, and outright refuses to prosecute, or aid in the prosecution abroad, of senior government officials who were caught taking bribes and doing favors for the Cartels.⁴¹ Instead, President Obrador has focused on prosecuting political opponents on trumped-up charges, focusing his efforts on power consolidation and not the security of the people of Mexico he was elected to protect. Even when faced with overwhelming evidence that high-ranking members of Mexico's government and military leadership are collaborating with the Cartels, President Obrador has turned a blind eye to their crimes and demanded an end to US prosecutions.⁴²

Cartels, and their dutiful Mexican government servants, have taken the entire country of Mexico hostage with no clear path out of this servitude in sight.

B. Cartels Kill Thousands of Americans

The drug epidemic is omnipresent in America. With hundreds of thousands of people dying every year from overdoses and other drug-related complications⁴³, the lethality of Mexican Cartels' product could be no clearer. The two largest narco-terrorist groups are the Sinaloa and Jalisco Cartels, both residing on

38. *See id.*

39. Vanessa Buschsluter, *Mexico passes controversial reform of election watchdog*, BBC (Feb. 23, 2023), <https://www.bbc.com/news/world-latin-america-64742733> [<https://perma.cc/DK8D-M92K>] (highlighting how President Obrador has long criticized the National Electoral Institute as corrupt because of his previous election losses that he still is slighted by).

40. *See* O'Neil, *supra* note 37.

41. *See* O'Neil, *supra* note 37.; *see Int'l Narcotics Ctrl. Strategy Report*, *supra* note 3 (explaining how the Mexican does not directly participate and support the Cartels, but does not hinder them either).

42. *See* Natalie Kitroeff et al., *In Blow to U.S. Alliance, Mexico Clears General Accused of Drug Trafficking*, THE NEW YORK TIMES COMPANY (Jan. 19, 2021), <https://www.nytimes.com/2021/01/15/world/americas/mexico-general-drug-charges.html> [<https://perma.cc/2SHK-BJAA>].

43. *See Drug Overdose Death Rates*, National Institutes of Health National Institute on Drug Abuse (Feb. 9, 2023), <https://nida.nih.gov/research-topics/trends-statistics/overdose-death-rates#:~:text=Figure%201.,illicit%20drugs%20and%20prescription%20opioids> [<https://perma.cc/J27Y-XLRZ>].

Mexico's western coast bordering the Pacific ocean.⁴⁴ The two narco-terrorist groups utilize a campaign of bribery and violence to ensure that they get their way in Mexico, and largely control expansive swaths of the country's rural areas as states independent from Mexican and international law.⁴⁵ Their efforts have built an illegal drug industry that likely totals in the tens of billions of dollars annually.⁴⁶

While many of the drugs already being exported by these narco-terrorists are already lethal, recent developments in drug production have spawned an even more dangerous export from the narco-terrorists residing in the narco-state south of the border: fentanyl.

Cartels are operated like businesses, and quickly adopted fentanyl, a highly addictive synthetic opioid, in the early 2010s as a profit-increasing component of their drug exports.⁴⁷ Although fentanyl by itself is generally more lethal than the other drugs that Cartels have traditionally supplied to the north, fentanyl is unique because it is so much more powerful than other drugs (like heroin). Therefore, smaller amounts of fentanyl have the same power of larger amounts of heroin, making smuggling less expensive and avoiding detection easier.⁴⁸ Fentanyl is also entirely synthetic, and the lab equipment needed to create it costs only a couple hundred dollars, making barriers to entry and set-up costs extremely low.⁴⁹ Also, unlike other drugs, fentanyl production does not require a giant space for poppy fields (like heroin), and only requires the use of a lab and the correct initial chemical ingredients.⁵⁰ Using existing supply and distribution networks, Cartels were readily able to integrate fentanyl into their supply chain, and have increasingly used the cheap synthetic opioid to lower costs while also increasing the lethality of their product.⁵¹ These lower costs have been especially appealing to the Cartels, and the readily available nature of the component parts of fentanyl have made the substance deadly simple for Cartels to refine and inject into their product. Since the early 2010s, reported fentanyl identifications by forensic crime laboratories in the United States have exploded, increasing nearly twenty-fold since the end of 2014.⁵² Yearly fentanyl seizures have been regularly breaking

44. Jon Kamp et al., *How Two Mexican Drug Cartels Came to Dominate America's Fentanyl Supply*, THE WALL ST. J. (Aug. 30, 2022 9:46 a.m.), <https://www.wsj.com/articles/mexico-drug-cartels-fentanyl-overdose-sinaloa-jalisco-11661866903> [<https://perma.cc/ZS5W-UMDJ>]. Hyper Link not working. (hyperlink works for me now)

45. *See id.*

46. *See id.*

47. *See id.*

48. *See* Alexandra Hart, *Why Mexican cartels are shifting their focus to fentanyl production*, TEXAS STANDARD (Aug. 31, 2022 9:55 a.m.), <https://www.texasstandard.org/stories/why-mexican-cartels-are-shifting-their-focus-to-fentanyl-production/> [<https://perma.cc/ZHA2-7N4P>].

49. *See id.*

50. Keri Blakinger & Connor Sheets, *Some pharmacies in Mexico passing off fentanyl, meth as legitimate pharmaceuticals*, LOS ANGELES TIMES (Feb. 2, 2023 5:00 a.m.), <https://www.latimes.com/world-nation/story/2023-02-02/mexico-pharmacy-fentanyl-laced-pills-meth> [<https://perma.cc/QZS6-PPQ6>].

51. *See* DEA Strategic Intelligence Section, *supra* note 12 at 7–8.

52. *See id.* at 8.

previous years' records.⁵³ Fentanyl use has directly contributed to an increase in overdose deaths and continues to destroy American communities across the United States.⁵⁴ While uncommon a few years ago, mass overdose events are now commonplace among drug users in the United States because of the amount of fentanyl that Cartels are mixing with other, less lethal, street drugs. Vital to note is that fentanyl violence is not relegated to certain sections of the United States; while its use first concentrated in cities and states around the Great Lakes region, Mexican Cartels have continued to spread it across the country, leaving a deadly trail. It is no surprise that two-thirds of overdose deaths are related to synthetic opioids, with fentanyl being the overwhelming favorite.⁵⁵ The DEA has pointed to the Sinaloa and Jalisco New Generation Cartels as the major exporters behind this recent influx, describing the fentanyl murders as happening at rates that are "catastrophic and record...like we have never seen before."⁵⁶ The increased lethality of fentanyl in relation to its dosage has combined with its common residence in less-deadly and more popular illegal drugs to compound the difficulties facing American law enforcement.

The danger of Mexican Cartel drugs isn't only restricted to the lethality of fentanyl itself as a drug. Most drugs now being sent into the United States by Cartels are mixed with fentanyl, exposing more unsuspecting Americans to an agent multiple times more deadly and addictive than the drug they believed they were purchasing.⁵⁷ Cartels are also hijacking traditional medical delivery systems, providing dangerously mixed-fentanyl drugs to pharmacies near the border frequented by American and Mexican citizens alike.⁵⁸ An investigation by the *Los Angeles Times* found that over 70% of the pills in Mexican pharmacies had been mixed and laced with fentanyl, likely supplied by the Cartels.⁵⁹ These pharmacies were the same ones frequented by American citizens, with tourists in Cabo San Lucas unwittingly purchasing drugs laced with fentanyl measuring as much as 50 times stronger than an equivalent dosage of heroin.⁶⁰

53. *Id.*

54. Press Release, *DEA Warns of Increase in Mass-Overdose Events Involving Deadly Fentanyl*, DRUG ENF'T ADMIN. MEDIA RELATIONS (Apr. 6, 2022), <https://www.dea.gov/press-releases/2022/04/06/dea-warns-increase-mass-overdose-events-involving-deadly-fentanyl> [https://perma.cc/UED2-XNWZ].

55. See Press Release, *DEA Warns of Increase in Mass-Overdose Events Involving Deadly Fentanyl*, *supra* n. 55.

56. Tori B. Powell, *Mexican cartels are killing Americans with fentanyl at "catastrophic" rates, DEA chief says*, CBS INTERACTIVE INC. (Aug. 19, 2022 3:09 p.m.), <https://www.cbsnews.com/news/fentanyl-drug-overdose-mexico-cartels-dea-anne-milgram/> [https://perma.cc/3LCS-A5CQ].

57. See *id.* (It is important to note that fentanyl can be up to 100 times stronger than typical morphine).

58. See Blakinger & Sheets, *supra* note 51.

59. *Id.*

60. See *Counterfeit pills sold in Mexican pharmacies found to contain fentanyl, heroin, and methamphetamine*, UCLA HEALTH (Feb. 2, 2023), <https://www.uclahealth.org/news/counterfeit-pills-sold-mexican-pharmacies-found-contain>; [https://perma.cc/5LZV-HAVH] see also Blakinger & Sheets, *supra* nnote 51.

While Mexican Cartels have a wide-ranging network built within the United States that works to deliver product to vulnerable populations⁶¹, Mexican Cartels are increasingly interfacing with U.S.-based street gangs, looking to further spread their market for drugs.⁶² The Cartels have recruited domestic-based U.S. gangs, ranging from the Bloods and Crips to the Aryan Brotherhood.⁶³ These relationships with U.S. gangs enable the Cartels to expand distribution of the deadly product, with a majority of the retail and sales operations of Cartel drugs being controlled by American street gangs.⁶⁴ This has led to analysts describing the Cartels as the “most powerful drug-dealing group” operating in the United States.⁶⁵

Drugs aren’t the only product of Mexican Cartels that kill Americans; hundreds of American citizens die every year, and thousands have died over the past decade, in violence committed directly or sanctioned by Cartel actors.⁶⁶ Violence by Cartels knows no bounds; in February of this year, Cartel gunmen ambushed four American tourists just south of the Texas border. Two of the Americans were immediately murdered, and the surviving two were kidnapped and held hostage until being later rescued by Mexican military forces under heightened pressure from U.S. policymakers.⁶⁷ These cold-blooded murders were only the most recent episode of violent Cartel crime targeting Americans; examples over the past decade include incidents where Cartel gunmen have fired on U.S. diplomats,⁶⁸ American law enforcement personnel,⁶⁹ and American

61. Christopher Woody, *Here’s how Mexican cartels actually operate in the United States*, BUSINESS INSIDER (Sept. 27, 2017, 3:20 PM), <https://www.businessinsider.com/what-are-mexican-cartels-doing-in-the-us-2017-4> [<https://perma.cc/UM2Y-EVVL>].

62. See U.S. DEP’T OF JUSTICE, ATTORNEY GENERAL’S REPORT TO CONGRESS ON THE GROWTH OF VIOLENT STREET GANGS IN SUBURBAN AREAS (Apr. 2008), <https://www.justice.gov/archive/ndic/pubs27/27612/gang.htm> [<https://perma.cc/4ZC8-K75T>].

63. See Marguerite Cawley, *Mexico Cartel-US Gang Ties Deepening as Criminal Landscape Fragments*, INSIGHT CRIME (Apr. 18, 2014), <https://insightcrime.org/news/analysis/mexico-cartel-us-gang-ties-criminal-groups-fragments/> [<https://perma.cc/C6W5-WXX5>]; see also Kamala D. Harris, *California and the Fight Against Transnational Organized Crime*, OFFICE OF THE ATT’Y GEN. CAL. DEP’T OF JUSTICE (Mar. 2014), https://oag.ca.gov/sites/all/files/agweb/pdfs/toc/report_2014.pdf [<https://perma.cc/DC9G-3TLL>].

64. See Woody, *supra* note 62.

65. See *id.*

66. See Aleks Phillips, *More Americans Are Killed in Mexico Every Year Than You Realize*, NEWSWEEK (Mar. 9, 2023, 9:36 AM), <https://www.newsweek.com/americans-killed-mexico-homicide-data-1786431> [<https://perma.cc/G8L8-6L49>].

67. See Madeline Halpert & Will Grant, *Two dead, two alive after Americans kidnapped in Mexico*, BBC NEWS (Mar. 7, 2023), <https://www.bbc.com/news/world-latin-america-64878721> [<https://perma.cc/X4AJ-J7E8>]; see also Snezana Farberov, *Inside frantic search for 4 Americans kidnapped in Mexico after deadly cartel shootout*, NEW YORK POST (Mar. 8, 2023, 2:08 PM), <https://nypost.com/2023/03/08/inside-frantic-search-for-4-americans-kidnapped-in-mexico/> [<https://perma.cc/ENT9-6D98>].

68. Julian Cardona, *Mexico gunmen kill American consulate staff*, REUTERS (Mar. 14, 2010, 7:53 AM), <https://www.reuters.com/article/us-obama-mexico-murders/mexico-gunmen-kill-american-consulate-staff-idUKTRE62D19Q20100314> [<https://perma.cc/77VY-VXFH>].

69. Press Release, U.S. Immigration and Customs Enforcement, 2 cartel members sentenced to life prison terms in slaying of ICE Special Agent Jaime Zapata and attempted murder of ICE Special Agent

families on vacation.⁷⁰

The State Department has described the volume of dangerous drugs entering the United States and the violence being exported by the Cartels as “unacceptably high.”⁷¹ Mexican Cartels have been exporting death for over a decade now, and it is an abdication of duty to not work towards resolving these threats to our nation using any means necessary.

III. LETHAL DRONE STRIKES HAVE ALWAYS BEEN CREDIBLE

Lethal drone strikes, while of relatively recent vintage, have been in the United States arsenal of tools to support international security for more than two decades. Because this tactical security asset has been in use for quite some time, understanding the historical context of the deployment of both armed and unarmed drone systems is integral to understanding the promise of its expanded use.

A. Pre-Cold War Battlefield Surveillance

Despite the focus on lethal drone capabilities in both the Ukraine and during the United States ongoing War on Terror, battlefield surveillance has always been a prized asset for commanders across the globe.

During the American Civil War, Union commanders like George B. McClellan pioneered the use of airborne surveillance activities, utilizing hot-air balloons to gather intelligence about confederate armies’ movements and positionings before and during battles.⁷² These balloons were disregarded as useless time-wasting at first, but their usefulness soon became apparent to the successful Union war effort.

During the first World War, the United States and its allies sought to develop unmanned payload delivery systems. These research attempts gave rise to the Kettering Bug, an experimental unmanned payload delivery device that worked by traveling through the air for a predetermined period of time before electrical controls located internally turned off the engine, causing the device and its hundreds of pounds of explosive to plummet towards its target.⁷³ These developments, while promising, were eventually not used in combat operations because the war ended. The research progress did act as a prelude to the first widely-

Victor Avila (Nov. 6, 2017), <https://www.ice.gov/news/releases/2-cartel-members-sentenced-life-prison-terms-slaying-ice-special-agent-jaime-zapata> [<https://perma.cc/X48K-2WSQ>].

70. Graig Graziosi, *Mexican drug cartel gunmen on jetskis open fire at Cancun resort*, THE INDEPENDENT (Dec. 8, 2021, 6:51 PM), <https://www.independent.co.uk/news/world/americas/mexican-cartel-cancun-soldiers-jetskis-b1972339.html> [<https://perma.cc/P42T-4NEL>].

71. See U.S. DEP’T OF STATE BUREAU OF INT’L NARCOTICS AND L. ENF’T AFF., *supra* note 3, at 170.

72. Michael C. Horowitz et al., *Separating Fact from Fiction in the Debate over Drone Proliferation*, 41 INT’L SEC. 7, 10 (2016); see NATIONAL PARK SERVICE, AIR BALLOONS IN THE CIVIL WAR (Jan. 12, 2021), <https://www.nps.gov/articles/000/air-balloons-in-the-civil-war.htm> [<https://perma.cc/AFR4-KRLS>].

73. See NAT’L MUSEUM OF THE U.S. AIR FORCE, KETTERING AERIAL TORPEDO “BUG”, <https://www.nationalmuseum.af.mil/Visit/Museum-Exhibits/Fact-Sheets/Display/Article/198095/kettering-aerial-torpedo-bug/> [<https://perma.cc/DQ3C-F9KR>].

adopted early drone technology, which culminated in 1939 with the creation of the Radioplane target drone.⁷⁴ These were the first mass-produced small unmanned drones, and were used by various branches of the U.S. military as target-practice training for specialists.⁷⁵ The Germans were simultaneously developing unmanned payload delivery systems, focusing research efforts into the V-1 project.⁷⁶

These research priorities were further pushed forward during the Cold War, as using manned aircraft was increasingly seen as a liability towards operational capabilities, especially after the downing of U-2 pilot Gary Powers over the Soviet Union.⁷⁷ Much of this research focused on non-lethal, intelligence-gathering capabilities, with priorities placed on drones that could serve as eyes in the sky for subsequent boots on the ground or air force pilots. These efforts are highlighted by the extensive use of the Firebee UAV systems to conduct surveillance during the Vietnam war, both for target-spotting for artillery and air force activity and for understanding enemy positioning on the battlefield.⁷⁸

While many of the devices pioneered in the earlier half of the 20th century focused on systems that are more similar to modern-day cruise missiles, the above uses of unmanned devices for military purposes demonstrate the long standard practice of the U.S. military.⁷⁹

B. Post-Cold War

The end of the Cold War did not end the U.S. military's continued research and development of unmanned drone systems. While limited in instances, the U.S. did use drones, namely the Pioneer drone, in a small number of situations during the 1991 Gulf War.⁸⁰ Arguably the most famous incident involving the Pioneer drone occurred when a group of Iraqi soldiers surrendered to a drone in

74. See generally Steve Mills, *Attack of the Drones - The Hundred-Year History of Military UAVs*, MILITARYHISTORYNOW.COM (Sept. 23, 2020), 23, 2020), <https://militaryhistorynow.com/2020/09/23/attack-of-the-drones-the-hundred-year-history-of-military-uavs/> [<https://perma.cc/7L8T-LCPT>] (highlighting the development of drone research in the early and mid 1900s).

75. Horowitz et al., *supra* note 73, at 10–11.

76. *Id.*

77. *Id.*

78. See *id.*; see also *1960s AQM-34 Ryan Firebee (USA)*, PBS ONLINE WGBH EDUCATIONAL FOUNDATION, https://www.pbs.org/wgbh/nova/spiesfly/uavs_09.html [<https://perma.cc/RX4H-PLDP>].

79. Cruise missiles are different from drones equipped with lethal munition in one major capacity: human control. Drones are controllable by remote control, while cruise missiles are programmed to fly a certain course to given targets, and are generally not controlled by a remote control or are only controlled by remote control for limited amounts of the flight time. See Lieutenant Colonel Andreas Schmidt & Lieutenant Colonel Andre Haider, *The Differences Between Unmanned Aircraft, Drones, Cruise Missiles and Hypersonic Vehicles*, JOINT AIR POWER COMPETENCE CTR. (Jan. 2021), <https://www.japcc.org/chapters/c-uas-the-differences-between-unmanned-aircraft-drones-cruise-missiles-and-hypersonic-vehicles/> [<https://perma.cc/7KNZ-BRSB>].

80. *Weapons: drones (RPVs)*, PBS ONLINE WGBH EDUCATIONAL FOUNDATION, <https://www.pbs.org/wgbh/pages/frontline/gulf/weapons/drones.html#:~:text=%22During%20the%20last%20week%20of,the%20battlefield%2C%20surveying%20potential%20targets> [<https://perma.cc/V8HH-PG49>].

the air above them.⁸¹ Despite its seemingly expansive uses for battlefield intelligence and promising initial forays, the drone program was still relatively underfunded by Congressional allotment.⁸²

The United States first used wide-scale deployment of unarmed Predator Drones (the predecessor to today's drone systems) during the early 1990s in the Balkans, where they were used in joint tactical operations. Their success led to vast increased congressional funding for the procurement of Predator Drones after the war in Bosnia amounting to an over 100% increase in this budget.⁸³ By two years of use, Predators had completed over 1,500 missions in support of the NATO mission in Bosnia.⁸⁴ Predators, and the drone systems they represented, had now been repeatedly tested in combat-scenario missions to resounding success. Now dawning was an entirely new methodology of warfare.

C. Post-9/11

The terrorist attacks on the United States on September 11, 2001, forever changed the US. One of these was the trajectory of the nascent, but rapidly ascendant, Predator program.

The first and most prominent authorizations for the use of drone strikes came after the 2001 Authorization for the Use of Military Force (AUMF) was passed by Congress and signed by President Bush. In stark contrast to previous conflicts, the 2001 AUMF authorized military force against a group that was not constituted under the banner of a state; Al Qaeda and the Taliban were terrorist organizations that, while holding bases in Afghanistan and Pakistan, was not actually endorsed or officially supported by these states.⁸⁵ While the governments of these states did allow Al Qaeda and the Taliban to roam relatively freely, the states themselves had not launched the attacks. With success in Bosnia fresh on the minds of American generals, and the emergence of global terrorist networks as the supreme threat to American national security interests, President George W. Bush authorized these first lethal drone strikes against members of al-Qaeda's leadership structure.⁸⁶ These strikes were conducted through two parallel drone programs; one, operated by the U.S. military in combat theaters where the U.S.

81. *Id.*

82. See Arthur Holland Michel, *Drones in Bosnia*, BARD COLL. (Jun. 7, 2013), <https://dronecenter.bard.edu/drones-in-bosnia/> [<https://perma.cc/F8J7-UEZ4>] (highlighting how the Predator program's budget for procurement before the Bosnian intervention led by NATO was substantially below \$100 million).

83. *See id.*

84. *See id.*

85. Stephen W. Preston, General Counsel, DEP'T OF DEF., Address at the Annual Meeting of the American Society of International Law: The Legal Framework for the United States' Use of Military Force Since 9/11 (Apr. 10, 2015), <https://www.defense.gov/News/Speeches/Speech/Article/606662/the-legal-framework-for-the-united-states-use-of-military-force-since-911/> [<https://perma.cc/26GZ-ATLU>].

86. Milena Sterio, *The United States' Use of Drones in the War on Terror: The (Il)legality of Targeted Killings under International Law*, CASE WESTERN45 CASE W. RSRV. J. OF INT'L L., 198–199 (2012), <https://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=1072&context=jil> [<https://perma.cc/NVN3-CGEB>].

had a relatively large troop presence and a second, operated by the CIA aimed at terror suspects in countries where the U.S. had a limited or non-existent troop presence.⁸⁷ These targeted strikes were mainly focused on al-Qaeda and affiliated terrorist groups' leadership hierarchy, and drones were generally not deployed on missions that targeted low-level terrorists and militants. According to published statistics, President Bush ultimately conducted nearly five dozen lethal drone strikes in furtherance of the War on Terror. While record-setting for the time, this number would pale in comparison to the subsequent administration.

Under the administration of Barack Obama, the United States vastly expanded the use of its drone program, increasingly relying on lethal drone strikes to take out targets of interest.⁸⁸ The pace of the drone strike program increased dramatically once President Obama took office. In his first year as President, Obama ordered nearly as many drone strikes as President Bush had ordered over the course of his entire presidency.⁸⁹ This lethal drone technology quickly had become the default tactic for a wide-range of counterterrorism actions; notably, this technology was used inside other states' borders against non-state actors, both with and without the consent of the theoretical sovereign.⁹⁰ While a relatively novel technology under President Bush, and even under President Obama during his first years in office, lethal drones quickly became enmeshed in the counterterrorism institutional strategy, with President Obama officially recognizing these covert strikes and releasing policy guidelines for their use during his second term.⁹¹ While President Obama did create some general guidelines for drone strikes, such as requiring that individuals post a "continuous [and] imminent" threat to the United States, these policy changes did not include centralization of strike approval.⁹² Importantly, President Obama's drone strike policy did not require Presidential approval for every strike.⁹³ In fact, Presidential approval was

87. See *id.* at 198.

88. Micah Zenko, *Obama's Final Drone Strike Data*, COUNCIL ON FOREIGN REL.: POL., POWER, AND PREVENTIVE ACTION (Jan. 20, 2017, 1:14 PM), <https://www.cfr.org/blog/obamas-final-drone-strike-data> [<https://perma.cc/6F9M-DJLD>].

89. Jessica Purkiss & Jack Serle, *Obama's Covert Drone War in Numbers: Ten Times More Strikes than Bush*, THE BUREAU OF INVESTIGATIVE JOURNALISM (Jan. 17, 2017), <https://www.thebureauinvestigates.com/stories/2017-01-17/obamas-covert-drone-war-in-numbers-ten-times-more-strikes-than-bush> [<https://perma.cc/ML9T-JTMM>].

90. See Micah Zenko, *Obama's Embrace of Drone Strikes Will Be a Lasting Legacy*, N.Y. TIMES (Jan. 12, 2016, 2:57 PM), <https://www.nytimes.com/roomfordebate/2016/01/12/reflecting-on-obamas-presidency/obamas-embrace-of-drone-strikes-will-be-a-lasting-legacy> [<https://perma.cc/DS7F-4AH3>].

91. See Zenko, *supra* note 91; see also *Procedures for Approving Direct Action Against Terrorist Targets Located Outside the United States and Areas of Active Hostilities*, U.S. DEP'T OF JUSTICE (May 22, 2013), https://www.justice.gov/oip/foia-library/procedures_for_approving_direct_action_against_terrorist_targets/download [<https://perma.cc/MPB7-CEY5>].

92. Charlie Savage & Peter Baker, *Obama, in a Shift, to Limit Targets of Drone Strikes*, N.Y. TIMES (May 22, 2013), <https://www.nytimes.com/2013/05/23/us/us-acknowledges-killing-4-americans-in-drone-strikes.html> [<https://perma.cc/QCL4-WWZG>].

93. See Letta Tayler, *How Obama's Drones Rulebook Enabled Trump*, HUMAN RIGHTS WATCH (Sept. 26, 2017, 2:03 PM), <https://www.hrw.org/news/2017/09/26/how-obamas-drones-rulebook-enabled-trump> [<https://perma.cc/2YB7-279E>].

generally only required when an operation was targeting a U.S. person or the top officials from national security adjacent government agencies could not reach a consensus on approving the strike.⁹⁴ In total, President Obama likely launched around 1,900 drone strikes during his 8-year presidency, though the total is unclear due to the often classified nature of these targeted killings.⁹⁵

President Trump consciously expanded the targeted killing drone program during his time in office, and even reduced restrictions on targeting criteria that President Obama had placed on the CIA and U.S. military before he left office.⁹⁶ This included allowing the U.S. military and the CIA renewed authority to conduct targeted drone strikes against individuals suspected to be terrorists without advance permission from the Pentagon or the White House.⁹⁷ In terms of raw numbers, President Trump actually shattered Obama's drone strikes record, conducting a targeted drone strike almost every day in office.⁹⁸ This amounted to a near quadrupling on President Obama's strikes.⁹⁹

President Biden has allowed himself to be constrained by the loudest voices in his caucus like Senator Bernie Sanders, who has frequently derided the American drone program as "terrible" and "counterproductive."¹⁰⁰ This has included a revocation of the looser drone regulations that President Trump instituted, centralizing command over the CIA's drone operations and putting decision-making into the hands of a slower, more bureaucratic process. This process simultaneously lowers drones' operational effectiveness, as operators are unable to act immediately when encountering a target, but also forces potential operations to wait for approval from the Office of the President before going forward with missions that are carried out to ostensibly save American lives.¹⁰¹

IV. DRONE STRIKES WOULD WORK AGAINST CARTELS

Currently, the United States broadly uses a law enforcement framework when attempting to counter the Cartels. While this framework provides useful rules and norms if the Cartels operated as a criminal organization susceptible to law

94. See *id.*; see also U.S. DEP'T OF JUSTICE, *supra* note 92, at 1489.

95. Tara McKelvey, *Trump revokes Obama rule on reporting drone strike deaths*, BBC NEWS (Mar. 7, 2019), <https://www.bbc.com/news/world-us-canada-47480207> [<https://perma.cc/JMC9-QNR7>].

96. Adam Hudson, *Trump Has Pushed Ahead With Drone Strikes, Putting US Citizens in the Crosshairs*, TRUTHOUT (Dec. 5, 2020), <https://truthout.org/articles/trump-has-pushed-ahead-with-drone-strikes-putting-us-citizens-in-the-crosshairs/> [<https://perma.cc/5V5U-Q38D>].

97. See *id.*

98. William Thompson, *Attack of the Drones: Legal and Ethical Dilemmas of US Bombing*, ST. ANDREWS L. REV. (May 9, 2021), <https://www.standrewslawreview.com/post/attack-of-the-drones-legal-and-ethical-dilemmas-of-us-bombing> [<https://perma.cc/U5S8-H5H7>].

99. *Id.*

100. See Matthew Cantor, *Bernie Sanders says he would use drones to fight terror as president*, THE GUARDIAN (Oct. 11, 2015, 10:27 PM), <https://www.theguardian.com/us-news/2015/oct/11/bernie-sanders-drones-counter-terror> [<https://perma.cc/AER9-BDXY>].

101. See Luke Hartig, *The Biden Drone Playbook: The Elusive Promise of Restrained Counterterrorism*, JUST SECURITY (Oct. 17, 2022), <https://www.justsecurity.org/83586/assessing-bidens-counterterrorism-rules/> [<https://perma.cc/U98P-FBEP>].

enforcement action, the Cartels increasing levels of violence against Americans and coordination with other international terrorist organizations suggest that the Cartels are no longer just trans-national criminal organizations; instead, the Cartels are violent non-state actors locked in a deadly armed struggle against the United States. Instead of comparing the Cartels to domestic street gangs, the more appropriate comparisons would be to groups like Al Qaeda and ISIS. Cartels, unfortunately, pose even graver a threat to the U.S. than these organizations.

Part IV of this paper, therefore, frames the struggle between the United States and the Cartels as one that requires the use of International Humanitarian Law. This paper does not address the numerous domestic legal issues that the President or Congress might face when attempting to actually authorize these types of drone strikes and focuses solely on the ramifications and justifications needed under international schema.

A. *Drones, the Constitution, and the President*

While the legality of America's use of drone strikes has been strongly contested in the international sphere, the domestic legality of these targeted killings has been settled over the course of the War on Terror. This Note's focus is not on the Constitutionality of drone strikes against Cartel assets; rather, framing the international law analysis with contemporary interpretations of executive authority to conduct drone strikes unilaterally is important to contextualize this policy solution.

The past four administrations, including both democrats and republicans, have relied on statutory authority implied to be granted by the initial Authorization to Use Military Force (2001 AUMF) passed by Congress shortly after the attacks on September 11 (9/11 attacks).¹⁰² Section 2 of the 2001 AUMF authorized the President, as Commander-in-Chief of the United States Armed Forces, to use all "necessary and appropriate force" against the groups, nations, and persons who helped in any way to conduct the 9/11 attacks.¹⁰³ Drone strikes, naturally, fall under a type of "force" that an Executive can use. Because of this, the legality of drone strike operations abroad depends on it being lawfully authorized by the Constitution and any appropriate Congressional legislation.¹⁰⁴ However, important to note, this constitutional legality analysis only applies to drone strikes that target a group that can be justifiably related to the 9/11 attacks.

102. See Jonathan G. D'Errico, *Executive Power, Drone Executions, and the Due Process Rights of Americans Citizens*, 87 FORDHAM L. REV. 1185, 1191–92 (2018).

103. Authorization For Use of Military Force, Pub. L. No. 107-40, 115 Stat. 224, <https://www.congress.gov/bill/107th-congress/senate-joint-resolution/23/text> [<https://perma.cc/JC7C-MB8P>]; see also D'Errico, *supra* note 103, at 1192.

104. See Lynn E. Davis et al., *Clarifying The Rules for Targeted Killing*, RAND CORP. (2016), https://www.rand.org/content/dam/rand/pubs/research_reports/RR1600/RR1610/RAND_RR1610.pdf [<https://perma.cc/H9GW-HUKD>].

Targeted killings of enemies of the United States broadly do not violate existing laws or statutes as long as the President was appropriately authorized to conduct actions unilaterally, or if the existing actions can be justified by imminent dangers. And targeting combatants without “conventional” uniforms is not a hurdle—experts have pointed to any disablement of targeted strikes against terrorists and other non-uniformed combatants as a non-starter, as this would effectively grant terrorists and other related combatants to enjoy greater legal immunities than those that are enjoyed by officers in conventional armies wearing clear uniforms.¹⁰⁵ Even using targeted drone strikes against American citizens is deemed acceptable if they have taken up arms against the United States, especially if there are existing authorities that delegate power to the executive.¹⁰⁶ The United States also employs an expanded definition of imminence, a critical portion of the international law analysis, allowing for more flexible target determinations and target approvals.¹⁰⁷

Targeted killings using drones also do not, generally, violate the Constitution when placed in the broader context of tactics in modern war. The Constitution and its interpretations have long recognized the right of self-defense for the United States, and the right of the President to take actions to further these aims.¹⁰⁸ When there exists an authorization to use force against certain armed groups, there is relatively limited restrictions on the President’s authorizations of strikes, so long as they can be connected to the existing conflict and congressional authorizations.¹⁰⁹ This authorization can even extend to American citizens who

105. See generally *Drone Wars: The Constitutional and Counterterrorism Implications of Targeted Killing: Hearing Before the Subcomm. on the Constitution, Civil Rights and Human Rights of the S. Comm on the Judiciary*, 113th Cong. (Apr. 23, 2013) (statement of Ilya Somin, Professor, George Mason University School of Law), <https://www.govinfo.gov/content/pkg/CHRG-113shrg26147/html/CHRG-113shrg26147.htm> [<https://perma.cc/4ACV-VXGG>].

106. Greg Miller, *Legal Memo backing drone strike that killed American Anwar Al-Awlaki is released*, THE WASHINGTON POST (Jun. 23, 2014, 12:45 PM), https://www.washingtonpost.com/world/national-security/legal-memo-backing-drone-strike-is-released/2014/06/23/1f48dd16-faec-11e3-8176-f2c941cf35f1_story.html [<https://perma.cc/SBJ8-C8PD>]; see also *Memorandum for the Attorney General Re: Applicability of Federal Criminal Laws and the Constitution to Contemplated Lethal Operations Against Shaykh Anwar al-Aulaqi*, U.S. DEP’T OF JUSTICE OFFICE OF LEGAL COUNSEL 12 (2010), https://www.washingtonpost.com/r/2010-2019/WashingtonPost/2014/06/23/National-Security/Graphics/memodrones.pdf?itid=lk_inline_manual_1 [<https://perma.cc/4GV5-UNVN>].

107. See John O. Brennan, Assistant to the President for Homeland Security and Counterterrorism, Address at the Harvard Law School Program on Law and Security: Strengthening our Security by Adhering to our Values and Laws (Sept. 16, 2011), <https://obamawhitehouse.archives.gov/the-press-office/2011/09/16/remarks-john-o-brennan-strengthening-our-security-adhering-our-values-an> [<https://perma.cc/94DJ-JUYU>]; see also *Drone Strikes and Targeted Killings: Domestic and International Perspectives*, YALE L. SCH., https://www3.ca2.uscourts.gov/docs/jc_reports/2014/4_Drone_Strikes.pdf [<https://perma.cc/WHB9-UUWU>].

108. See Milena Sterio, *Lethal Use of Drone: When the Executive Is the Judge, Jury, and Executioner*, 23 THE INDEPENDENT INDEP. REV. 1, 37 (2018), https://www.jstor.org/stable/pdf/26591798.pdf?refreqid=fastly-default%3A4e877897c6154c7c84e489a11101c7de&ab_segments=&origin=&initiator=&acceptTC=1 [<https://perma.cc/Q4MB-MAMY>].

109. See *id.*

have gone abroad to join enemies of the United States.¹¹⁰ Experts also outline that the President likely also has independent constitutional authority to conduct and oversee drone strikes against targets.¹¹¹ This power enables the President to unilaterally order these strikes, but does not enable the executive branch to escape oversight from the legislative branch.¹¹² The President is also accountable to voters, a further method of grounding the executive with “public accountability.”¹¹³ And this view of military action is not in disagreement with the Founders’ varying views (and more contemporary interpretations of these views) of the power of the executive as Commander-in-Chief of the armed forces.¹¹⁴

The Supreme Court has readily confronted issues of the reach of the Executive, with *Youngstown Sheet & Tube Co. v. Sawyer*, holding the most illuminating explanations of appropriate exercises with relation to wartime scenarios.¹¹⁵ Justice Jackson describes several scenarios involving Presidential invocations of power:

When the President acts pursuant to an express or implied authorization of Congress, his authority is at its maximum, for it includes all that he possesses in his own right plus all that Congress can delegate. ...[when] the President acts in absence of either a congressional grant or denial of authority, he can only rely upon his own independent powers, but there is a zone of twilight in which he and Congress may have concurrent authority, or in which its distribution is uncertain. Therefore, congressional inertia, indifference or quiescence may sometimes, at least as a practical matter, enable, if not invite, measures on independent presidential responsibility. In this area, any actual test of power is likely to depend on the imperatives of events and contemporary imponderables rather than on abstract theories of law. ...[when] the President takes measures incompatible with the expressed or implied will of Congress, his power is at its lowest ebb, for then he can rely only upon his own constitutional powers minus any constitutional powers of Congress over the matter.¹¹⁶

The third scenario is unlikely to be applicable to drone strikes in Mexico unless Congress has specifically prevented the President from doing so by statute, and is therefore unlikely to ever be applicable unless the current political environment underwent a tremendous shift. When there exists a Congressional resolution or authorization enabling executive action against a particular armed group, constitutional analyses have repeatedly highlighted that most types of actions,

110. See U.S. DEP’T OF JUSTICE OFFICE OF LEGAL COUNSEL, *supra* note 107, at 12; see also Rajini Vaidyanathan, *US confirms four American citizens killed by drones*, BBC NEWS (May 23, 2013), <https://www.bbc.com/news/av/world-22634614/> [<https://perma.cc/3KAZ-V535>].

111. See Sterio, *supra* note 109, at 37.

112. See *id.* at 37–38.

113. See D’Errico, *supra* note 103, at 1206.

114. See D’Errico, *supra* note 103 at 1196–1198; see also *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 589 (1952).

115. See U.S. DEP’T OF JUSTICE OFFICE OF LEGAL COUNS., *supra* note 107, at 21.

116. See *Youngstown Sheet*, 343 U.S. at 635–37.

including drone strikes, would likely be an authorized course of action by the President.¹¹⁷ Even if this type of authority didn't exist, drone strikes historically contemplated have occurred in combat theaters far from the continental United States (i.e. Korea (*Youngstown*) and the Middle East (the War on Terror). When considering drone strikes against an enemy so close to the southern border, it is likely that the President's self-defense powers are much more prominent because the threat to United States citizens and territorial integrity is much more severe and apparent. Because of this, it is likely that while the President's authority in this case would fall under the second scenario envisioned by Justice Jackson, it is likely to fall at the far end of allowed, unlike other operations that occur in places far from the United States' borders.

B. Drone Strikes and International Humanitarian Law

Targeted killings through drone strikes problem naturally raises some thorny issues for justification under traditional International Humanitarian Law. In an effort to frame this conversation, we should take note of two important Articles of the UN Charter: Article 2(4) and Article 51. This conflict would operate under *Jus ad bellum* rules.¹¹⁸

Article 2(4) of the UN Charter text starts as follows: "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations."¹¹⁹ Article 2(4) text plainly demonstrates that the use of force against a state is not acceptable generally by the international community. However, there are two exceptions to Article 2(4)'s restrictions, one of which is Article 51.¹²⁰ Article 51 states that "Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security."¹²¹ In the simplest terms, Article 51 authorizes states to take actions that could be categorized as self-defense.

Understanding this broad framework, policymakers must turn to the actions (perceived, actual, or predicted) that the non-state group has taken against the

117. See U.S. DEPT OF JUSTICE OFFICE OF LEGAL COUNS., *supra* note 107, at 21.

118. *Jus ad bellum* refers to wartime footing; these are the conditions under which states may go to war. *Jus ad bellum* deals with the reasoning or legitimacy of a state to use military force. See Rob McLaughlin, *Keeping the Ukraine-Russia Jus Ad Bellum and Jus In Bello Issues Separate*, LIEBER INSTITUTE WEST POINT (Mar. 7, 2022), <https://lieber.westpoint.edu/keeping-ukraine-russia-jus-ad-bellum-jus-in-bello-issues-separate/> [https://perma.cc/9NFY-CRSJ].

119. U.N. Charter art. 2(4), https://legal.un.org/repertory/art2/english/rep_supp7_vol1_art2_4.pdf [https://perma.cc/K44D-TDP8].

120. The other exception explains that states may use armed force that goes against the spirit of Article 2(4) if it has been authorized by the UN Security Council.

121. U.N. Charter art. 51, <https://legal.un.org/repertory/art51.shtml#:~:text=%E2%80%9CNothing%20in%20the%20present%20Charter,maintain%20international%20peace%20and%20security> [https://perma.cc/2WV2-KA6M].

state.¹²² In order to take military action outside the scope of normal law enforcement operations, a state, under International Humanitarian Law, must identify the force that was used against them. The state must define the aggression taken against them. This requires the categorization of uses of force as either armed attacks or not. The International Court of Justice (ICJ) has explained that an armed attack is an objective inquiry under international law and is not a subjective inquiry that can be determined on a case-by-case basis by the impacted state(s).¹²³

1. The Republic of Nicaragua v. United States

The ICJ further, in the *Nicaragua* case and subsequent instances, has established three general circumstances where these factors may be under scrutiny.

First, there might be a circumstance where another state or non-state group works to interfere with a state's sovereign right to decision-making, hindering political, social, economic, health, or other policies reserved for sovereign decision-making.¹²⁴ For example, the ICJ in *Nicaragua* did not consider the simple act of funding the contras by the United States to be an actual use of force by the United States against Nicaragua. According to the ICJ, in response to a non-forcible intervention like this, a state cannot use military force or other uses of force legally under international humanitarian law. Instead, the state must rely on countermeasures or retorsions.

The second situation considered by the ICJ looked at the threat of a use of force, or an armed attack of a short duration. The Court considered these situations to be characterized by uses of force that are often both low scale and low intensity, commonly referred to as mere frontier incident(s).¹²⁵ This distinction serves to separate singular attacks or incidental confrontations from an attack of a larger magnitude that could be considered an attack on the state itself. For example, if the state militia or a terrorist from a non-state group intentionally killed one citizen from a different state, it is unlikely that the ICJ would consider this singular attack alone as enough to justify a categorization of it as an armed attack and further justification of a militarized response. The ICJ in the *Nicaragua* case considered the arming and training of contras to be by definition a use of force; however, the court determined that this use of force did not give rise to sufficient conditions to be considered an armed attack that could be used as a justification

122. While the factors laid out below are important for international military uses of force, the United States does not subscribe to *all* of the same policies that the ICJ and other international bodies advocate for.

123. See Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.), Judgment, 1986 I.C.J. 14 (June 27).

124. See *id.* at 108–09.

125. See Judge Abdulqawi A. Yusuf, *The Notion of 'Armed Attack' in the Nicaragua Judgment and Its Influence on Subsequent Case Law*, 25 LEIDEN J. OF INT'L L. 461–70 (Jun. 2012), <https://www.cambridge.org/core/journals/leiden-journal-of-international-law/article/notion-of-armed-attack-in-the-nicaragua-judgment-and-its-influence-on-subsequent-case-law/BF1DD8F779BFD9EEF713D8BF2AA8843E>. [<https://perma.cc/ZX3W-QD4A>]

for something further.¹²⁶ The ICJ, and international norms, have generally dictated that the appropriate responses for a use of force that rises to only the level of a frontier incident to establish legitimacy for the use of countermeasures and may allow for the impacted state to apply for authorization from the UN security council for use of force as stipulated therein. However, this methodology of determination of an armed attack, and the categorization of some attacks as frontier incidents, is not globally accepted. While many countries do subscribe to this theory, the US, Israel, and a few other select countries hold a broader definition of an armed attack, including any use of force as an armed attack and therefore justifying increased military responses.¹²⁷ While the ICJ and most other countries reject this view, the US has been a persistent and consistent objector to the ICJ's claims that the *Nicaragua* case has established customary international law. Having always held reservations towards these inappropriate court decisions does also lend the US' position some legitimacy as a manifestation of a demonstrated, consistent, and long-standing foreign policy.¹²⁸

The third and final example consists of two parts. Identifying a genuine armed attack requires the existence of a use of force that has such scale, magnitude, and impact on the state that it can be distinguished from an armed attack of limited duration or from a mere frontier incident. For example, if the United States had a base in a country, and a non-state actor conducted a series of bombings against this base, the bombings, when taken together, can likely be considered as armed attacks against the United States, thereby justifying all types of self-defense allowed under Article 51. If these attacks persist and are both large-scale and protracted, these armed attacks can rise to the level of an armed conflict.¹²⁹ This is true even if the other actor is not a state-related entity but is instead a non-state actor like the terrorist groups responsible for the 9/11 attacks. Most importantly, an armed conflict allows for a more expansive and lenient military response, as the goal of the country is no longer to simply prevent another attack or defend against one, but it is to win a protracted armed conflict.

2. Self-Defense & Armed Conflict Principles

When an armed attack occurs, and self-defense under Article 51 kicks in, international law still limits the amount and type of force that a given state is allowed

126. See *supra* note 124.

127. See Ryan Goodman, *Cyber Operations and the U.S. Definition of "Armed Attack,"* Just Security (Mar. 8, 2018), <https://www.justsecurity.org/53495/cyber-operations-u-s-definition-armed-attack/> [<https://perma.cc/QL4M-M2TP>].

128. See generally Eric Neumayer, *Qualified Ratification: Explaining Reservations to International Human Rights Treaties*, 36 J. OF LEGAL STUD. 397–429 (Jun. 2007), <https://www.journals.uchicago.edu/doi/10.1086/511894> (explaining that when states object vocally and publicly, like with a reservation, it grants their future policy decisions greater legitimacy). While these “reservations” are generally observed in respect to treaties, similar sentiment exists for policy decisions that have been largely consistent and well-established.

129. See *Prosecutor v. Tadic*, IT-94-I-A, Judgement in Appeal (Jul. 15, 1999), <https://www.internationalcrimesdatabase.org/Case/79> [<https://perma.cc/K6B8-SKA8>].

to use. While most countries are limited in defining armed attacks by the factors above, it is again important to highlight that the United States considers any use of force against itself as an armed attack. The responses are limited by two main factors: necessity and proportionality.

A state must first establish that no measure short of the use of military force would be adequate to defend the state from an imminent or actual attack. By this logic, international law views the use of military force as a last resort; it shouldn't be used until absolutely needed, and not until the state has exhausted all other avenues. This view may make sense when dealing with state-on-state violence; the state attacked/impacted would be able to conduct a wide variety of programs in order to attack back without *actually* attacking. These would include things like countermeasures, sanctions, retorsions, and other methods through international bodies or organizations. However, when dealing with non-state actors, like terrorist groups, these types of responses are ineffective and only nominally injure non-state actors.¹³⁰ Therefore, in most circumstances, other avenues being exhausted can be both a waste of time and delay timely intervention.

A state then must only respond with proper proportionality. In essence, the state should use no more than the amount of force that would be successful to prevent an imminent attack or to repel an ongoing attack. The state's response should, generally, not inflict disproportionate damage on the attacker or would-be-attacker compared to what the state would have been hit with. Thinking back to the *Nicaragua* Case, the ICJ has said that the attacks on ports and oil installations were not proportional to the aid received by Salvadorian opposition groups from Nicaragua.¹³¹ Therefore, that response to a perceived armed attack was inappropriate.

In stark contrast, armed conflict allows for a wider range of flexibility in a given state's execution of defensive measures, as an armed conflict implies a conflict that is wide in scale, protracted in duration, and high in intensity. Therefore, the international community accepts different standards for the same principles listed above (necessity and proportionality).

In an armed conflict, international law accepts that the principle of necessity generally means that the state must use adequate amounts of force to destroy the overall threat that the enemy state or non-state group poses. The goal of using force during an armed conflict is to defeat the enemy and win the conflict, which can (most of the time) only be done through the use of military force. Despite this reality, the international regime still requires that attacks conducted against aggressors are still held to fairly stringent accountability regimes. However, a given victim state's military is allowed to conduct strikes that help to gain explicit military advantage in the conflict, and do not necessarily need to show that uses

130. See Franco Mariuzzo et al., *Fines and reputational sanctions: The case of cartels*, 69 INT'L J. OF INDUS. ORG. (Mar. 2020), <https://www.sciencedirect.com/science/article/abs/pii/S0167718720300060> [<https://perma.cc/YKJ5-6YMX>].

131. See *supra* note 124 at 119.

of military force were resorted to as only a last-step measure.¹³² States only need to demonstrate that incidental losses of civilian life, and other related collateral damage, is not excessive in relation to a concrete military advantage anticipated to be gained.¹³³ In a similar vein, proportionality in an armed conflict also has lowered guardrails under international law, allowing states to use as much force as is necessary to win the war, subject to *jus in bello* principles.¹³⁴

3. Territorial Sovereignty

To comply with international law when undertaking uses of military force in states that are not consenting, the state wishing to act must establish that the state housing a non-state actor target is either unable or unwilling to address the threat posed by the non-state actor on its territory. Notably, this is a shift in accepted international norms around the use of force against non-state actors. In some regards, this mode of self-defense has been garnering expansionist tendencies, with multiple states agreeing that self-defense principles must be modernized with the rise of non-state actors and their high-level of lethal capabilities.¹³⁵ Despite the expansion and wider acceptance of this policy, many states still hold strong reservations to this policy. Importantly, the unable or unwilling standard also does not grant any state an unfettered right to wage war globally while disregarding state sovereignty concerns. States must fulfill either of the two prongs under the doctrine to take further interventionist action in anticipation of an armed attack.

The two facets of this doctrine are frequently involved together. It is often apparent that states who are unable to control non-state actor behaviors are often also unwilling to do so, mainly due to an assumption that they would be unable to actually control them even if they tried. However, each prong of this analysis is evaluated independently because satisfying even just one prong could authorize military intervention.¹³⁶

Being “unable,” as defined by the United States and some close allies, is defined as when a state has lost, or intentionally abandoned, effective control over the portions of its territory where the non-state actor is operating.¹³⁷ A state

132. Thompson, *supra* note 99.

133. *See id.*

134. *Id.*

135. Raas Nabeel & Ayesha Malik, CONFLICT L. CTR. RESEARCH SOCIETY OF INT'L L., *The Unwilling or Unable Doctrine and the View from Pakistan* 7 (2022).

136. *See* Dr. Waseem Ahmad Qureshi, *International Law and the Application of The Unwilling or Unable Test in the Syrian Conflict*, 11 DREXEL L. REV. 61, 67 (2018).

137. *See* Elena Chachko & Ashley Deeks, *Which States Support the ‘Unwilling and Unable’ Test*, THE LAWFARE INST. (Oct. 10, 2016 1:55 PM), <https://www.lawfaremedia.org/article/which-states-support-unwilling-and-unable-test> [<https://perma.cc/2VK8-FEP3>]; *see also* THE WHITE HOUSE, REPORT ON THE LEGAL AND POLICY FRAMEWORKS GUIDING THE UNITED STATES’ USE OF MILITARY FORCE AND RELATED NATIONAL SECURITY OPERATIONS 10 (Dec. 2016), https://www.justsecurity.org/wp-content/uploads/2016/12/framework.Report_Final.pdf [<https://perma.cc/4ZJU-8H95>]; *see also* Letter from Ambassador Linda Thomas-Greenfield, Representative of the United States, to the United Nations (Feb.

might be willing to take on a threat, but simply unable to effectively do so because of an apparent or demonstrated lack of capacity or capabilities.¹³⁸ Because of this, the onus falls on victim states to determine whether the foreign state housing the non-state actor has the capacity to counter the specific threat posed by the non-state actor without victim state-led intervention.¹³⁹ This information is often easily accessible, as the ungoverned spaces within states, the most common place for non-state actors to thrive, are often heavily studied and documented regions of countries.¹⁴⁰ Therefore, states are likely able to readily obtain the necessary information to make informed decisions.¹⁴¹ For example, the Obama administration determined that the United States could strike against the Islamic State in Syria without approval from the Syrian regime under international law because the Syrian regime had lost effective control of the land that the Islamic State then controlled, including most of northeastern Syria.¹⁴² In a more recent example, the Biden administration established that the Syrian regime was unable to control Iranian-backed militia proxies in its East, and used this as part of its justification for striking back with targeted military strikes against Iranian-proxy groups' infrastructure.¹⁴³

Being "unwilling" is defined as a state refusing to take effective measures to genuinely confront a non-state actor that uses the state's territory as a staging center for operations.¹⁴⁴ Historically, the United States has generally held the view that analysis demonstrating unwillingness, sometimes conducted independently of the domestic government's institutions, can amount to enough justification for military intervention.¹⁴⁵ For example, in the view of the United States, unwillingness can manifest itself when a State is actively colluding with a non-state actor to organize attacks on a foreign adversary. When a state, although not actively helping a non-state actor organize or carry out attacks, harbors or otherwise shields a non-state actor within their territory, the unwilling prong of this doctrine is also often thought to have been met. Some international actors take a different tact, arguing that states victimized by non-state actor violence originating in a foreign state should gauge the willingness of the foreign state to subdue the threat through the imposition of a formal timeline; essentially, some scholars argue that this approach gives foreign states housing the non-state actors time to demon-

27, 2021), <https://www.justsecurity.org/wp-content/uploads/2021/02/united-states-of-america-letter-to-united-nations-on-27-february-2021-syria-strike-under-article-51.pdf> [<https://perma.cc/YFL7-GFJA>]

138. See Qureshi, *supra* note 137, at 70–71.

139. *Id.*

140. *Id.* at 70.

141. *Id.*

142. See Chachko & Deeks, *supra* note 138.

143. See Letter from Ambassador Linda Thomas-Greenfield, *supra* note 122.

144. See THE WHITE HOUSE, *supra* note 138.

145. See Brian Egan, State Department Legal Advisor, Keynote Address at the American Society of International Law (2016), <https://www.lawfareblog.com/state-department-legal-adviser-brian-egans-speech-asil>. [<https://perma.cc/P7MU-XFFW>]

strate willingness to subdue the threat.¹⁴⁶ Subsequently, if the foreign state is unwilling to counter the threat, these scholars would then determine that the unwilling prong of this doctrine is met. Arguably the most famous invocation of the unwilling prong of this doctrine came in 2011, when the United States unilaterally entered Pakistani territory, without permission, to target and kill Osama Bin Laden, who was being housed and protected down the street from a Pakistani military facility.¹⁴⁷

4. Applying IHL to Mexican Cartels

It is a fair assessment of the situation to determine that the Cartels have been waging armed attacks against Americans for years. These attacks have taken the form of lethal and addictive drugs being sold and distributed in the United States and more traditional forms of violence targeting Americans in the United States and abroad in Mexico. It is important to note that the United States likely has an argument that the violence and death carried out by Cartels on American citizens rises to the level of an armed conflict. Armed conflicts are characterized by protracted large-scale violence, and require analysis of the duration and intensity of the conflict between the two parties.¹⁴⁸ Despite the likely existence of this argument, the existence of an armed conflict between the Cartels and the United States is likely to be untenable in the current domestic and global political environment, and this analysis therefore stops short of any recommendations under this view of the situation.

As defined by the United States, an armed *attack* is the use of any type of force against it under Article 51. To this point, the United States, along with a number of other allies, have acted as consistently persistent objectors to claims and ruling from the ICJ describing distinctions between frontier incidents and armed attacks that have larger scale, magnitude, and effects.¹⁴⁹ The international community takes a different approach, describing incidents that are of low scale and intensity, even if they involve uses of force, as not rising to the level of an armed attack.¹⁵⁰ Taking into account both of these viewpoints, the murders, importation of drugs, and other related criminal activity that Cartels have meted out on the United States and its citizens likely amounts to an armed attack of a protracted duration. Over the past decade, the Cartels have killed hundreds of thousands of Americans through a variety of means.¹⁵¹ This has included kidnapping and murdering

146. See Quereshi, *supra* note 137, at 68–69.

147. See Nabeel & Malik, *supra* note 136, at 16–17.

148. See *The Law of Armed Conflict*, INT'L COMM. OF THE RED CROSS UNIT FOR REL. WITH ARMED & SEC. FORCES, (Jun. 2022), https://www.icrc.org/en/doc/assets/files/other/law1_final.pdf [https://perma.cc/3USR-65TM].

149. See Abraham Sofaer, *The International Court of Justice and Armed Conflict?*, 1 NW. J. OF INT'L HUM. RTS. 4 (2004).

150. *Supra* Section (IV)(B).

151. *Id.*

American law enforcement personnel, servicemen, and private citizens.¹⁵² The combination of these incidents likely meets both the United States and international requirements, as the scale, magnitude, and effects of the Cartel-led drug epidemic, direct Cartel violence, and spillover Cartel violence has amounted to clearly distinguish it from simply a frontier incident. If the Cartels only *occasionally* engaged in drug trafficking, and only *occasionally* murdered American government officials and citizens, then the international requirements under Article 51 and *Nicaragua* would likely not be met. However, this is not a description of reality; therefore, Cartels and their violence can appropriately be described and distinguished as a genuine armed attack. Furthermore, because these modes of Cartel violence are systemic, ongoing, and all-pervasive, this armed attack (or group of armed attacks) can be qualified as ongoing. Because of this, the United States is entitled to act in self-defense under Article 51 against these repeated incessant armed attacks.

Because the existence of an armed attack by the Cartels can now be established, the analysis turns to a determination of the necessity and proportionality of any proposed response.¹⁵³ In this situation, the United States must demonstrate that no other measures or actions short of the use of drone strikes would be adequate in order to defend against these continued armed attacks.¹⁵⁴ The United States has fulfilled this requirement handily, having utilized a wide-ranging toolkit against the Cartels in order to prevent further violence including, but not limited to, targeted legislation, law enforcement raids in Mexico and the United States, joint task forces with Mexican officials, and economic sanctions against Cartel leadership.¹⁵⁵ Because of these efforts, the United States has demonstrated a good-faith commitment to use other measures against the Cartels despite their penchant for being ineffective against non-state actors.¹⁵⁶ However, it is apparent that these efforts have failed spectacularly, and that the situation with Cartels calls for increased intervention through the use of targeted drone strikes. These targeted drone strikes would amount to a logical increase in the intensity of the United States' responses to repeated armed attacks and incursions and would be necessary to prevent imminent attacks and beat back ongoing current attacks.

In respect to proportionality, the United States would need to demonstrate that no use of force less than targeted drone strikes would successfully prevent continued armed attacks by the Cartels.¹⁵⁷ This use of force should, within reason, not inflict disproportionate damage on the Cartels when compared to the violence

152. *Id.*

153. *Id.*

154. *Id.*

155. See, e.g., Press Release, *Fact Sheet: Department of Justice Efforts to Combat Mexican Drug CARTELS*, U.S. DEP'T OF JUST. (Apr. 2, 2009), <https://www.justice.gov/opa/pr/fact-sheet-department-justice-efforts-combat-mexican-drug-cartels> [https://perma.cc/3MU2-3NWH].

156. *Supra* Section (IV)(B)(2).

157. *Id.*

suffered by the United States.¹⁵⁸ Because of the expansive and highly-deadly nature of the Cartels armed attacks, amounting to the deaths of hundreds of thousands of Americans every year, it is readily apparent that the United States has a high bar before any military interventions would be classified as disproportionate. Drone strikes are targeted, and any drone strikes against Mexican Cartel assets would have narrow criteria and would impact only those interfacing at Cartel locations or interacting with Cartel members. In much a similar way to the drone strikes carried out against Al Qaeda, these drone strikes can and will be effectively targeted to minimize unnecessary casualties and prioritize high-value targets. When weighing these drone strikes against the massive violence that the Cartel has been inflicting through their constant armed attacks, the use of targeted drone strikes pales in comparison. The number of individuals impacted in Mexico by the drone strikes would be, by definition, miniscule against the sheer number of Americans suffering violence at the hands of the Cartels¹⁵⁹, further highlighting how this response, if disproportionate in any way, is likely a relatively restrained military intervention in response to the existing aggression and armed attacks. The United States would also need to weigh how each strike could impact Mexican civilians in contrast to how many Cartel members were neutralized. This tactical proportionality analysis would likely heavily weigh on any decision-making; however, it seems likely that any concerns about high levels of civilian casualties could be addressed relatively easily. These targeted drone strikes use targeted munitions that can be created in a relatively small size utilizing advanced laser-guided targeting systems to ensure the munition is delivered to the appropriate location.¹⁶⁰ Additionally, while some Cartel bases of operation and drug labs are located inside population centers, increasingly, Cartel chemists are resorting to sparsely-populated areas of Mexico in order to create and package drugs without prying eyes.¹⁶¹ Because of these factors, it is likely that drone strikes against drug supply chains and other Cartel assets could be conducted with a controlled and minimal impact on Mexican civilians.

5. Mexico is Unable & Unwilling to Restrain Cartels

After establishing that drone strikes would be a proportionate response under the existing criteria, it then must be determined whether the United States can willfully violate Mexican sovereignty under the unable or unwilling doctrine.

158. *Id.*

159. *Supra* Section (II).

160. *MQ-9 Reaper*, U.S. AIR FORCE (Mar. 2021), <https://www.af.mil/About-Us/Fact-Sheets/Display/Article/104470/mq-9-reaper/> [<https://perma.cc/8YMM-3T3U>].

161. See generally Monica Villamizar, *A secret look at a Mexican cartel's low-tech, multimillion-dollar fentanyl operation*, PBS NewsHour Prod. (Sept. 14, 2021 6:25 PM), <https://www.pbs.org/newshour/show/a-secret-look-at-a-mexican-cartels-low-tech-multimillion-dollar-fentanyl-operation> (explaining how many Cartels now informally employ chemists who set-up fentanyl labs all over the country, with many concentrated in the more rural areas of Sinaloa state).

While Mexican government officials will likely disagree with security analysis done by the US military, it is clearly evident that bilateral security cooperation is a thing of the past. Because of this, it appears increasingly unlikely that Mexican officials would sanction US military-led drone strikes against Cartels housed in Mexico when they are already preventing joint raids and surveillance data-sharing.¹⁶² President Obrador has also explicitly come out against the proposition of American military intervention, describing Mexico as secure and safe despite the reality on the ground.¹⁶³ Any drone strikes taken against the Cartels would therefore likely be operating without the consent of the Mexican state in violation of their territorial sovereignty. Mexico also has an on-the-record objection to any invocations of the unable or unwilling doctrine. In a United Nations General Assembly Meeting in 2018, the then Mexican ambassador highlighted that Mexico holds the following as their stated policy position on the unable or unwilling doctrine:

“Article 51 of the Charter cannot be invoked to justify a response to an armed attack perpetrated by a non-state actor that has no relationship with the State, and, moreover, opens the door to undermining the territorial integrity of another State when the latter presents a lack of will or capacity (is “unable or unwilling”) to act against said private entities.”¹⁶⁴

As demonstrated through the language here, Mexico is likely to heavily oppose any foreign intervention on other countries, or its own, soil. Despite these objections, facts on the ground should spur active intervention from the United States. Mexico has lost control of its territory to the Cartels and is actively refusing to stem the tide of Cartel crime and terror. Therefore, the Mexican state is unable to effectively exercise control over a large portion of the state and is unwilling to take active actions against these terrorist groups. US military action is now needed to preserve American lives.

Cartel control of Mexican land is no secret. Estimates on the amount of land that Cartels control, but generally range from 20% on the low end to nearly 40% on the high end.¹⁶⁵ This reality has collided with explicit policy; the Mexican government has largely adopted a *laissez-faire* approach to the Cartels, hoping that their violence would naturally recede with less government intervention and actively withdrawing from areas where the Cartels presence is most visible.¹⁶⁶

162. See Dilanian, *supra* note 30.

163. See Mexico's president slams calls for US military to target cartels, Al Jazeera Media Network (Mar. 9, 2023), <https://www.aljazeera.com/news/2023/3/9/mexicos-president-slams-calls-for-us-military-to-target-cartels> [https://perma.cc/3XFM-DNTF].

164. See Chachko & Deeks, *supra* note 138.

165. See, e.g., John Daniel Davidson, *Former US Ambassador To Mexico: Cartels Control Up To 40 Percent Of Mexican Territory*, The Federalist (Apr. 28, 2021), <https://thefederalist.com/2021/04/28/former-us-ambassador-to-mexico-cartels-control-up-to-40-percent-of-mexican-territory/> [https://perma.cc/6QR6-F8N7].

166. See *id.*

This retreat from areas of the country has been met with exasperation from civilians, many of whom are now arming themselves to fight against the Cartels, viewing the policies of the Obrador administration as ineffective and misaligned.¹⁶⁷ These facts combine to create a situation where the Mexican government has actively withdrawn itself from attempting to control Cartel activity, ceding the determination that Mexico itself has determined, if not explicitly, that it is unable to control the Cartels. This is exemplified by current Mexican force deployments; instead of working to disrupt Cartel activities, Mexican army and police forces now instead focus on protecting Cartel territory, ensuring competing groups don't spread their activity across their arbitrary borders.¹⁶⁸ Shockingly, government forces are guarding borders while simultaneously ignoring the illegal activities on Cartel territory that often happens merely a few hundred yards away from their guard positions.¹⁶⁹ To draw similarities to other situations where the "unable" prong of this analysis scheme was met, Mexico has lost effective control over many of its individual states in much the same way that the Syrian Regime under Bashar Al-Assad lost effective control of land taken over by ISIS. Much like ISIS was free to conduct public executions and act as judge, jury, and executioner in territory under their control in Syria, Mexican Cartels have the same freedoms, including the ability to use public execution as a method of public control without government response.¹⁷⁰ Because of the Mexican government's inability to control their own territory, as explained above, Cartels have been allowed to act with essentially complete freedom in vast swathes of the country. This activity involves the creation of the deadly drugs that head to the United States and the murder of American citizens in Mexico, demonstrating how the Mexican government's inability to control Cartel activity has contributed to harm to Americans.

Cartels have even developed functions that have replaced traditional government institutions. In Michoacan, the Jalisco New Generation Cartel provides an informal safety net for residents under their protection. This includes providing cleaning supplies to local residents and school supplies for students at schools.¹⁷¹ Some Cartels have also adopted the role of law enforcement in their respective territories, with the Sinaloa Cartel providing support and investigative capacity in high-profile kidnappings cases of businessmen.¹⁷² In this specific instance,

167. Lizbeth Diaz, *Mexico's Wild West: vigilante groups defy president to fight cartels*, Reuters (Sept. 13, 2019 6:07 AM), <https://www.reuters.com/article/idUSKCN1VY1N6/> [<https://perma.cc/NHH4-L2BG>].

168. See THE GUARDIAN, *supra* note 16.

169. *Id.*

170. See Vanda Felbab-Brown, *How Mexico's Cartel Jalisco Nueva Generación rules*, Brookings Inst. (May 29, 2022), <https://www.brookings.edu/opinions/how-mexicos-cartel-jalisco-nueva-generacion-rules/> [<https://perma.cc/9DBP-35QC>].

171. *Id.*

172. Vanda Felbab-Brown, *How the Sinaloa Cartel rules*, Brookings Inst. (Apr. 4, 2022), <https://www.brookings.edu/opinions/how-the-sinaloa-cartel-rules/> [<https://perma.cc/LA7Q-UM98>].

Cartel men investigated the disappearances, apprehended the suspected kidnapers, and handed evidence over to relevant government authorities for further prosecution.¹⁷³ Brazenly, the Cartels have started to openly interface with regulatory agencies traditionally insulated from Cartel influence. For example, the Sinaloa Cartel has repeatedly approached state officials and regulatory officials with Mexico's Fishing regulatory agency to offer help in enforcing compliance with fishing licenses and other related requirements in the waters off the coast of Cartel-controlled territory.¹⁷⁴ Cartels have also helped serve as employers in times of economic contractions; even as the overall Mexican economy was getting pummeled because of the COVID-19 pandemic and its downstream consequences, the Cartels actively recruited laid off workers or recent graduates to interface with the populace more, specifically hiring a large number of social science graduates of Mexican universities to create and run surveys of the populace under Cartel control to better understand their social needs and anxieties.¹⁷⁵ It is true that some Cartels have faced service delivery difficulties, namely due to competing Cartels and local criminal organizations that seek to carve out their own niche.¹⁷⁶ However, the overall narrative presents a compelling and coherent story; the retreat of the Mexican government from large swaths of territory demonstrates the Cartels omnipresent fixture and their role superseding the ability and control of government agents.

The Cartels are also surprisingly unrestrained in their targeting of government officials and community leaders in Mexico. Cartels have a reputation for brazen displays of violence and coercion, with some turning to propaganda-style videos highlighting their power. These videos go so far as to highlight attacks some Cartels undertake, with violence a core theme.¹⁷⁷ Attacks include ransacking and burning police stations and checkpoints, destroying law enforcement vehicles and equipment, and hunting down noncompliant police officers and their families.¹⁷⁸ The Jalisco New Generation Cartel is particularly violent; the group is seen as a pioneer in creating drone-borne IEDs similar to those seen being used in the war in Ukraine.¹⁷⁹ The Jalisco New Generation Cartel uses these drone-borne IEDs to exact violence against enemies, government agents, and to "depopulate" areas they seek to control or use for drug operations.¹⁸⁰

Cartel targeting of community leaders also significantly advances their ability to wield unfettered control over territory. To bring community leaders and activists to heel, Cartels often adopt a dual-pronged approach; first, Cartels may approach these members of a community with fistfuls of cash, seeking to buy

173. *See id.*

174. *See id.*

175. *See* Felbab-Brown, *supra* note 171.

176. *See id.*

177. *Id.*

178. *Id.*

179. *Id.*

180. *Id.*

their cooperation, and if this approach doesn't work, Cartels often turn to intimidation tactics, using fear as a method to achieve territorial control.¹⁸¹ This "fear-based control" is not only limited to government officials and depopulation campaigns, and is used against community activists and leaders as well. Similar to how the Taliban sought to neutralize or muzzle local community leaders to consolidate control in Afghanistan, Cartels (namely the Jalisco New Generation Cartel) works to actively undermine community leaders or eliminate them when deemed no longer useful.¹⁸² This campaign of fear extends to local teachers, prominent businessmen, and other professionals that could otherwise undermine the influence and reach of the Cartel.

Unfortunately, the fears of Mexican government officials worrying that massive swaths of territory would be lost to Cartels has come to fruition only a little longer than a decade after these worries first leaked.¹⁸³ Despite a tremendous runway of time to control the Cartels and prevent them from exacting harm around the globe, the Mexican government has failed. For what was once considered a relatively shiny example of western democracy in Latin America, the Mexican state has fallen far and fast. All these elements combine to create a lethal combination of the unable or unwilling doctrine, forestalling Mexican intervention while the reality on the ground begs for American intervention. Because the actions taken by Mexican Cartels can be categorized as continued armed attacks against United States law enforcement, military, and civilian assets, and the Mexican state both appears and has stated public positions indicating that they are unable *and* unwilling to control Cartel activity, US military intervention is a necessary solution to an only growing insidious issue.

C. Saving Lives with the Targeted Killing Program

Drone strikes are also incredibly effective at destroying the upper-echelons of terrorist organizations and forcing negative downstream effects. Since drone strikes have often targeted the leaders of non-state groups, these terrorist organizations have been forced to conduct leadership shuffles; in order to ensure continuity, less-qualified and less-experienced replacements are promoted within terrorist organizations after a leader or multiple leaders were killed by lethal targeting.¹⁸⁴ Historically, these leadership losses have made terrorist organizations less effective. In fact, studies have shown that violent attacks that can be

181. *Id.*

182. See Gilles Dorronsoro, *The Taliban's Winning Strategy in Afghanistan*, Carnegie Endowment for INT'L Peace (2009), https://carnegieendowment.org/files/taliban_winning_strategy.pdf [https://perma.cc/M7JP-DR4M]; see also Felbab-Brown, *supra* note 171.

183. Robin Emmott, *Mexico fears losing areas to drug cartels: WikiLeaks*, Reuters (Dec. 2, 2010 6:14 PM), <https://www.reuters.com/article/us-wikileaks-mexico/mexico-fears-losing-areas-to-drug-cartels-wikileaks-idUSTRE6B20FU20101203> [https://perma.cc/6UNW-YTWH].

184. See Bryce Loidolt, *Were Drone Strikes Effective/Evaluating the Drone Campaign in Pakistan Through Captured al-Qaeda Documents*, 5 TEX. NAT'L SEC. REV. 53 (2022).

attributed to terrorist organizations decreased in their intensity and magnitude after the US' drone program targeted and killed high-value members of leadership.¹⁸⁵

Drone strikes have also, historically, prompted terrorist groups' leaders to either enter hiding or take extensive precautionary measures in their movements and communications. These measures often slowed organizational processes and plannings, thereby undermining the leader's ability to lead the group, and control individual member's behavior, and restricting the entire organization's operational flexibility. By forcing terrorists to first think about their own safety, as opposed to how to attack the United States, drone strikes naturally place an operational barrier into terrorist's planning.¹⁸⁶ Also important to note are the communication issues that can pop-up once leadership is more concerned with hiding from drone strikes; academic studies have shown that a decreased level of leadership interaction with the general body of members of a given terrorist organization severely hampers organizational cohesion, undermining the goals of the organization.¹⁸⁷ Morale also takes a hit with less leadership interaction, impacting terrorist organizations' ability to retain individuals as well.¹⁸⁸ Evidence taken from the War on Terror, with specific attention paid to drone strikes conducted against Al Qaeda, demonstrated that US drone strikes did in fact outpace Al Qaeda's ability to "[manage] personnel turnover and [mentor] new personnel."¹⁸⁹

This intentional expansion of the targeting killing drone program has a major advantage over other conventional military operations: lowering American military personnel casualties. Instead of requiring boots on the ground for frequently dangerous counterterrorism operations¹⁹⁰, drone strikes allow operators to operate from the safety and security of US military bases, often housed in the States.¹⁹¹ This inherently lowers any risk of fatal or non-fatal injury that a group of American servicemen would otherwise be exposed to if thrust into an operating environment.¹⁹² Therefore, drones by nature have worked to enable the United

185. *Id.*

186. See Second Lieutenant Alexander Farrow, *Drone Warfare as a Military Instrument of Counterterrorism Strategy*, 28 Air & Space Power J. 4.

187. See Bryce Loidolt, *supra* note 185, at 58.

188. *Id.*

189. *Id.*

190. See Mohammed Ghobari & Phil Stewart, *Commando dies in U.S. raid in Yemen, first military op OK'd by Trump*, REUTERS (Jan. 29, 2017 10:35 PM), <https://www.reuters.com/article/us-usa-yemen-qaeda/commando-dies-in-u-s-raid-in-yemen-first-military-op-okd-by-trump-idUSKBN15D08J> (demonstrating the danger of human-based counterterrorism operations).

191. W.J. Hennigan, *Drone Pilots go to war in the Nevada desert, staring at video screens*, L.A. TIMES (Jun. 17, 2015 3:05 AM), <https://www.latimes.com/nation/la-na-drone-pilots-20150617-story.html> [<https://perma.cc/BZD6-2M5U>].

192. Testimony of Ambassador Nathan A. Sales, "Targeted Killing" and the Rule of Law: The Legal and Human Costs of 20 Years of US Drone Strikes, Senate Committee on the Judiciary, 2 (Feb. 9, 2022), <https://www.judiciary.senate.gov/imo/media/doc/Sales%20testimony.pdf> [<https://perma.cc/V2JP-SCEE>].

States' counterterrorism operations to achieve objectives without much difficulty without the risks associated with deploying human troops.¹⁹³

It is clear that drone strikes work against enemies and simultaneously save American lives and money. Now the question turns to whether these drone strikes would work against the Mexican Cartel in a similar fashion as they did against Al Qaeda in the Middle East? The answer seems to be a likely yes. In the aggregate, studies have shown that lethal targeting creates favorable outcomes for US operational goals.¹⁹⁴ Importantly, Al Qaeda internal documents and communications did not mention or refer to increased levels of recruitment or support from local populations caught in the crossfire of US drone strikes, as many detractors claim. Therefore, it seems unlikely that support for the Mexican Cartels, who are already killing thousands of Mexicans every year¹⁹⁵, would increase when US drone strikes incidentally hurt or kill some innocent civilians. The United States could likely use targeted killings against Mexican Cartel leadership in a similar fashion as against Al Qaeda, likely also reaping the same benefits. A future drone campaign against the Mexican Cartels would also instill similar fears amongst the leadership as was viewed in Al Qaeda; leaders would likely go into hiding and reduce communication channels to avoid detection and destruction by drones. This would help the US operation, hurting the Cartel's operational efficiency and hampering their continued efforts to export dangerous products north. Although studies have shown that while broadly effective, drone strikes can produce diminishing marginal benefits after most senior leadership has been killed, the United States can effectively continue the drone program by employing a multi-pronged offensive, combining the traditional law enforcement capabilities we have used for decades with lethal drone strikes. By using these two avenues of response, the United States can greatly diminish Mexican Cartels ability to operate freely in Mexico and bring death to Americans' doorsteps.

Drone strikes against the Cartels are also not an unheard of policy solution. During the latter half of President Trump's presidency, his administration and national security apparatus regularly toyed with the idea of labeling Cartels as terrorists, a move that would likely serve as a pretext for possible drone strikes.¹⁹⁶ Increasingly, candidates for President are considering more stringent measures against Cartels, including, but not limited to, using drone strikes in Mexico, whether at the behest of the Mexican government or not.¹⁹⁷ Proposing this policy

193. *Id.* at 4.

194. See, e.g., Bryce Loidolt, *supra* note 185, at 79.

195. See Center for Preventive Action, *supra* note 17.

196. Bobby Allyn, *Trump Floating Terrorist Label For Mexican Cartels Brings Fears Of Drone Strikes*, NPR (Nov. 27, 2019 6:26 PM), <https://www.npr.org/2019/11/27/783371799/trump-floating-terrorist-label-for-mexican-cartels-brings-fears-of-drone-strikes> [<https://perma.cc/U2ME-XR6D>].

197. Philip Bump, *Trump and the tough-guy allure of invading Mexico*, THE WASHINGTON POST (Mar. 30, 2023 11:50 AM), <https://www.washingtonpost.com/politics/2023/03/30/trump-mexico-drug-cartels/> [<https://perma.cc/V7TV-88D6>].

solution, therefore, would not be met with as much resistance as might be anticipated.

Importantly, the United States intelligence community has a vast trove of information that can be leveraged to better target and destroy Cartel assets.¹⁹⁸ This likely enables the United States to more precisely target Cartel members and their supply chains, enabling drone strikes to be simultaneously more lethal to the Cartels and contributing less to any possible collateral damage. Furthermore, a common criticism of lethal drone strikes is that their use can help contribute to a growth of resentment against the country from a given local population.¹⁹⁹ However, because of the difference in intelligence and drug laboratory locations when compared with traditional terrorists (like Al Qaeda), it is likely that targeted drone strikes against Cartel membership would result in less accidental attacks and collateral damage and therefore making it easier to sustain positive views of the United States amongst the Mexican population.

It is also important to acknowledge that positive impacts from drone strikes may not be immediately recognizable. US drone strikes against Al Qaeda did not immediately diminish their ability to conduct and plan terrorist attacks, as the group had a sizable base from which to recruit and replace killed members. Instead, patience is the name of the game, as the biggest “payoff” from drone strikes actually become evident as these strikes increased in frequency.²⁰⁰ Even if Cartels developed limited methods to counter drone strikes impacts on their operations and supply chains, a long-term and sustained bombing campaign with the use of drones against Cartel assets would render them inoperable and make America, and Americans around the globe, safer.

V. DRONE DRAWBACKS AND POTENTIAL CRITICISM

It is important to acknowledge that targeting Mexican Cartels with drone strikes may be an unpopular policy choice. Drone strikes, and the morality and legal consequences of them, have been debated in legal academia for decades. Increasingly, the academy has turned against their use, arguing that the United States’ use of drone strikes represents a significant degradation of the international rule of law, and actively destroys the core tenets underlying international war and conflict.²⁰¹ The main crux of this argument posits that the United States increased use of drone strikes, and the justifications forwarded by the past few

198. See, e.g., Brian Mann, *U.S. says it ‘infiltrated’ the Sinaloa drug cartel in the fight against fentanyl*, NPR (Apr. 21, 2023 1:05 PM), <https://www.npr.org/2023/04/21/1170326191/fentanyl-mexico-drug-cartel-sinaloa-chapitos-el-chapo> [https://perma.cc/2G5H-TS2A] (demonstrating how American intelligence agencies have been unable to infiltrate and extract tremendous information about Cartel activity, strategy, and leadership members).

199. See, e.g., Christopher J. Coyne & Abigail R. Hall, *The Drone Paradox: Fighting Terrorism with Mechanized Terror*, 23 THE INDEPENDENT REVIEW 51 (2018).

200. See Bryce Loidolt, *supra* note 185, at 79.

201. See Rosa Brooks, *Drones and the International Rule of Law*, 28 J. ETHICS & INT’L AFF. 83, 83–84 (2014), <https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=2296&context=facpub> [https://perma.cc/P4X3-HSA2].

administrations as to the legality of these drone strikes, have been vague to the point of hurting the establishment of international norms.²⁰²

A. *International Irritability*

The United States would likely also face significant international criticism of any forceful intervention in Mexico, even if no American soldiers actually touched Mexican soil. As we have seen over the past several years, authoritarian governments around the world have sought to malign and weaponize US military operations into justifications for their own illegal military operations. This is most prominent in Ukraine, where Russia has invoked Article 51 of the UN charter and has pointed to the United States' use of international law during the War on Terror as precedent for its illegal invasion of Ukraine. Rightfully so, the Western world, spearheaded by the United States and its allies, have worked to push back on this narrative, countering Russian propaganda and highlighting how the invasion of Ukraine is illegal and unprecedented.²⁰³ International actors like China and Russia would likely seek to present any forceful American intervention in Mexico as a similar illegal military operation. While likely ineffective, the United States could point to their intentional reservations from many international treaties governing the laws of war, and to other related (and similarly misguided) treaties that constrain the US' military as evidence that US policy has been consistent over the past decades and has therefore created an international norm surrounding expectations.²⁰⁴

One concerning drawback to conducting targeted lethal drone strikes in Mexico would likely be the emboldening of international actors who seek to forcefully rearrange the global order. China is waiting for any legal justification and excuse it can muster under international law to invade Taiwan. It is vital that the United States continue to reiterate security commitments around the globe even if it were to focus a significant amount of military capital towards destroying the Cartels.

There are also many states that strongly disagree with anticipatory self-defense under the unable or unwilling doctrine and some who may simply entirely disagree with this doctrine's application to any international context.²⁰⁵ Some point out that invoking the unable or unwilling doctrine naturally requires a state to *ex-post-facto* justify anticipatory attacks that otherwise would constitute violations of the UN charter under Article 51.²⁰⁶ Further, some argue strongly against

202. *Id.*

203. Press Release, Eleventh Emergency Special Session United Nations General Assembly, *General Assembly Overwhelmingly Adopts Resolution Demanding Russian Federation Immediately End Illegal Use of Force in Ukraine, Withdraw All Troops* (Mar. 2, 2022), <https://press.un.org/en/2022/ga12407.doc.htm> [<https://perma.cc/XE2T-ENNX>].

204. *Supra* Part(III)(C)

205. See Raas Nabeel & Ayesha Malik, *supra* note 136, at 9; see also Elena Chachko & Ashley Deeks, *supra* note 138.

206. See Raas Nabeel & Ayesha Malik, *supra* note 136, at 9.

the notion that a state cedes sovereignty simply when they are unable to control the actions of a non-state actor within the territory.²⁰⁷ This acquiescence to a non-state actor, some scholars have argued, should not rise to a level allowing foreign intervention or the basic premise of sovereignty is vaporized; however, contemporary invocation of the doctrine, and the conspicuous lack of widespread international outrage, demonstrates that international norms accept the simple invocation of the unable or unwilling doctrine as wholly sufficient for state-led intervention.²⁰⁸ Despite the existence of some reservations, governments themselves have generally not explicitly taken a consistent position, with the strongest rebukes to the unable or unwilling doctrine coming on the floor of some United Nations meetings, whereby a limited number of states have commented that they do not like seeing sovereignty and territorial integrity infringed upon as justified under this doctrine.²⁰⁹ Importantly, many of these rebukes of the doctrine do not even mention the doctrine by name, and simply ask that every country acknowledge sovereignty concerns.²¹⁰ This lack of direct objection and the non-existence of consistent policy decisions against this doctrine from allies of the United States and other regional powers around the globe demonstrate how governments have not explicitly disagreed with the legal analysis forwarded by the United States in its military interventions. While this does not amount to a resounding endorsement, and it is true that the world has not widely endorsed this theory, the lack of outright consistent and loud disagreement indicates at least some level of tepid acquiescence, and possibly even acceptance of the United States' view.

Others may also be wary to endorse this type of intervention in Mexico because it could prompt further armed conflicts or other related incidents; while this could happen, forgoing a strong policy decision just because there are some anticipated negative externalities is not a reason to completely write off a given solution. Just like there were many detractors to the use of the atomic bomb to end the Japanese Empire's participation in World War II, there will be many detractors towards drone strikes in Mexico; however, immediately disregarding solutions like this can leave policy makers without propositions and Americans in harm's way.

Over recent history, the United States has continued to consolidate power and emerged as the only true global superpower, taking into account the reach of the US military, the economic prowess of its industry, and the appeal of a cultural and political system that generally discourages violence.²¹¹ These inherent American advantages really accelerated in the wake of World War II,

207. *See id.*

208. *Id.*

209. *See* Elena Chachko & Ashley Deeks, *supra* note 138.

210. *See id.*

211. Ivo H. Daalder & James M. Lindsay, *The Globalization of Politics: American Foreign Policy for a New Century*, Brookings Institution (Jan. 1, 2003), <https://www.brookings.edu/articles/the-globalization-of-politics-american-foreign-policy-for-a-new-century/> [<https://perma.cc/X5CU-YBEU>].

transforming America from a secondary regional power to the leader of the growing free world.²¹²

This stature uniquely positions the United States in a role that allows it the flexibility to undertake necessary, and often unpopular, intervention in regions that many states (including western, European democracies) wish they could just ignore.²¹³ Despite limited objections, states have generally acquiesced in situations where the United States has determined that drone strikes are necessary for the safety and security of regions (i.e., Syria, Pakistan, Afghanistan, etc. . .).²¹⁴

Some detractors of using drone strikes in Mexico would point to the world's general alleged negative opinion of the War on Terror. Worryingly, the unquestioned power of the United States, and its ability to influence foreign decisions, can breed resentment even amongst its closest allies across the globe.²¹⁵ Some may argue that these actions taken without Mexico's consent could lead to increased hostility from other Central American and Latin American countries that are currently being courted by an increasingly aggressive China.²¹⁶ While this is possible, policymakers have two strong justifications that enable this criticism to be acknowledged but not derail a possible drone program. The United States has built-up a large coffer of international goodwill due to our support of Ukraine during the ongoing Ukrainian-Russian war. This has manifested itself in numerous instances, namely demonstrated through the support that the United States has garnered in fora like the United Nations where proposals condemning Russia's invasion have garnered widespread support after lobbying by the United States and other important allies.²¹⁷ Support for the US military has also increased among European allies in and outside of NATO, with these populaces generally viewing the war in Ukraine through a similar lens as many Americans.²¹⁸ The

212. *Great Responsibilities and New Global Power*, The Nat'l WWII Museum New Orleans (Oct. 23, 2020), <https://www.nationalww2museum.org/war/articles/new-global-power-after-world-war-ii-1945> [https://perma.cc/B4GR-JVMK].

213. See Richard Youngs & Jake Gutman, *Is the EU Tackling the Root Causes of Middle Eastern Conflict?*, Carnegie Europe (Dec. 1, 2015), <https://carnegieeurope.eu/2015/12/01/is-eu-tackling-root-causes-of-middle-eastern-conflict-pub-62138> [https://perma.cc/46KG-3GPU].

214. See generally Paul Lushenko & Sarah Kreps, *What makes a drone strike "legitimate" in the eyes of the public?*, Brookings Institution (May 5, 2022), <https://www.brookings.edu/blog/order-from-chaos/2022/05/05/what-makes-a-drone-strike-legitimate-in-the-eyes-of-the-public/> [https://perma.cc/HX8B-NYHL].

215. Ivo H. Daalder & James M. Lindsay, *supra* note 212.

216. See, e.g., Ryan C. Berg & Carlos Baena, *The Great Balancing Act: Lula in China and the Future of U.S.-Brazil Relations*, Center for Strategic and International Studies (Apr. 19, 2023), <https://www.csis.org/analysis/great-balancing-act-lula-china-and-future-us-brazil-relations> [https://perma.cc/6KN5-6GCT].

217. Marwan Bishara, *The world is united on Ukraine, divided on America*, Al Jazeera Media Network (Feb. 27, 2022), <https://www.aljazeera.com/opinions/2022/2/27/the-world-is-united-on-ukraine-divided-on-america> [https://perma.cc/LH49-NUKG].

218. Timothy Garton Ash et al., *United West, divided from the rest: Global public opinion one year into Russia's war on Ukraine*, European Council on Foreign Relations (Feb. 22, 2023), <https://ecfr.eu/publication/united-west-divided-from-the-rest-global-public-opinion-one-year-into-russias-war-on-ukraine/> [https://perma.cc/58PB-CGFL].

Ukraine war, and the United States' consistent posture on it, will enable policy-makers to assuage fears from Central American and Latin American counterparts and continue to enable policymakers to advocate for continued positive relations with the United States. Additionally, the immense amount of death must be emphasized; hundreds of thousands of Americans are dying every year because of Cartel drugs and violence, and current methods that the international community has accepted, like joint law enforcement operations, have failed at restraining these terrorist groups. Nothing else has worked, and policymakers in the United States are obligated to entertain innovative solutions to currently untenable problems.

B. Domestic Complaints

Some may suggest that using the targeting killing program and drone strikes against the Cartels would invigorate a viciously negative domestic response.²¹⁹ While there are some politically-affiliated organizations and groups that consistently try to criticize the United States' drone posture, these groups frequently demonize all apparatuses of the US' war machine; this is to say, their criticism of drones is less credible when it is placed in their overall body of criticism.²²⁰ Any criticisms from NGOs and political organizing groups that try to dismiss the effectiveness of drone strikes would also likely also be met with public skepticism; however, NGOs have found success in the past focusing on international norms and law.²²¹ Although most American citizens traditionally have viewed the US government as a trustworthy source of information for justifications involving uses of military force, Americans have been more negative on drone strikes if criticisms revolved around perceived inconsistencies with long-standing international legal principles.²²² Even if these groups' interpretation of these international principles, and blatant disregard for the US' reservations and separate policies on many of these norms, can reasonably be determined to be misleading, the general public has been shown to be susceptible to these appeals to rule of law.²²³

Despite the realities of the new world paradigm, evidenced by the war in Ukraine and China's increasingly militant posture in the waters surrounding the Philippines and Taiwan, many American politicians have transitioned into a

219. See, e.g., Shaan Khan & Jethro Mullen, *American activists in Pakistan to protest U.S. drone strikes*, CNN (Oct. 6, 2012 5:23 AM), <https://www.cnn.com/2012/10/05/world/asia/pakistan-us-drone-protest/index.html> [<https://perma.cc/9DAU-3H2J>].

220. See generally Sabrina Worsham, *Code Pink anti-war organization*, Encyclopedia Britannica, <https://www.britannica.com/topic/Code-Pink> [<https://perma.cc/PXU4-6J5F>] (describing Code Pink and their missions as one that is broadly "anti-war," and explaining how Code Pink is one of the largest domestic US political groups that advocates against drone strikes, and all other forms of US military action).

221. Sarah E. Kreps & Geoffrey PR Wallace, *International law, military effectiveness, and public support for drone strikes*, 53 J. of Peace RES.830, 840–841 (2016).

222. Sarah E. Kreps & Geoffrey PR Wallace, *supra* note 222, at 838–841.

223. See *id.*

starkly anti-war positioning, claiming that global US interventionism has stifled democracy and promoted instability.²²⁴ Popular scholars have grown increasingly critical of our country's growing war-time posture, claiming that US actions around the globe have pushed China and Russia towards conflict.²²⁵ Some scholars have come out against the legal analysis forwarded under President Obama's Presidential Policy Guidances related to targeting criteria for drone strikes that have been again-adopted by the Biden administration.²²⁶ Other scholars have also come out against the United States existing legal justifications for drone interventions abroad, arguing that the Unable or Unwilling doctrine is inappropriate under current international customary law in its current form.²²⁷ Further, scholarly discourse is a natural part of a vibrant democracy, and limited academic criticism of legal policies and stances in relation to these issues should do little to influence the actual decision-makers. The United States might also be able to hope for rejuvenated scholarly nationalism as academic elites come to grip with the reality on the ground. Other detractors will naturally provide hurdles to overcome in any policy-making decisions to intervene against Cartels, with far-left and far-right politicians being particularly stubborn.²²⁸

The factors working against intervention's domestic popularity don't necessarily mean that American military interventions have entirely lost their appeal and that drone strikes against Cartel assets are inherently unpopular. Studies have demonstrated that conversations on online fora, especially Reddit, can help uncover previously unknown public opinions and trends that traditional surveys generally miss.²²⁹ After the recent kidnapping and murder of multiple American tourists, sub-forums on reddit (subreddits) catering towards users in the United States interested in the defense industry, led by the heavily-subscribed r/NonCredibleDefense, regularly spread memes and other internet posts promoting the use of drones (and other intervention methods) in Mexico.²³⁰ While not

224. See Alexander Hall, *Rep. Gaetz calls out The Squad on Ukraine: 'Where did the anti-war Democrats go?'*, Fox News (Feb. 16, 2023 6:30 PM), <https://www.foxnews.com/media/rep-gaetz-calls-squad-ukraine-anti-war-democrats-go> [https://perma.cc/DS9R-KYBV].

225. See Stephen Wertheim, *World War III Begins With Forgetting*, NYTimes (Dec. 2, 2022), <https://www.nytimes.com/2022/12/02/opinion/america-world-war-iii.html> [https://perma.cc/JW7B-QW5H].

226. See Luke Hartig, *supra* note 102.

227. See Craig Martin, *Challenging and Refining the "Unwilling or Unable" Doctrine*, 52 VAND. J. OF TRANSNAT'L L. 387 (2019).

228. See Liz Goodwin et al., *A Republican 'civil war' on Ukraine erupts as Reagan's example fades*, The Washington Post (Mar. 15, 2023 6:00 AM), <https://www.washingtonpost.com/politics/2023/03/15/republican-ukraine-support/> [https://perma.cc/8RYY-5TDK] (demonstrating the differences in traditional republican policy and current positions).

229. See Kaiping Chen et al., *Using Data from Reddit, Public Deliberation, and Surveys to Measure Public Opinion about Autonomous Vehicles*, 85 PUB. OPINION Q. 289 (Sept. 1, 2021), <https://academic.oup.com/poq/article/85/S1/289/6361038> [https://perma.cc/W89C-ZJ25]; see also Itamar Shatz, *Fast, Free, and Targeted: Reddit as a Source for Recruiting Participants Online*, 35 SOC. SCI. COMPUTER REV. (May 19, 2016).

230. See, e.g., *Checking NCD today and apparently everyone wants to declare an actual war on drugs*, REDDIT (Mar. 7, 2023 9:21 PM), https://www.reddit.com/r/NonCredibleDefense/comments/11lnbt5/checking_ncd_today_and_apparently_everyone_wants/ [https://perma.cc/F95U-H3PC].

demonstrative of substantive political thought, existence of this type of support for American interventionism, as further highlighted by the subreddit's banner proclaiming that "Democracy is Non-Negotiable," demonstrates the existence of divergent political thought representing possible pre-cursors to more traditional public opinion trends. Policymakers would be wise to understand that there is a base of support that exists for intervention in Mexico, and those most invested in American military action might applaud the use of drone strikes, just as they applaud the use of American military assets in Ukraine.²³¹ Popular posts on r/NonCredibleDefense, and other subreddits like it, have also relatively accurately tracked public shifts in sentiment regarding the use of weapons and other related military assets in wars around the globe.²³² Immediately after the aforementioned Cartel murders, posters started to theorize that American intervention in Mexico was realistic²³³; shortly after this theorization, a group of lawmakers announced they were working to introduce bills that would allow for President Biden to take military action targeted at Cartels.²³⁴ Instead of ignoring conversations on the internet as random, radicalized and unimportant, policy-makers should seek to understand how these opinions are rooted in genuinely held beliefs. Policymakers and media alike don't always accurately understand true public sentiment²³⁵, and forums like r/NonCredibleDefense highlight a new horizon for public opinion surveying.²³⁶

This anecdotal evidence regarding younger Americans' opinions about intervention is strikingly similar to findings in polls conducted during the initial stages of the war on terror. Younger Americans, specifically between the ages of 18 and 29, supported the invasion of Iraq at a significantly higher rate than their older counterparts, with over 60% of 18-to-29-year-olds in favor of the war while over 50% of those over the age of 65 disfavored forceful intervention.²³⁷ This phenomenon represented a time where Americans, in a generational crisis, rallied around

231. See, e.g., *F-15 at a museum today*, REDDIT (Mar. 25, 2023 2:12 PM), https://www.reddit.com/r/NonCredibleDefense/comments/121zcxe/f15_at_a_museum_today/ [<https://perma.cc/CQV9-VGTW>] (highlighting a post where the original poster and subsequent commenters marveled at seeing an F-15 fighter jet in person, mirroring similar posts where posters expressed delight and unbridled excitement when viewing American military technology).

232. See *STOP BEING CREDIBLE*, REDDIT (Mar. 7, 2023 9:33 AM), https://www.reddit.com/r/NonCredibleDefense/comments/1115lat/stop_being_credible/ [<https://perma.cc/DL7A-T84Q>].

233. See *id.*; see also *Plausibly deniable and peaky credible plan to destroy Mexico's drug labs*, REDDIT (May 6, 2022 4:54 PM), https://www.reddit.com/r/NonCredibleDefense/comments/uk0q6e/plausibly_deniable_and_peaky_credible_plan_to/ [<https://perma.cc/CFU7-CRRW>].

234. Zachary Basu & Stef W. Kight, *GOP's war on the cartels*, AXIOS (Apr. 3, 2023), <https://www.axios.com/2023/04/03/gops-war-on-the-cartels> [<https://perma.cc/TU89-M6QH>].

235. See Andrew Mercer et al., *Why 2016 election polls missed their mark*, Pew Research Center (Nov. 9, 2016), <https://www.pewresearch.org/short-reads/2016/11/09/why-2016-election-polls-missed-their-mark/> [<https://perma.cc/HGG3-B5A8>].

236. See James Fallows, *The Media Learned Nothing From 2016*, *The Atlantic* (Sept. 15, 2020), <https://www.theatlantic.com/ideas/archive/2020/09/media-mistakes/616222/> [<https://perma.cc/65GZ-PPE9>].

237. Caroline Smith & James M. Lindsay, *Rally 'Round the Flag: Opinion in the United States before and after the Iraq War*, Brookings INSTITUTION (Jun. 1, 2003), <https://www.brookings.edu/>

the flag to support the United States' military actions. If presented in an appropriate manner, policymakers may be able to generate similar sentiment among Americans, enabling a drone program to act with significant domestic support.²³⁸

The tenor on conversations surrounding intervention in Mexico also appears to be shifting. This has manifested itself in novel and vigorous appeals to launch military action against the Cartels. In recent weeks, leading candidates for President have described using human and technological means to bring Cartels to heel, with former President (and Republican Party front-runner) Trump suggesting that special forces operators should work in tandem with other military assets inside of Mexico against the Cartels.²³⁹ Congress, despite working to remove the 2001 Authorization to Use Military Force that enabled intervention in the Middle East, has moved to introduce legislation that would allow for an Authorization to Use Military Force enabling intervention in Mexico.²⁴⁰ The eagerness demonstrated by Congressional leaders and leading Presidential candidates represents how public opinion has substantially shifted, or is shifting currently.²⁴¹ Interestingly, these developments have all suggested unilateral intervention, and therefore acknowledge that the United States is primed to intervene based on Mexico's current inability to control the situation. Public opinion may also be already shifting in line with these views – a recent poll conducted in September of 2023 found that over half of Americans surveyed were in favor of targeted military actions against Cartel assets in Mexico, and one third of respondents supported unilateral military actions against Cartel assets by the United States even if the Mexican government disapproved of the incursions.²⁴²

Some detractors may also argue that the drone program costs the United States military too much money. This is far from the truth. Drone strikes actually save the American taxpayer a significant amount of money; in Fiscal Year 2021, DoD requested only \$1.8 billion dollars for increased advancement of the drone

articles/rally-round-the-flag-opinion-in-the-united-states-before-and-after-the-iraq-war/ [https://perma.cc/T54G-D5VU].

238. There are no significant polling efforts around American opinions about a possible military intervention in Mexico. However, it seems likely that a major pollster will engage with this soon, considering how prominent an intervention in Mexico is becoming during the race for 2024. *See, e.g.,* Kelly Weill, *These Republicans Want Drone Strikes on Mexico*, Yahoo News (Mar. 17, 2023), <https://news.yahoo.com/republicans-want-drone-strikes-mexico-001148561.html>.

239. Alexander Ward, *GOP embraces new foreign policy: Bomb Mexico to stop fentanyl*, Politico (Apr. 4, 2023 4:30 AM), <https://www.politico.com/news/2023/04/10/gop-bomb-mexico-fentanyl-00091132> [https://perma.cc/W2XJ-PGLK].

240. *See* Alexander Ward, *supra* note 225.

241. *See generally* Tetsuya Matsubayashi, *Do Politicians Shape Public Opinion*, 43 BRIT. J. OF POL. SCI. 451 (Apr. 2013), <https://www.cambridge.org/core/journals/british-journal-of-political-science/article/abs/do-politicians-shape-public-opinion/8B08F2AC84682539AAF6A90A57E62092> [https://perma.cc/W9HU-CTAF] (describing broadly how politicians both react to and help alter public opinion on political issues).

242. Gram Slattery, *Americans Broadly Support Military Strikes in Mexico*, Reuters/Ipsos Poll Finds, REUTERS (Sept. 14, 2023), <https://www.reuters.com/world/americans-broadly-support-military-strikes-mexico-reutersipsos-poll-finds-2023-09-14/#:~:text=According%20to%20the%20seven%2Dday,and%20the%20remainder%20were%20unsure> [https://perma.cc/M3VM-RGS8].

program, only a fraction of the cost of acquiring materials needed for an intervention using troops on the ground.²⁴³ The United States can therefore effectively employ targeted drone strikes against the Mexican Cartels as a viable and cost-saving alternative to large-scale mobilization and deployment of ground forces in Mexico. It is vital that the Presidential Administration authorizing these strikes focuses on the effectiveness of the drone strikes; this could include pointing to tangible improvements in American military personnel's safety or the highlighting of the killing of an especially high-ranking Cartel member.

VI. CONCLUSION

It is no secret that Cartel violence, through their armed attacks on American citizens around the globe, has gone too far without an appropriate response. While law enforcement has taken efforts to control this issue, the plague of the Cartels has spread for far too long. Mexico has also actively abandoned and enabled the Cartels' growth, as Mexican government leaders have been proven to both sanction Cartel activity and drug production, and violent crime. Mexico's government has abdicated their posts as responsible stewards of the country and can no longer be trusted to ensure that the United States has a neighbor that we can cooperate with on security and geopolitical issues.

To confront this threat, American policymakers must acknowledge that the Mexican government is an active roadblock towards dismantling the Cartels and their stranglehold on power. Once acknowledged, policymakers should turn to drone strikes to systematically dismantle the Cartel's leadership and assets through an expanded utilization of the targeted killing program. This strategy would effectively neutralize the drug lords making a fortune killing innocent Americans and destroy the Cartels' operational and organizational infrastructure. As evidenced by the effectiveness of drones in the Global War on Terror, drone strikes against Cartel members would likely have a chilling effect across the entire organization, rendering operations more difficult and expensive to maintain. Leaders would be more fearful of operating in the open, decreasing communications between membership and the leadership hierarchy, further rendering the narco-terrorist groups less powerful and more unorganized.

Using drone strikes would preserve American lives, both by eliminating the need for American ground forces to enter Mexico and rendering Mexican drug exports impossible to do without substantial risk to life and limb. American servicemen and American civilians would both be saved. Drone strikes would also save money; instead of spending copious amounts of American taxpayer funds on amenities needed for humans (*i.e.*, food, lodging, and security in a foreign hostile territory), the government can focus on spending less money on this evolving

243. Testimony of Ambassador Nathan A. Sales, *supra* note 193, at 2.

technology that enables operators to conduct targeted operations from remote and operationally safe control booths.²⁴⁴

Evil exists around the world and has permeated many of the countries once deemed safe and reliable. With the recent rise of the Cartels and the explosion of their violence and death in the United States, policymakers must understand that there now exists a new and different operational paradigm. Although the United States no longer confronts a non-state actor that stations itself in a far-flung land in the Middle East, the United States must not act tepidly because evil now resides on our southern doorstep. It is the responsibility of US policymakers to root out evil that threatens Americans, no matter where it exists. I understand that military intervention in a neighboring country is an idea some readers might find objectionable, and to them I will add one closing question; if we don't defend our border, what do we have left to defend?

244. See *Drone Crew from Creech Air Force Base Blamed for Afghan civilian deaths*, Las Vegas REV-J. (May 29, 2010), <https://www.reviewjournal.com/news/drone-crew-from-creech-air-force-base-blamed-for-afghan-civilian-deaths/> [<https://perma.cc/2YAJ-YYFP>].