



CAGEPRISONERS

Giving voice to the voiceless.

Unnecessary and Disproportional: The Killings of Anwar and Abdul-Rahman al-Awlaki



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CagePrisoners is a not-for-profit company limited by guarantee which operates as a human rights NGO. The organisation seeks to work for political Muslim detainees, specifically those interned as a result of the War on Terror and its peripheral campaigns, by raising awareness of the illegality and the global consequences of their detention. By promoting due process, the vision of the organisation is to see a return to the respect of those fundamental norms which transcend religion, societies and political theories.



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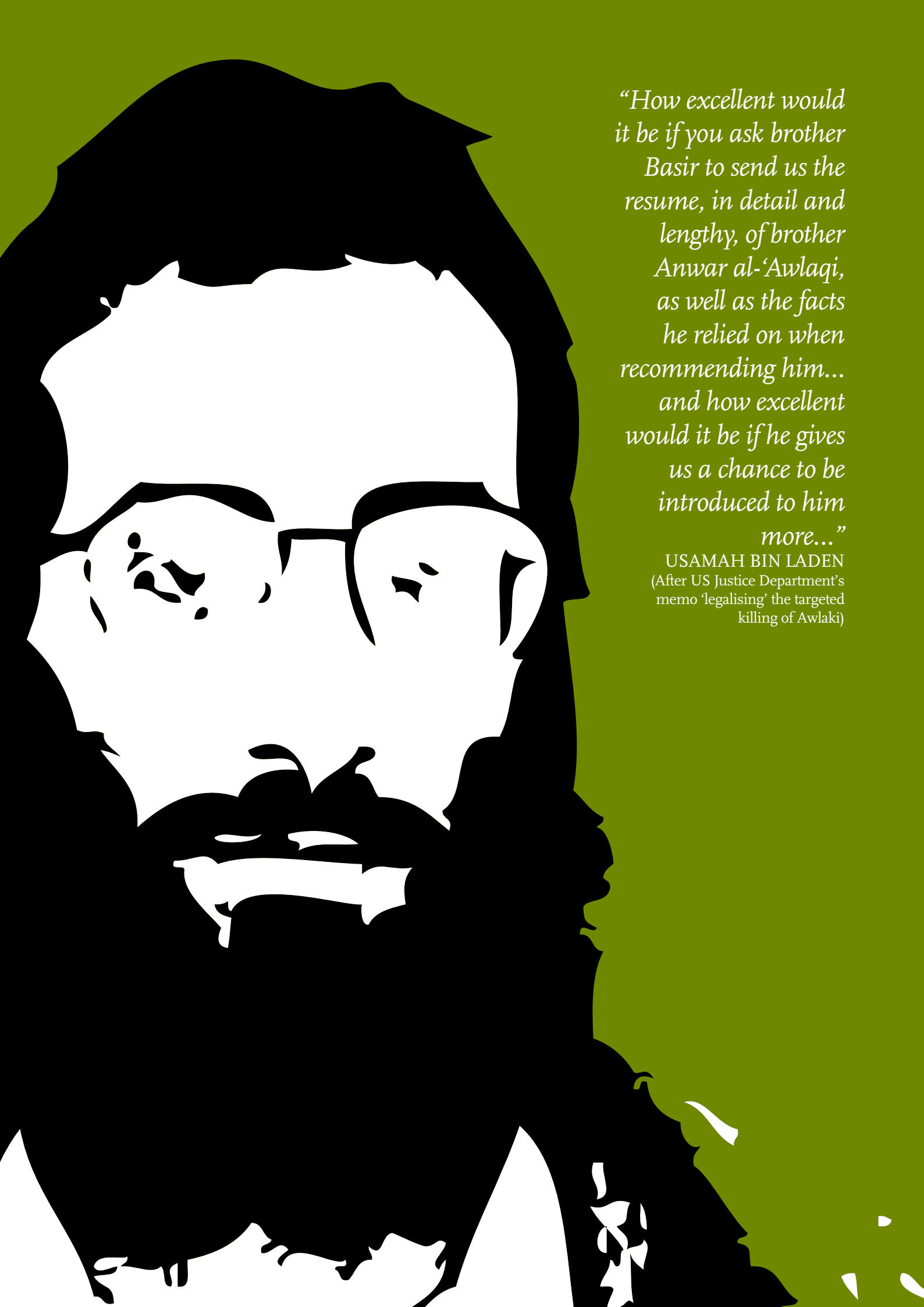
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“How excellent would it be if you ask brother Basir to send us the resume, in detail and lengthy, of brother Anwar al-‘Awlaki, as well as the facts he relied on when recommending him... and how excellent would it be if he gives us a chance to be introduced to him more...”

USAMAH BIN LADEN
(After US Justice Department’s
memo ‘legalising’ the targeted
killing of Awlaki)

FOREWORD

"As for my husband who was assassinated by a US drone exactly one year from today, I believe strongly that his killing has nothing to do with the allegations by the US that he has links to terrorist attacks, but rather to silence him because of his influence on Muslims in the Western world as a Muslim scholar and preacher...the drone programme is wrong and illegal because it kills a lot more civilians than so called [high] valuable targets."

– Gihan Mohsen Baker, wife of Anwar al-Awlaki

ELEVEN YEARS AGO, on November 25th 2001, after the notorious uprising and ensuing prisoner massacre at the fortress of Qala-i-Jangi near the Afghan city of Mazar-e-Sharif, the world saw the first images of a dishevelled, starved, emaciated, wounded, burned and battered American, John Walker Lindh, beamed into its living rooms. It was America's first encounter with its own citizen's accused of supporting its enemies in the War on Terror.

I'D NEVER heard the name Anwar al-Awlaki before or during my years as a captive in Bagram and Guantanamo. I'd never been questioned about his ideology, his history or his whereabouts – not by the FBI, the CIA, Military Intelligence or MI5. The reason was simple: they hadn't heard of him either, or if they had, they were not interested in him. After my freedom from US captivity and return home, I began to hear more about this young, articulate and charismatic Yemeni-American Imam whose lectures had become immensely popular with Muslims through his tours in the English-speaking world, es-

pecially the UK, as well as via the internet.

In mid-2006, shortly after I joined Cage-Prisoners, al-Awlaki was arrested in his native Yemen and held until his release in December 2007. Shortly after that I was able to conduct an exclusive phone interview with him to discuss why he'd been held and under what conditions.

Al-Awlaki may have been imprisoned without charge or trial by the Yemenis but he was convinced he was kept at the behest of the US government. Although he told me that he was interrogated by the FBI and that an incident occurred between them, he refused to elaborate on the details when I pressed him further. He may not have been a friend of US foreign policy and even have been of interest to the FBI beforehand but, it was from the point of this interrogation that al-Awlaki started his collision course with the US administration:

"There was some pressure, which I refused to

1. <http://www.cageprisoners.com/our-work/interviews/item/159-moazzam-begg-interviews-imam-anwar-al-awlaki>

accept and that led to a conflict that occurred between me and them, because I felt that it was improper behaviour from their behalf. That led to an issue between me and them during the interrogation".¹

Strangely, although he was never placed on the FBI's 'Most Wanted' list, al-Awlaki's name, despite being a US citizen, was put at the head of a secret US Government 'kill or capture' listing. He could not have known it during his time in captivity but the 'conflict' and 'issue' that had begun in a Yemeni dungeon between him and the US would only end after his death, carried out by a CIA drone attack last year. Or would it?

Shortly after he was killed – alongside another US citizen, Samir Khan – al-Awlaki's 16-year-old son Abdulrahman was also struck down by a US drone, and he wasn't on any kill list.

Unmanned Aerial Vehicles (UAVs) – or drones – are regularly used to kill suspects in places like Waziristan, Somalia and Yemen which are often described as the 'Wild West' of the Muslim world due to the lawlessness that prevails in some of those regions. It is a bitter irony indeed that drones are used to kill 'the bad guys' in these places as the preferred choice of modern US justice – whether the victims are placed on 'wanted dead or alive' lists or not.

Like others, Al-Awlaki may have become anti-American because of his opposition to US policy in the Muslim world, his own response to what was happening, his encounter in prison with the FBI or a combination of all three, but there was a time when he dined freely in the Pentagon as a guest and, when he condemned the 9/11 attacks openly.

Various governments and media outlets have regularly stated that the killing of Al-Awlaki was justified as he was a leader of Al-Qaida in the Arabian Peninsula (AQAP) and his views and influence constituted a major threat to US national security. As untenable as that scenario appears to be it was never tested by evidence. Al-Awlaki's name, however, was big only in the English-speaking world; and, it was inflated by the media and those who understood very little about his operational role and influence in AQAP and the Arabic-speaking world, which remains highly questionable and unsubstantiated.

This report by CagePrisoners seeks to explain some of the above along with legal rules that were twisted to allow President Obama to carry out extrajudicial killings, just as his predecessor had implemented extrajudicial detention.

Moazzam Begg

Director of CagePrisoners and former detainee at Bagram and Guantanamo Bay
September 2012

...his encounter in prison with the FBI or a combination of all three, but there was a time when he dined freely in the Pentagon as a guest and, when he condemned the 9/11 attacks openly.

INTRODUCTION

In capital cases in the US, the legal standard that is required in order to apply the death penalty to a defendant requires a defence that goes beyond that of a normal investigation. The guidelines set out by the American Bar Association require that mitigation of the defendant's act takes place as part of a trial, in order to ascertain any reason why he/she should not be executed, sometimes looking at three generations of family history in order to come to that understanding.

DESPITE having such strong legal protections in place for such federally administered executions, the US has determined that targeted assassinations are permissible by law, as they are there to protect national security of the American people.

The case of Anwar al-Awlaki highlights the way in which the Obama administration has radically altered its own understanding of the law, in order to assassinate those who it deems to be 'dangerous'. This understanding goes well beyond what was envisaged by the US Constitution and international human rights and humanitarian law.

With al-Awlaki, the Americans claimed that he played a key operational role in the attacks by Nidal Hassan and Umar Farouk Abdulmutallib.

This report seeks to deconstruct the rhetoric that surrounded al-Awlaki's extrajudicial killing, and understand to what extent he presented a real and present danger to

the US. Did he, as they claim, have an operational role that was significant enough to warrant his killing? The principles of necessity and proportionality in the laws of armed conflict have been given as a measure by which states understand the extent to which they should go in the targeting of an enemy. The claim by the US, is that al-Awlaki's killing met both those criteria due to their knowledge of the case, much of which has not been shared publicly.

Regardless of the secret evidence that has been kept from the public in this case, there are major issues in relation to the facts as they stand according to public accounts. By understanding the evidence that is publicly available and looking at the manner in which the US justified its actions, it could be said that this exercise was far more to do with making an example of Anwar al-Awlaki, than about killing a strategic target in the fight against global terrorism.

US 'LEGAL' JUSTIFICATION ON UNMANNED AERIAL VEHICLES

Intelligence gathering

THE US Administration has not released the secret memorandum addressing the legal justification on the targeting of al-Awlaki or the 'drone' programme². Much of the information analysed in this report are speeches presented by the US legal adviser and media reports which briefly state the US position on international law for unmanned aerial vehicle (UAV) warfare in general application.

The US administration consistently reiterates that they must comply with international legislation and principles. The administration echoed that the US is engaged in armed conflict with Al-Qaeda, Taliban and associated forces due to the attacks on 11 September 2001. Consequently the US have responded as a right under article 51 of the UN Charter (self defence) to protect US citizens and engage in conflict³ on an international sphere to use lethal force, as Al-Qaeda still have intent to conduct attacks and compromise US national security.

On a national level, the US asserts the authority of 'Authorization for Use of Military Force' (AUMF) 2001, which provides the US with empowerment to use force against any person who aids or abets in planning of terror related attacks. However there are issues with the proportionality of self-defence. The US have undermined international law and have invoked an undetermined time scale for the timeframe of the War on Terror, which is contrary to the opinion of the ICJ

in the Nuclear Weapons case, where self-defence can only warrant measures which are proportional to the armed attack and necessary for response.⁴

Customarily the War on Terror has set a precedent of an unlimited timeframe of self-defence and to any territory to be in conflict with non-state actors. Consequently, the US are deploying Unmanned Aerial Vehicles (UAVs) over sovereign states, which should beg the question, whether the US are in armed conflict with these states, such as Yemen where al-Awlaki was assassinated. Although there are several matters of discussion and analysis with regards to the proportionality and requirements of self-defence under international law, for this report, we will merely focus on extra-judicial killings relating to UAVs with special focus on Anwar al-Awlaki et al.

The justification for the usage of UAVs remains covert and therefore there is not a wealth of public knowledge on the UAV programme from the US administration, detailing their 'legal' position, although they have briefly stated they believe they are abiding by international legislation and laws of war.

Harold Hongju Koh on use of force

On 25 March 2010 Harold Hongju Koh; the Legal Adviser to the US Department of State, addressed the Annual Meeting of the American Society of International Law in Washington, DC.

Koh addressed the meeting with several points with regards to the US position on

² 'Secret Memo made case for Awlaki killing' [09/10/2011]

<http://www.aljazeera.com/news/americas/2011/10/201110945658841979.html>

³ Militarily and Ideologically

⁴ Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 1996 I.C.J. 226,245 (Jul.8)

use of force and UAV's justifications surrounding them.

"What I can say is that it is the considered view of this Administration—and it has certainly been my experience during my time as Legal Adviser—that US. targeting practices, including lethal operations conducted with the use of unmanned aerial vehicles, comply with all applicable law, including the laws of war⁵."

Koh further stated that the US Administration carefully reviewed the rules concerning 'targeted operations' and the laws of wars and principles pertaining to it, such as the following:

"First, the principle of distinction, which requires that attacks be limited to military objectives and that civilians or civilian objects shall not be the object of the attack;"

There is a wealth of research and empirical data to factually prove that the US administration is in violation of the principle of distinction as thousands of non – combatants have been killed⁶. Further, the Bureau of Investigative Journalism has established that not only innocent civilians are facing the brutal force through drones, but rescuers⁷ and funeral attendees⁸. There is much empirical evidence which gives credence to the argument that the US has little control over targeting in relation to the principle of distinction, consequently the purpose of the 'precision' drone programme is flawed.

Even the concept of where the conflict is taking place becomes important. The application of international humanitarian law (IHL) spilling over to the borders of Pakistan can be a classical example of how difficult it is to distinguish between combatants and civilians.

Geographical Analysis

The War on Terror has leaped to many countries from Iraq, Afghanistan, tribal areas of Pakistan and to Yemen.

The non-international conflict with non-state actors creates many practical problems with the principle of distinction. Afghanistan and the tribal areas bordering Pakistan is a prime example of how Al-Qaeda, Taliban and associated forces are amalgamated on the borders of the two countries with refugees and tribesmen, creating complications for the application of international legislation and principles. The US administration need to acknowledge, that just as intelligence officers and private security contractors are deployed in these conflict related zones, covertly integrating with the tribal people, the same standard of protection, distinction and proportionality need to be preserved for civilians and non-combatants in this conflict through the use of drone warfare. Risk is apparent on both sides of the conflict, and the CIA- led drone programme has not preserved the right of protection of the civilian population, as attacks have taken place where civilian casualties have outweighed the military objective, which would, under international law, be regarded as indiscriminate killing and thus unlawful.

On a logistical analysis, it would be highly difficult due to practicalities for the US drone programme to fulfil the principle of distinction, as Al-Qaeda or the Taliban do not wear a set uniform, as a result it will be difficult to distinguish between an alleged fighter and tribesmen which will inevitably weaken the upholding of the distinction principle. Although intelligence and informers on the ground are central for intelligence to reach drone operators for commissioning of attacks, they are not operating consistently, thus operators relying upon drone surveillance which can be airborne for more than 24 hours. This is exacerbated by tribal tensions that exist in the region, where the US has been used to solve ancient tribal grudges.

'Playstation mentality'

UAV operators are stationed thousands of miles away or in a complete different territory, thus the psychological and risk elements of warfare are reduced to a minimum, creating and encouraging the development of 'playstation mentality',⁹ which will make killing less difficult. Consequently, widen-

5 The Obama Administration and International Law Harold Hongju Koh, Legal Adviser, US. Department of State Annual Meeting of the American Society of International Law, Washington, DC - [March 25, 2010]
<http://www.state.gov/s/l/releases/remarks/139119.htm>

6 'Drone Statistics Visualised' [10/08/2011]
<http://www.thebureauinvestigates.com/2011/08/10/resources-and-graphs/>

7 'US Drone Strike Kills 11 Militants in Pakistan' [14/09/2010]
<http://www.google.com/hostednews/afp/article/ALeqM5jtkGEuTypVodIZ8trtmL2R58hiiA>

8 Obama terror drones: CIA tactics in Pakistan include targeting rescuers and funerals [4th, Feb, 2012]
<http://www.thebureauinvestigates.com/2012/02/04/obama-terror-drones-cia-tactics-in-pakistan-include-targeting-rescuers-and-funerals/>

9 <http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.24.Add6.pdf>

United Nations, General Assembly, 'Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions', Philip Alston [29/05/2010]

ing the threshold to fall in to errors, and not abide by the principle of distinction and proportionality.

“Second, the principle of proportionality, which prohibits attacks that may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, that would be excessive in relation to the concrete and direct military advantage anticipated.”

Investigations have gathered data which only draws a similar conclusion, that the use of drones is not proportional. UAV's are extra-judicially killing innocent civilians and ruining humble infrastructure without any transparency and accountability in the aftermath of a 'targeted' strike.

The US administration has made it clear that it will target any individual who is involved in directly aiding and abetting in hostilities against the US, which includes the non-combatants in the highly populated tribal areas, as they will lose the right to civilian protection. Article 51(2)¹⁰ states that civilian populations and individuals will not be 'object of attack' with the primary purpose to spread terror among civilians being prohibited. Further article 51(4) prohibits indiscriminate attacks:

Article 51(4) Additional Protocol I: Indiscriminate attacks are prohibited. Indiscriminate attacks are,

“(a) those which are not directed at a specific military objective;

(b) those which employ a method or means of combat which cannot be directed at a specific military objective; or

(c) those which employ a method or means of combat the effects of which cannot be limited as required by this Protocol; and consequently, in each such case, are of a nature to strike military objectives and civilians or civilian objects without distinction.”

In light of this, the US has engaged in armed attacks against civilians in the various parts of the world under the pretext of the War on Terror. Although the US reiterates clearly that any individual or group 'directly' aiding or assisting in hostilities will be legitimate targets. The US have not defined who is a combatant and non combatant in these circumstances, as rescuers and funeral attendees in an event of a drone strike cannot

¹⁰ Article 51(2) Additional Protocol I: The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.

be deemed as combatants or directly assisting in hostilities. Striking such groups or individuals would be considered reprehensible according to the spirit of the law and a violation of IHL. These issues will be discussed by illustration:

1. Drone strike used to 'bait' a funeral attack

The CIA-led programme is disproportionate, as drone strikes are used to 'bait' higher ranked officials. An attack on 23 June 2009 targeted a middle ranking commander with the objective of later attacking the higher officials in the command infrastructure at the funeral, such as Baitullah Mehsud. The funeral attendees were numbered in their thousands and the UAV's attacked the crowds, extra judicially killing 83 people, and between 18–45 was believed to be non-combatants/civilians.¹¹ The systematic plan by the CIA to 'bait' higher ranking officers to attend a funeral is disproportional and morally questionable. On a cultural note, it is an Islamic religious obligation to attend funerals of any Muslim who have passed away or killed, as we witness in the attack on 23 of June 2009. The attack was a deliberate opportunist strike which only targeted civilians, failing to assassinate Baitullah Mehsud himself or any other high ranking official who may have attended the funeral. This is contrary to the laws of armed conflict. The attack was indiscriminate and did not protect the civilians that were attending the funeral, which concludes the attack to be unlawful and counter-productive to the military objectives sought by the CIA.

2. Rescuers targeted and killed

The US UAVs have targeted rescuers that have tried to aid those targeted in drone attacks.¹² Although the US deems any person who 'directly aids hostilities' as losing their civilian protection, one must question the threshold the US are using to distinguish who can be targeted in these circumstances, as the US have disproportionately targeted civilians.

3. Chromite miners

¹¹ 'Witnesses Speak Out' [04/02/2012]

<http://www.thebureauinvestigates.com/2012/02/04/witnesses-speak-out/>

¹² US. terror drones target rescuers and funerals in Pakistan killing civilians, investigative report reveals

<http://www.asiantribune.com/news/2012/02/11/us-terror-drones-target-rescuers-and-funerals-pakistan-killing-civilians-investigati>

Reports have documented that chromite miners have been killed unjustly under the drone programme, as the miners clearly have no connection with the conflict.

The Pakistan press reported four local tribesmen attending to their chromite mines were killed and two other men on vehicles. The US drone fired four missiles and targeted a car with workers travelling from Miranshah to Dattakhel village¹³. This is yet another example of how individuals who have no connection to the conflict in Afghanistan were targeted and assassinated by firing four hell fire missiles.

Indiscriminate Targeting

The reports of targeting civilians as illustrated above, provides questions as to the respect of the rule of law and law of armed conflict. The US asserts, if civilians are aiding those committing hostilities, they will not enjoy the right of protection in the conflict. However, there seems to be problems with this particular line of thinking, as the US are targeting public ceremonies such as funerals as 'bait' for targeting higher ranked officials and targeting miners who have no link with the conflict with the US.

Questions should further arise on the intelligence used in such disproportional attacks to assist the drone operator, as the targeted were civilians who deserve the right to

civilian protection in war time.

The US cannot justify targeting crowds in their thousands for the purpose of targeting one commander; there are serious implications and risks of targeting innocent civilians. Drone strikes by no means target one individual alone, but strike a surrounding area, and consequently, a group of people will be targeted. Drone strikes are in violation of international law as the US are attacking with motives of attaining a higher objective which is disproportional to the 'direct military advantage anticipated' and such attacks will amount to indiscriminate killing¹⁴. Can it be concluded that rescuers, miners or funeral attendees are 'directly' taking part in hostilities, as article 51(3) protects civilians in conflict unless they take part in hostilities.¹⁵

The CIA-led drone programme has not published any legal memorandum or policy guideline on the use of UAVs and as a result it becomes unclear what the threshold is in determining when a civilian is stripped from their rights of protection from the law of armed conflict. Contrary to Harold Koh's presentation of the US justification on the use of force, it is evident from research, that the laws of war and its guiding principles are contravened.

¹⁴ Article 51 (5)(b) Additional Protocol I: an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated

¹⁵ Article 51(3) [Additional Protocol I] Civilians shall enjoy the protection afforded by this section, unless and for such time as they take a direct part in hostilities.

¹³ Four Killed in North Waziristan Attack [31st Oct, 2011]
<http://www.thenews.com.pk/TodaysPrintDetail.aspx?ID=9973&Cat=13&dt=10/31/2011>

The US cannot justify targeting
crowds in their thousands for
the purpose of targeting one
commander



ANWAR AL-AWLAKI

“The death of Awlaki is a major blow to al-Qaeda’s most active operational affiliate...” (US. President Barack Hussein Obama)

Background

ANWAR al-Awlaki was a highly educated and influential Muslim thinker of Yemeni heritage born on 21 April 1971, in New Mexico with dual citizenship in the US and Yemen. Al-Awlaki served as an Imam in California, and later in the Washington D.C. area where he led the Dar Al-Hijrah Islamic Centre and was also the Muslim Chaplain at George Washington University. In 2001, the US government attempted to associate al-Awlaki to the 11 September attack. They were compelled to release al-Awlaki due to the lack of credible evidence linking him directly with any plot of terror related attacks. In 2004 he returned to his native Yemen where he taught at Eman University until his arrest in mid-2006 by the Yemeni security agencies at the behest of the US. He was held and tortured for more than a year, for what the Yemeni security officials describe as a ‘secret investigation’. Al-Awlaki was released from custody on 12 December 2007 having spent a year and a half in prison.

On his release, he was interviewed by CagePrisoners where he spoke of the conditions of his detention and shared his reflections on his time in prison. He asserted that the reason behind his imprisonment was due to a request by the US to the Yemeni security agencies. He was held in solitary confinement for the first nine months in a tight cell and had been abused during inter-

rogations, a number of which were attended by US officials. It was only during his last month and a half that he was moved to a somewhat larger cell where he had access to another fellow inmate and for the first time interacted socially.

Anwar al-Awlaki was a highly influential lecturer in Islamic history and attracted a mass following internationally, particularly due to his strong command of both the English and Arabic languages. Anwar al-Awlaki provided a unique lectureship to the English-speaking audience, in particular providing a juxtaposition analysis comparing vital events which the early Muslims encountered and deriving lessons in application to modern day needs in similar contexts.

Anwar al-Awlaki: his personal narrative

Anwar al-Awlaki’s ordeal was portrayed with several narratives by the US government and major news agencies across the world. Although the family members of al-Awlaki have cleared the disparities between the governmental and media reporting, it is vital to take in to consideration al-Awlaki’s own personal account which was published online recently¹⁶.

Anwar al-Awlaki states that the FBI blacked-out some records of history and that

¹⁶ Inspire Magazine, “Spilling out the Beans: Al-Awlaki revealing his own side of the story” Page 50 (May 2012)

his ordeal started early on, as he was being monitored from the moment he received a scholarship to study in the US. Al-Awlaki mentions that he encountered close contact from the Office of International Students who recruit for governmental and intelligence agency roles. Al-Awlaki states:

“...I was feeling the flirting of the Office of International Students at my university. They were being very helpful and wanted to extend the relationship with me beyond business to a personal level. Even though I was not fully practicing back then but I had an extreme dislike to the US government and was very wary of anything concerning intelligence services or secret orders. Thus, I was cold when it came to my relationship with the Office of International Students (which in my belief is a front for recruitment of international students for the government and is also a front from spying on them and reporting on them to the authorities). I also received an invitation to join the Rotary Club which I turned down.¹⁷”

Once al-Awlaki had returned from Afghanistan in 1991 to the US, the Office of International Students completely changed their efforts on al-Awlaki and was effectively less interested in him and wanted to terminate the scholarship. Al-Awlaki received information on the reason behind the termination of his scholarship:

“...word came to me from a connection at the US Embassy in Sana’a, that they have been receiving reports about my Islamic activities on campus and the fact that I have traveled to Afghanistan and this was the single reason for the termination of my scholarship. That is something that the Office of International Students never mentioned or even eluded too”¹⁸.

“Anyways, the plans to have me as one of the many thousand men and women around the world who have their loyalty to the US did not go through. I wasn’t suitable for that role anymore. I was a fundamentalist now!”¹⁹

When al-Awlaki clearly showed discontent to the efforts of recruitment, al-Awlaki claims that a more aggressive method was employed.

“In 1996 while waiting at a traffic light in my minivan a middle aged woman knocked

on the window of the passenger seat. By the time I rolled down the window and before even myself or the woman uttering a word I was surrounded by police officers who had me come out of my vehicle only to be handcuffed. I was accused of soliciting a prostitute and then released. They made it a point to make me know in no uncertain terms that the woman was an undercover cop. I didn’t know what to make of the incident. However a few days later came the answer. I was visited by two men who introduced themselves as officials with the US government (they did not specify which government organization they belonged to) and that they are interested in my cooperation with them. When I asked what cooperation did they expect, they responded by saying that they are interested in having me liaise with them concerning the Muslim community of San Diego. I was greatly irritated by such an offer and made it clear to them that they should never expect such cooperation from myself. I never heard back from them again until in 1998 when I was approached by a woman, this time from my window and again I was surrounded by police officers who this time had go to court. This time I was told that this is a sting operation and you would not be able to get out of it.²⁰”

Anwar al-Awlaki moved residence from Denver to San Diego and finally to Washington D.C as he perceived that the issue of harassment and recruitment from the police was only a local problem and if he moved elsewhere the issue would dissolve, until the 9/11 attacks occurred. The FBI visited him two days after 9/11 and questioned al-Awlaki about the attacks and demanded cooperation. Al-Awlaki states:

“The questions revolved around the attacks. They visited me again but this time they were asking for cooperation which I made it clear that they shouldn’t expect and the third meeting which was the last I had my lawyer attend the meeting.”

At this juncture, it is important to note that al-Awlaki himself was relocating himself within the US to avoid further encounters and requests for cooperation with the authorities. However the harassment and request for cooperation continued which eventually led to al-Awlaki leaving the US three years later.

¹⁷ Inspire Magazine, “Spilling out the Beans: Al-Awlaki revealing his own side of the story” Page 50 (May 2012)

¹⁸ Inspire Magazine, “Spilling out the Beans: Al-Awlaki revealing his own side of the story” Page 50 (May 2012)

¹⁹ Inspire Magazine, “Spilling out the Beans: Al-Awlaki revealing his own side of the story” Page 50 (May 2012)

²⁰ Inspire Magazine, “Spilling out the Beans: Al-Awlaki revealing his own side of the story” Page 50 (May 2012)

Accusations Post-Migration to Yemen

The US Government failed to link al-Awlaki to the 11 September attacks as there was no credible evidence against him being the spiritual adviser of the attackers who attended the Dar Al Hijra Islamic Centre in Falls Church²¹.

When al-Awlaki migrated to Yemen, three further terrorism related plots were targeted on the US and her allies all allegedly plotted by Al Qaeda in the Arabian Peninsula (AQAP). The US Government associated al-Awlaki with several other individuals who have been branded as extremists in their own jurisdictions, ranging from Britain, US to Canada. The US Justice Department and major news agencies had over-sensationalised the links that al-Awlaki allegedly played an 'operational' role in directing terror attacks from Yemen. The media described al-Awlaki as a 'senior recruiter' for Al Qaeda and the 'mastermind' behind the attacks which were directed from AQAP²².

Alleged Terror Links

The United States Justice Department claims that Anwar al-Awlaki was linked to the following terrorism related plots on the US and her allies but has not provided credible evidence of the accusations up until this date. Although the secret memorandum detailing the legal position on killing Anwar al-Awlaki remains highly covert, despite rigorous pressure from the ACLU and CCR through freedom of information mechanisms, CagePrisoners believes that the following terror attacks are at the forefront of the reasoning for targeting al-Awlaki by the Obama administration.

Fort Hood shooting by US officer Nidal Malik Hasan who was serving as a Psychiatrist²³

Attempted Christmas Day 'Underpants Bomb' by former University College London student; Umar Farouk Abdulmutallab²⁴

Cargo bomb plot - sent covertly through a printer ink cartridge²⁵

21 Al-Mihdar and Al-Hazmi

22 <http://www.guardian.co.uk/world/2010/oct/29/yemen-bomb-scare-mastermind-london>

23 Fort Hood Shooting; Nidal Malik Hasan
<http://www.guardian.co.uk/world/2009/nov/06/fort-hood-nidal-malik-hasan?INTCMP=ILCNETTXT3487>

24 Profile: Umar Farouk Abdulmutallab - 'Underpant Bomber'
<http://www.bbc.co.uk/news/world-us-canada-11545509>

25 Cargo Bomb plot - 29th Oct. 2010 <http://www.telegraph.co.uk/news/uknews/terrorism-in-the-uk/8098587/Ink-cartridge->

Anyways, the plans to have me as one of the many thousand men and women around the world who have their loyalty to the US did not go through. I wasn't suitable for that role anymore. I was a fundamentalist now!

A MAJOR BLOW TO AL-QAEDA'S MOST ACTIVE OPERATIONAL AFFILIATE?

Anwar al-Awlaki was labelled as the 'mastermind' behind several terror attacks and a threat to the national security of the US.

DESPITE not having specifically admitted to having given instructions for any specific terrorism plot around the world, his name is automatically associated with those cases and an individual who somehow influenced the plot, without any evidence being provided for allegation. The media have furthered the cause in marginalising al-Awlaki in society by highlighting fabrications which the US administration has not proved independently.

Fort Hood shooting

Anwar al-Awlaki was portrayed by the US and the media as having had an operational role in the Fort Hood shootings that Nidal Hasan conducted.²⁶ The media reporting painted a picture of incitement and direction from al-Awlaki. In an interview with Al Jazeera; Anwar Al-Awlaki clarified that Nidal Hasan attended the Dar Al Hijra Islamic Centre and Nidal initiated a correspondence via email in 2008, seeking an 'edict regarding the [possibility] of a Muslim soldier killing his colleagues who serve with him in the American army'. Al-Awlaki explains how Nidal Hasan expressed his own opinions on the killing of Israeli soldiers and the 'target-

ing of jews with missiles', mentioning religious justifications²⁷ during the correspondence with al-Awlaki through email. Anwar al-Awlaki evidently from this interview does not mention any indication of an operational role in the Fort Hood incident nor did he direct Nidal to commit the killings of the US soldiers.

Four days after the shooting in Fort Hood, Anwar al-Awlaki posted an article on his blog on 9 November 2009, as a response to the incident, as many Muslim clerics condemned the shootings. Anwar al-Awlaki described Nidal Hasan as a 'Hero' and acquiesced his actions at Fort Hood. There is no indication in the blog piece that Anwar al-Awlaki himself directed the Fort Hood campaign²⁸. The US administration failed to provide credible evidence from the emails to demonstrate al-Awlaki had an operational role in the attacks.

Attempted Christmas Day 'underpants bomb' attack

Umar Farouk Abdulmutallab was on board Northwest Airlines flight 253 towards Detroit, where he attempted to take the flight down using explosives covertly hidden in his

bomb-reveals-innovation-of-terrorist-groups.html

²⁶ Radical Imam Tied to Terror Plots Has Gone 'Operational' in Yemen [29th Dec, 2009]

http://www.foxnews.com/politics/2009/12/29/radical-imam-tied-plots-gone-operational-yemen/?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%253A+foxnews%252Fpolitics+%2528FOXNews.com+-+Politics%2529

²⁷ On Al-Jazeera.net - First Interview with U.S.-Born Yemen-Based Imam Anwar Al-Awlaki on Major Hasan and the Fort Hood Shooting: Nidal [Hasan] Contacted Me a Year Ago (Dec, 23, 2009) <http://www.memri.org/report/en/o/o/o/o/o/o/3859.htm>

²⁸ 'Nidal Hassan Did the Right Thing' - Anwar Al-Awlaki Blog [9th Nov 2009] Reposted by PureIslam.co.za http://www.pureislam.co.za/index.php?option=com_content&task=view&id=820&Itemid=33

lower garments, as a result he received the label of the ‘underpants bomber’. Due to technical faults with the concealed bomb, it did not detonate, leaving the 289 passengers on board safe when landing, Abdulmutallab was sentenced to life imprisonment.²⁹

On 10 February 2012, the US Department of Defence released a Sentencing Memorandum specifically for his case, which states Anwar al-Awlaki had a direct role in the ‘underpants plot’. By way of illustration, the Sentencing Memorandum states:

‘Although Awlaki gave [the] defendant operational flexibility, Awlaki instructed defendant that the only requirements were that the attack be on a US airliner, and that the attack take place over US soil³⁰’

Al-Jazeera Interview:

An interview conducted by Al-Jazeera in 2010 clarifies major questions about al-Awlaki and his role in attacks which the US claim al-Awlaki had an ‘operational role’. A question was directed to Anwar al-Awlaki regarding his relationship with Abdulmutallab and if Awlaki issued a fatwa (Islamic legal verdict) instructing him to conduct the acts of terrorism over Detroit. Al-Awlaki responded and stated the following:

‘My fellow mujahid [a Muslim engaged in jihad] Umar Farouk, may Allah free him, is one of my students, and yes there was some contact between me and him, but I did not issue a fatwa allowing him to carry out this operation³¹.’

From his own words, Anwar al-Awlaki did not play an ‘operational role’ in the attacks as he did not provide a religious verdict to instruct Abdulmutallab to carry out the operation over Detroit. This interview rebuts the various accusations that the US Justice Department and media agencies have sensationalised, in an attempt to link Anwar al-Awlaki to any terror related attacks stemming from Yemen or home grown terrorism.³²

Al-Awlaki in the interview responds to a question on whether he supports the actions

of Abdulmutallab:

‘Yes, I support what Umar Farouk has done after I have been seeing my brothers being killed in Palestine for more than 60 years, and others being killed in Iraq and in Afghanistan. And in my tribe too, US missiles have killed 17 women and 23 children, so do not ask me if al-Qaeda has killed or blown up a US civil jet after all this. The 300 Americans are nothing comparing to the thousands of Muslims who have been killed’.³³

Anwar al-Awlaki supported the Nidal Hasan shooting incident as he targeted military personnel ready to be deployed in Afghanistan, but Abdulmutallab targeted a plane of innocent civilians; when questioned about this, Anwar al-Awlaki replied:

‘It would have been better if the plane was a military one or if it was a US military target. Al-Qaeda organisation has its options, and the American people live [in] a democratic system and that is why they are held responsible for their policies.³⁴’

Anwar al-Awlaki clarifies that his preference would be to target a military one, but it is interesting to note at this juncture how al-Awlaki expresses Al-Qaeda as an ‘organisation has its options’, independently analysing their behaviour, maybe disassociating himself with their ideology or options. The US Justice Department released a Sentencing Memorandum relating to the case of Abdulmutallab which stated that al-Awlaki ‘instructed’ him as a requirement for the operation to attack a US airliner and detonate over US soil.³⁵ Based on the evidence, this should be questioned.

Ink cartridge bomb plot

The media reports that Al-Qaeda in the Arabian Peninsula (AQAP) attempted to cause acts of terrorism via a flight heading towards the UK Midlands Airport which should have taken the route to the US, but was intercepted by intelligence. In due course, the media focused the coverage on the operational role of Anwar al-Awlaki, as

29 16/02/2012 [Sentencing Date]

30 UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MICHIGAN SOUTHERN DIVISION: Governments Sentencing memorandum, CASE NO. 2:10-cr-20005 [Filed: 10/02/2012] at page 14

<http://www.washingtonpost.com/wp-srv/world/documents/umar-farouk-abdul-mutallab-sentence-brief.pdf>

31 Interview: Anwar Al-Awlaki [7 February 2010]

<http://www.aljazeera.com/focus/2010/02/2010271074776870.html>

32 5th Amendment

33 ibid at footnote 9 [Interview: Anwar Al-Awlaki with Al-Jazeera]

34 Ibid at footnote 9 [Interview: Anwar Al-Awlaki with Al-Jazeera]

35 UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MICHIGAN SOUTHERN DIVISION: Governments Sentencing memorandum, CASE NO. 2:10-cr-20005 [Filed: 10/02/2012] at page 14

<http://www.washingtonpost.com/wp-srv/world/documents/umar-farouk-abdul-mutallab-sentence-brief.pdf>

the US government alleged without any evidence that Anwar al-Awlaki supervised the failed terrorist plot from Yemen³⁶.

There have been many terrorism cases in the UK, many of them linked to Anwar al-Awlaki. No evidence however has been provided that specifically presents al-Awlaki's operational role in this alleged plot.

Al-Malahem eulogy with Awlaki's final message

Al-Malahem – The official media wing of AQAP, released a recorded video addressed and forwarded to the American people, the Muslims in the West and particularly in America. The video does not follow the standard AQAP introduction to their videos, and it is unknown whether or not al-Awlaki made this recording for Al-Malahem, or if they took one of his own videos and included it within the eulogy. He states in his address:

“Obama has promised that his administration will be one of transparency, but he has not fulfilled his promise. His administration tried to portray the operation of brother Nidal Hasan as an individual act of violence from an estranged individual. The administration practiced the control on the leak of information concerning the operation, in order to cushion the reaction of the American public. Until this moment, the administration is refusing to release the emails exchanged between myself and Nidal, and after the operation of our brother Umar Farouk, the initial comments coming from the administration were looking the same, another attempt of covering up the truth. But, Al-Qaeda cut off Obama from deceiving the world again, when they issued their statement claiming responsibility for the operation. However, we the Mujhaideen [Fighters participating in Jihad] are straight forward and transparent. We have no hidden agenda's or secret objectives. We proclaim our message to the world openly and truthfully.....³⁷”

Al-Awlaki states how the American administration ‘controlled on the leak of information concerning the operation’ and criticises the administration for not releasing the emails in correspondence between al-Awlaki and Nidal Hasan. Al-Awlaki con-

tinues to demonstrate how the operation of Abdulmutallib portrayed a similar narrative from the administration, ‘another attempt of covering up the truth’. Nevertheless, Al-Qaeda responded with a statement claiming responsibility for the operation. Al-Awlaki clarifies that he was not part or had any operational role in the attacks of Nidal Hasan or Abdulmutallib as Al-Qaeda claimed responsibility of the case of Abdulmutallib. This is a rebuttal of the claim by the administration that al-Awlaki had an operational role in that case which led to the undisclosed justification of the targeted assassination of al-Awlaki. If the Obama administration is portraying al-Awlaki to have had a direct role in the attacks conducted by Nidal and Umar Farouk, then the administration should confidently release the evidence used to justify the targeted killing of Anwar al-Awlaki.

Anwar al-Awlaki continues in his addressed video to mention how the American administration have failed to notice and admit how the US foreign policies and ‘American crimes’ recruited Nidal Hasan.

“Nidal Hasan was not recruited by Al-Qaeda, Nidal Hasan was recruited by American crimes and this is what America refuses to admit. America refuses to admit that its foreign policies are the reason behind the man like Nidal Hasan, born and raised in the US, turning his guns against American soldiers. And the more crimes America commits, the more Mujahideen will be recruited to fight against it [Through America's oppression]³⁸.”

“We the Muslims do not have any inherent hatred or animosity towards any racial group or ethnicity; we are not against Americans for just being American. We are against evil, and America as a whole has turned in to a nation of evil. What we see from America, is the invasion of two Muslim countries, we see Abu Ghuraib and Baghram and Guantanamo Bay, we see cruise Missiles and cluster bombs and we have just seen in Yemen the death of 23 children and 17 women, we cannot stand idly in the face of such aggression, and we will fight back and incite other to do the same.

I for one was born in the US and lived in the US for 21 years, America was my home. I was a preacher of Islam, involved in non-violent Islamic activism. However with the

³⁶ The US. Case Against Awlaki [30, Sep, 2011]
<http://abcnews.go.com/blogs/politics/2011/09/the-us-case-against-awlaki/>

³⁷ [‘The Martyr of Dawaah’ -The Biography of Sheikh Anwar Al-Awlaki]
<http://theunjustmedia.com/>

³⁸ [‘The Martyr of Dawaah’ -The Biography of Sheikh Anwar Al-Awlaki]
<http://theunjustmedia.com/>

American invasion of Iraq and continued US aggression against Muslims, I could not reconcile between living in the US and being a Muslim...”

Emails released in July 2012

The most sought after emails by lawyers, investigators and analysts was released in July 2012 through a William H. Webster Commission report (FBI) on the investigation of the events at Fort Hood³⁹.

The report contains the emails in correspondence between Nidal Hasan and al-Awlaki. The emails contained themes of Islamic questions, finance for charity and matchmaking⁴⁰. The investigation by security agents included 3,000 electronic documents which were reviewed in the investigation. Several emails were sent between 17 December 2008 to 16 June 2009, in which security service agents have indicated that majority, if not all emails were deemed “Not a Product of Interest” and “Not Pertinent”, leading to the fact that it did not concern the security service apart from one email which needed review due to arrangements to be made for finance. Anwar al-Awlaki only responded to Nidal Hasan’s emails twice, and in those emails of correspondence, al-Awlaki did not reply regarding any terrorism related topics or answers to Nidal Hasan’s thoughts. The emails in response from al-Awlaki are as follows:

First Response: On 19th February 2009: al-Awlaki responds to Nidal Hasan for the first time.

“Assalamu alaykum Br Nidal,

I pray this message reaches you at the best state of emaan and health. Jazakum Allahu khairan for thinking good of me. I don’t travel so I wont be able to physically award the prize and I am too “embarrassed” for a lack of the better word to award it anyway. May Allah assist you in your efforts.”⁴¹

Second Response: On 22nd February 2009: al-Awlaki to Nidal Hasan.

39 “Final Report of the William H. Webster Commission on The Federal Bureau of Investigation, Counterterrorism Intelligence, and the Events at Fort Hood, Texas, on November 5, 2009.” <http://www.fbi.gov/news/pressrel/press-releases/final-report-of-the-william-h.-webster-commission>

40 ‘Hasan’s e-mail exchange with al-Awlaki; Islam, money and matchmaking’ [CNN, 20TH July 2012]

<http://security.blogs.cnn.com/2012/07/20/hasans-e-mail-exchange-with-al-awlaki-islam-money-and-matchmaking/>

41 Original email from al-Awlaki can be found in William H. Webster Commission Report on page 50:

<http://www.fbi.gov/news/pressrel/press-releases/final-report-of-the-william-h.-webster-commission>

“Assalamu alaykum Br Nidal,

Believe it or not I kind of felt that the contest would end up running into red tape. People in that part of the world are becoming very timid and it doesn’t look it’s getting any better.

Thanks for the offer for help. Well it is needed but I just don’t know how to do it. There are poor people, orphans, widows, dawa projects, and the list goes on. So if you have any ideas on how to get help across and in accordance to law in a climate that is strict to start with please let me know. Tell more about yourself. I will keep an eye for a sister.”

It is evident at this juncture, regardless of the emails sent by Nidal Hasan⁴² on any date known to the security service agents, that al-Awlaki did not instruct nor reply to any of the questions and thoughts Nidal sent to al-Awlaki via email. Nidal Hasan initiated the correspondence with Awlaki and al-Awlaki did not respond to the questions in the first email regarding the acts of killing soldiers. This may be evidence to attest to the fact that al-Awlaki did not instruct nor take on a role to influence Nidal Hasan to commit the Fort Hood shootings.

The Washington Post reported on 16 November 2009 in an interview that al-Awlaki stated “... that he neither ordered nor pressured Maj. Nidal M. Hasan to harm Americans...”⁴³.

The Webster H. Commission report further states “while email contact with Aulaqi does not necessarily indicate participation in terrorist – related matters, Aulaqi’s reputation, background, and anti-US. sentiments are well known [REDEACTED] ... Although the context of these messages was not overtly nefarious, this type of contact if the writer is actually the individual identified above”⁴⁴.

Usamah bin Laden’s views on Anwar al-Awlaki

The clearest example of Anwar al-Awlaki’s nominal role in Al-Qaida can be found in a

42 “Final Report of the William H. Webster Commission on The Federal Bureau of Investigation, Counterterrorism Intelligence, and the Events at Fort Hood, Texas, on November 5, 2009.” Please see pages 41-62.<http://www.fbi.gov/news/pressrel/press-releases/final-report-of-the-william-h.-webster-commission>

43 “Final Report of the William H. Webster Commission on The Federal Bureau of Investigation, Counterterrorism Intelligence, and the Events at Fort Hood, Texas, on November 5, 2009.” Page 62.<http://www.fbi.gov/news/pressrel/press-releases/final-report-of-the-william-h.-webster-commission>

44 “Final Report of the William H. Webster Commission on The Federal Bureau of Investigation, Counterterrorism Intelligence, and the Events at Fort Hood, Texas, on November 5, 2009.” Please see pages 44-45.<http://www.fbi.gov/news/pressrel/press-releases/final-report-of-the-william-h.-webster-commission>

revealing communiqué⁴⁵, published by the Westpoint Combating Terrorism Center (CTC), sent by Usama bin Laden who, although interested in him, had little idea of Anwar al-Awlaki was, let alone being a leader in his organisation:

“...and how excellent would it be if he gives us a chance to be introduced to him more...”

What slight knowledge Bin Laden did have about Al-Awlaki would most likely have come, ironically, through the media. As such, being a relative unknown coupled with lack of operational experience, Al-Awlaki's tasks, if any, were to be restricted to what he knew best:

“Regarding what brother Basir mentioned relating to Anwar al-Awlaki, it would be excellent if you inform him, on my behalf in a private message to him, to remain in his position where he is qualified and capable of running the matter in Yemen”.

His “qualification” of course lay in his penchant for learning and imparting Islamic knowledge, not in planning and executing attacks on and off the battlefield.

Another reason why Al-Awlaki could not have been a senior Al-Qaida member is that although some of Al-Awlaki's views might have reached the leadership, the Al-Qaida leadership didn't actually know what his vision was in any detail.

“...thus I hope that brother Basir writes me his vision in detail about the situations and also asks brother Anwar al-Awlaki to write his vision in detail in a separate message...”

Al-Awlaki may have been recommended to Bin Laden for a role in Al-Qaida but not only was the Al-Qaida head unacquainted with Al-Awlaki's vision he was not convinced by recommendation alone regarding someone he knew next to nothing about.

“How excellent would it be if you ask brother Basir to send us the resume, in detail and lengthy, of brother Anwar al-Awlaki, as well as the facts he relied on when recommending him...”

From this one communiqué we can thus deduce that:

1. Al-Awlaki had no operational qualifications and abilities that Al Qaida recognised would be of benefit to their organisation, beyond his well-known role as a preacher
2. The Al Qaida leadership knew very little

about Al-Awlaki and had still not been introduced to him

3. Al-Awlaki's vision was still unknown to the Al Qaida leadership even two months before he was killed

4. The recommendations given on behalf of Al-Awlaki were not from weighty enough sources that would earn Al-Awlaki instant entry into and trust of Al Qaida. Simply put, because he was not well-connected to its leadership.

The British cases citing al-Awlaki

The UK terrorism cases have recently witnessed an increase of allegations that British nationals have been influenced by Anwar al-Awlaki's literature. Several UK cases have referred to al-Awlaki as the “American born ideologue” and many suspects had in their possession literature authored by al-Awlaki. *The following British cases recently cited al-Awlaki and claimed the suspects were either influenced, in contact or in possession of material by al-Awlaki:*

Rajib Karim (2011)

Rajib Karim settled in the UK with his family and began working for British Airways. The case points that Rajib Karim was in contact with his younger brother Tahzeeb in Bangladesh, Pakistan and Yemen. Allegations followed that in 2009 Tahzeeb was in contact with Anwar al-Awlaki in Yemen. It is alleged that Tahzeeb put al-Awlaki in contact with his brother Rajib in the UK through a recorded message by Anwar al-Awlaki. The messages allegedly surrounded questions of Rajib's employment with the airlines company⁴⁶. Rajib was imprisoned to thirty years, but there are major questions remaining in the case in terms of the distinct lack of evidence of communication between Karim and al-Awlaki.

Munir Farooqi, Mathew Newton, Harris Farooqi and Israr Malik (2011)

The four defendants were alleged to have operated a Daw'ah stall (An invitation to Islam) in Manchester in order to convert the general public to Islam and eventually radicalise the converts to join jihad abroad. Undercover officers posing as interested on-lookers and then later guising to be Muslims

⁴⁵ <http://www.ctc.usma.edu/wp-content/uploads/2012/05/SOCOM-2012-0000003-Trans.pdf>

⁴⁶ The Counter-Terrorism Division of the Crown Prosecution Service – Cases concluded in 2011: http://www.cps.gov.uk/publications/prosecution/ctd_2011.html#a02

started conversations which were covertly recorded. The case cites that the defendants provided literature of a radical nature which included those of Anwar Al-Awlaki.

Munir Farooqi and Mathew Newton were convicted of offences for preparation for acts of terrorism and dissemination of terrorist material. Harris Farooqi was acquitted of the count against him. Munir Farooqi was sentenced to a minimum nine years and Mathew Newton was sentenced to six years. Israr Malik received an indeterminate sentence for public protection⁴⁷.

Head of the North West Counter Terrorism Unit (NWCTU), Detective Chief Superintendent Tony Porter confirmed that Munir Farooqi was not involved in any 'terrorist plot' at all: "This was an extremely challenging case, both to investigate and successfully prosecute at court, because we did not recover any blueprint, attack plan or endgame for these men. However, what we were able to prove was their ideology.

Mohammad Shabir Ali and Mohammed Shafik Ali (2012)

The individuals had read the book *44 Ways to Support Jihad* by Anwar al-Awlaki. Both of the brothers were sentenced to three years imprisonment for raising funds for terrorism and sending money to their brother in Somalia.⁴⁸

London Stock Exchange Bomb Plot (2012)

In the case of Mohammed Chowdhury and others, a claim was made that they were influenced by Anwar al-Awlaki. Six of the nine men had possession of the Inspire Magazine which is allegedly created by al-Qaeda in the Arabian Peninsula. All nine men were arrested in December 2010 and charged with offences of engaging in conduct and preparation for acts of terrorism, and conspiracy to cause explosions. Six of the men were charged with possession of the Inspire Magazine which was concluded as material

likely to be useful to a terrorist.⁴⁹

Christian Emde and Robert Baum (2012)

Two German nationals were stopped entering the port of Dover as the authorities found possession of a laptop which included copies of the Inspire Magazine. Robert Baum had further possession of a document titled *39 Ways to Support Jihad*. The German nationals were both sentenced to sixteen and twelve months.⁵⁰

British - US Intelligence sharing for Targeted Killings

Lord Macdonald stated that there was "pretty compelling" evidence that GCHQ was providing information to assist the Americans in targeting al-Qaida and Taliban leaders in Pakistan and Afghanistan⁵¹. Lord Macdonald warned that drone attacks had killed innocent people and was producing a "new generation of people with huge resentment against the West". Lord Macdonald's comments follow a report of an official from GCHQ admitting the governmental organisation is proud of sharing "locational intelligence"⁵².

A High Court case in the process of litigation in the UK filed by Noor Khan alleges that British security services have provided intelligence to the US which has been used in targeted killings in Pakistan and Afghanistan. Noor Khan is a victim of the drone programme as his father was illegally killed in March 2011⁵³.

47 The Counter-Terrorism Division of the Crown Prosecution Service – Cases concluded in 2011: http://www.cps.gov.uk/publications/prosecution/ctd_2011.html

48 The Counter-Terrorism Division of the Crown Prosecution Services (CPS) – Cases concluded in 2012: http://www.cps.gov.uk/publications/prosecution/ctd_2012.html

49 The Counter-Terrorism Division of the Crown Prosecution Services (CPS) – Cases concluded in 2012: http://www.cps.gov.uk/publications/prosecution/ctd_2012.html

50 The Counter-Terrorism Division of the Crown Prosecution Services (CPS) – Cases concluded in 2012: http://www.cps.gov.uk/publications/prosecution/ctd_2012.html

51 British Government Must Come Clean Over Alleged Help for US Drone Attacks: Former DPP (18/09/12) <http://www.telegraph.co.uk/news/uknews/defence/9549716/British-Government-must-come-clean-over-alleged-help-for-US-drone-attacks-former-DPP.html>

52 British Government Must Come Clean Over Alleged Help for US Drone Attacks: Former DPP (18/09/12) <http://www.telegraph.co.uk/news/uknews/defence/9549716/British-Government-must-come-clean-over-alleged-help-for-US-drone-attacks-former-DPP.html>

53 Court case over drone strike 'could force Britain to reveal intelligence exchanges with US' (25/05/12) <http://www.telegraph.co.uk/news/uknews/defence/9289127/Court-case-over-drone-strike-could-force-Britain-to-reveal-intelligence-exchanges-with-US.html>

THE EXTRAJUDICIAL KILLING OF ANWAR AL-AWLAKI

Political assassination

“AS ONE senior official said it bluntly, when Anwar was in prison, he said, ‘we want to shut him up’, no evidence was ever presented against him and no evidence will ever be. They knew that Imam Anwar Al-Awlaki carried an effective message, a message that was simple and was straight forward. His target were Muslims in the west, they considered a fluent Muslim preacher as a threat, so they tried everything to silence him. First they forced him to leave the United States and tried to obstruct his work there. Then they imprisoned him in Yemen, and finally they killed him after several failed attempts. They were so determined to eliminate his Dawah (Invitation to Islam), that they fired more than half a dozen missiles on his car.” [Dr. Nasser Al-Awlaki]⁵⁴

‘Kill list’ and the secret memorandum on targeting Anwar al-Awlaki

The United States administered a secret panel of anonymous officials in April 2010 to create a legal memorandum consisting of a detailed justification for the targeting of Anwar al-Awlaki and to include him on a kill list for imminent assassination upon sight by intelligence, which was authorised by the White House.

An attempt was made to assassinate al-Awlaki on 10 May 2010. He was believed to be travelling in a vehicle (pick-up truck) with his associates, while drone and harrier

jets were systematically ordered to strike his vehicle, although two individuals have been reported to have been killed in the attacks, the strikes failed to assassinate him.⁵⁵

Litigation in the US

Dr. Nasser al-Awlaki (father of Anwar al-Awlaki) filed a case on three constitutional and one statutory ground with the support of the American Civil Liberties Union and Centre for Constitutional Rights:⁵⁶

Fourth Amendment: Right to be free from unreasonable seizures

Fifth Amendment: Right not to be deprived of life without due process of law.

United States refusal to disclose the criteria it has administered via secret panel and including US citizens on kill lists

Statutory claim regarding the Alien Tort Statute⁵⁷, alleging that the US administration’s policies undermine public international law.

Dr. Nasser al-Awlaki filed the case on behalf of his son, to stop the assassination, challenge the constitutionality of the kill list and the lack of judicial review. Judge Bates argued that Awlaki’s father lacked standing and that the decision was unreviewable under the political question doctrine.

After a lengthy duration from the US department intending to assassinate al-Awlaki, the Department for Office of Foreign Assets Control [OFAC], immediately froze assets

⁵⁴ <http://www.youtube.com/watch?v=oAlYwZqHjIE> [Message from Dr. Nasser Al-Awlaki] Working on 23/02/2012 Transcript: http://icsr.info/news/attachments/1323183844Full_text_of_Nasser_alAwlaki_speech.pdf

⁵⁵ ABC News: <http://abcnews.go.com/Blotter/anwar-al-awlaki-targeted-us-drones-osama-bin/story?id=13549218#.TieS7PFzkrk>

⁵⁶ Al-Awlaki V Obama et al [30th Aug. 2010] <http://www.aclu.org/files/assets/2010-12-7-AulaqivObama-Decision.pdf>

⁵⁷ 28 U.S.C. § 1350

belonging to al-Awlaki, as the US believed that he had an ‘increasingly operational role’⁵⁸. More concerning was the implications it impeded on his right to receive legal representation before a court of law in the US, as it became illegal for an attorney practicing in the US bar to represent al-Awlaki on his behalf without clearance and a license from the US. Ironically the ACLU & CCR was forced to sue the Treasury Department due to the unprecedented denial of representing al-Awlaki by depriving them of a license, consequently achieved the grant of license the following working day.

Attorney General Eric Holder states “Due process and judicial process are not one and the same, particularly when it comes to national security”. By the same token, if this is the threshold of understanding by the US, Attorney General Eric Holder and the US administration must appreciate that attaining a ‘direct role, aiding and assisting in hostilities’ and ‘inspiring jihad’ are not one and the same similarly.

A sneak preview of the secret memo?

Attorney General Eric Holder on 5 March 2012 delivered a speech at Northwestern University School of Law, Chicago. Holder addressed the US ‘counter-terrorism’ strategy in targeting US citizens. Although Attorney General Eric Holder did not specifically refer to al-Awlaki, inference can readily be drawn from his words below,

“Let me be clear: an operation using lethal force in a foreign country, targeted against a US citizen who is a senior operational leader of al Qaeda or associated forces, and who is actively engaged in planning to kill Americans, would be lawful at least in the following circumstances: First, the US government has determined, after a thorough and careful review, that the individual poses an imminent threat of violent attack against the United States; second, capture is not feasible; and third, the operation would be conducted in a manner consistent with applicable law of war principles.”⁵⁹ [Attorney General Eric Holder]

The three circumstances highlighted by Attorney General Holder will be highlighted

and analysed in application to the targeted assassination of Anwar Al-Awlaki by illustration.

1. “...First, the US government has determined, after a thorough and careful review, that the individual poses an imminent threat of violent attack against the United States;”

Anwar al-Awlaki was allegedly linked to several terror plots as stated previously. Whether a direct and operational role was apparent is not beyond reasonable doubt, as the US remains silent on the secret memorandum detailing the legal justification and rationale. Research findings established how al-Awlaki himself denounced the claim of attaining an operational role and questions why the Obama administration has not released the classified emails and sources to ‘prove’ the direct involvement⁶⁰. Although Attorney General Eric Holder states that Anwar al-Awlaki possessed a direct role in the terror attacks relating to Abdulmutallib, no specific evidence has been produced attesting to that fact. The sentencing memorandum (referred to earlier in the report), does not mention that Abdulmutallab ‘stated’ al-Awlaki instructed him. These are claims which cannot be justified or clarified, unless evidence allegedly attained by the US is released.

2. “...second, capture is not feasible;”

The administration has asserted that if there are complications in capturing al-Awlaki, then it will be ‘legally’ justifiable to target and kill him⁶¹. This would be highly impractical by observing Judge Bates opinion to dismiss the filed case, because if a US citizen on the list decides to hand himself in to the US, only to discover that his position legally is unreviewable as a political question, it leaves no room for any form of challenge, as there is no method to challenge the legality or stop the assassination. Although Anwar al-Awlaki had no intention of returning to the US, the ‘Specially Designated Terrorist List’ makes it extremely difficult for anyone to render support for individual on the list without a license from the US. Subsequently, al-Awlaki was denied entry into the US and it should be questioned whether the US had

58 Al-Awlaki V Obama et al [30th Aug, 2010]
<http://www.aclu.org/files/assets/2010-12-7-AulaqivObama-Decision.pdf>

59 Attorney General Eric Holder Speaks at Northwestern University School of Law [05/03/2012]
<http://www.justice.gov/iso/opa/ag/speeches/2012/ag-speech-1203051.html>

60 [The Martyr of Dawaah] -The Biography of Sheikh Anwar Al-Awlaki – Final Message]

<http://theunjustmedia.com/>

61 Secret US. Memo Made Legal Case to Kill a Citizen

[08/10/2011]
http://www.nytimes.com/2011/10/09/world/middleeast/secret-us-memo-made-legal-case-to-kill-a-citizen.html?_r=1&pagewanted=all

an intention to capture al-Awlaki primarily, as the procedures employed to neutralise al-Awlaki seemed counterintuitive to any form of appeal against his designation. Al-Awlaki would have had no legal means to receive any support due to the fact it would have been illegal to assist him in any way without approval from an administration, which had overtly stated its intent to kill upon sight.

3. "...and third, the operation would be conducted in a manner consistent with applicable law of war principles"

Anwar al-Awlaki was assassinated by drone strikes on the 30 September 2011. The factual narrative reports that al-Awlaki's vehicle paused for a short moment for 'break-fast', when the men discovered the UAVs and hastened their escape. The CIA-led drones fired hellfire missiles which eventually overtook al-Awlaki's vehicle which led to the assassination of Anwar al-Awlaki and another American citizen Samir Khan⁶² among the killed.

The news of the killing of al-Awlaki brought about great confusion and did not receive the same level of public support as the targeted killing of Osama Bin Laden. American citizens and journalists were questioning the legality of killing a US citizen without due process of law or without being indicted of a crime while in the same time nervously celebrating the "major blow to [Al-Qaeda's] most active operational affiliate"⁶³.

The case Hamdi v Rumsfeld⁶⁴ ruled that all US citizens will enjoy the right of all constitutional protections. Accordingly, Anwar al-Awlaki should not have been treated ar-

⁶² Samir Khan, a US national brought up in Saudi Arabia, is allegedly the creator of the Al-Qaeda magazine, Inspire

⁶³ 'Anwar al-Awlaki Killed in Yemen – as it happened' <http://www.guardian.co.uk/world/blog/2011/sep/30/anwar-Al-Awlaki-yemen-live>

⁶⁴

Hamdi was at risk of being denied protection under the Geneva Conventions and the Constitution as a US citizen, if he was designated as an 'enemy combatant'. Although Hamdi was released from Guantanamo as it is illegal to detain a US citizen there, he was still denied the right to appear before a court and meet with his legal representation. The court ruled that Hamdi was being denied due process and that he had the right to appear before a court to contest the 'enemy combatant' title.

bitrarily; as he was a US citizen who found himself in a similar situation to Guantanamo detainees, guilty without any credible evidence supported with the allegations against him. The US administration should have provided this protection to al-Awlaki, instead of secretly including al-Awlaki on a CIA kill list. Now that al-Awlaki is assassinated, the alleged crimes attributed to him will never receive true transparency due to the lack of due process.

Al-Awlaki's Fifth Amendment rights

The Fifth Amendment⁶⁵ in conjunction with the historic Bill of Rights provides US citizens with the enjoyment of protection and due process of law. Anwar al-Awlaki was stripped of his rights as a US citizen and was deprived of life, liberty and due process which contravene the US constitution. The chronological stages from assembling a secret panel to justify the targeted execution, to listing al-Awlaki on the CIA kill list and Special Designated Terrorist list and finally conducting the extra-judicial killing, breaches the most fundamental aspects of the US Constitution.

Yemen: A New Front in Operation Enduring Freedom?

Al-Awlaki was assassinated outside the town of Khasaf in a desert linked to Jawf Province [87 Miles] East of the Capital of Yemen, Sana'a.⁶⁶

Dr. Nasser al-Awlaki clarified in an audio message, al-Awlaki "was far from any battlefield" when he was assassinated. Although under international law there are contentious issues relating to territorial sovereignty, with the presence of US drones in Yemen, it must be acknowledged that the Yemeni President aided in the extrajudicial killings of many drone victims, due to the Wikileaks Cables revealing Ali Abdullah Saleh, provided an 'open door' for UAV attacks by the US.⁶⁷ However, any claim of there being intervention by invitation is unfound, due to the fact that any deal made by Saleh and the US government, was done secretly and thus a valid bilateral agreement. Secondly,

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⁶⁶ 'Anwar al-Awlaki death: U.S keeps role under wraps to manage Yemen fallout' [30/09/2011]

<http://www.guardian.co.uk/world/2011/sep/30/anwar-Al-Awlaki-yemen>

⁶⁷ 'Wikileaks Cables: Yemen offered US 'Open Door' to attack al-Qaida on its soil' [03/12/2010] <http://www.guardian.co.uk/world/2010/dec/03/wikileaks-yemen-us-attack-al-Qaeda>

as there is no sign of armed conflict, it can be confidently concluded that international armed conflict between Yemen and US is not visible, which ultimately means that not only was in breach of Yemen's sovereignty, but that it was willing to carry out an armed attack within its borders.

The focus of analysis should be whether the killing of al-Awlaki, outside of a traditional armed conflict, would be legal under international law. The US would have to prove AQAP have sufficient affiliation with Al-Qaeda in Afghanistan for the Authorization for Use of Military Force 2001 [AUMF], to be applied within Operation Enduring Freedom on Yemen's non-state actors. The US have perpetrated a new battle front under this War on Terror beyond territorial borders of Afghanistan, as there is no evidence to declare that AQAP (a non-state actor) participated in the armed attack on the US.

The US has not proved that AQAP are connected to Al-Qaeda in Afghanistan and consequently directing attacks from Yemen. Although the argument would be weak due to the clandestine nature of the non-state actors involved in the War on Terror, the question should be whether al-Awlaki is ultimately connected to AQAP and not whether AQAP is connected to AQ for the focus of the legality of the killing and for AUMF to apply on al-Awlaki.

Al-Awlaki was cleared by the US for allegedly being the 'spiritual adviser' of three of the 9/11 hijackers due to the lack of evidence, thus the US cannot by any authority apply AUMF⁶⁸ to justify the legality of the assassination as it is directly concerned with the parties involved in the attack against the US on 9/11. In stating this, it must be made clear, that international law provides the scope for a state to use lethal force when there is evidence of a clear imminent threat.

Although the US may prove that AQAP is sufficiently directing multiple attacks from Yemen, in which the US may have a strong case using lethal force for those who wish to compromise US security interests and as a result, perpetrating a new confrontation on an unproved branch of al-Qaeda in Yemen.

Equally, the question should by default, for the standard of due process, concern itself with the 'operational role' and alleged direction from al-Awlaki, which has not been

legally proved by the US administration – effectively assessing the principles of necessity and proportionality. Essential documents such as email correspondence between al-Awlaki and Nidal Hasan, have only been disclosed recently which may display a true narrative, as opposed to the lack of empirical evidence for a 'directive role' in the attacks, in which al-Awlaki expresses the question to the US himself in his final message.

Analysing the opinion concluded by Judge Bates in the case which was dismissed for lack of standing and political question doctrine, President Barack Hussein Obama adopted the role of the judiciary, law maker and executioner, and further claims al-Awlaki is connected to the named attacks.

Al-Awlaki Connected to AQAP?

Al-Awlaki represents himself as an individual lecturer through his works, but although he received protection from AQAP and the Yemeni tribes due to the shared feelings towards the US administration for its foreign policy. This is not dissimilar on how Osama Bin Laden (AQ) in Afghanistan received protection from Taliban and vice versa, as both parties was involved in the same conflict, with the consensus of the Americans and coalition forces being the belligerent force. The eulogy created for al-Awlaki demonstrates the expression in which AQAP perceives al-Awlaki's death as - the 'Martyr of Dawah' [Martyr of Calling to Islam], which expresses that al-Awlaki was not killed because of his direct role in any plots or military activity, but due to al-Awlaki's lectureship and influence upon the global western audience, critically analysing US foreign policy in the Muslim world, which is agreed upon even by his own father.

The US administration has not connected an armed conflict which al-Awlaki is participating in, whether through direct involvement as a group member or aiding in hostilities. The burden of proof is on the US administration to clarify with credible evidence that al-Awlaki directed terror attacks from Yemen and the evidence provided should be a higher standard than narratives employed by the administration which is baseless in a court of law.

Al-Awlaki: Combatant or Non-Combatant

The Obama administration is most likely

⁶⁸ 'those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001'

to declare al-Awlaki as an enemy combatant in order to justify the targeted killing. Considering the reality in factual terms, no evidence presented provided by any of the parties which may conclude that al-Awlaki beyond reasonable doubt embraced an 'operational role' in the terror acts. Absent of evidence of this 'operational role' – al-Awlaki is merely supporting acts of terrorism and is not participating or directing in them. Although the US administration may provide a rebuttal and claim anyone 'aiding or assisting in hostilities' will be deemed as a legitimate target, even if al-Awlaki was to be branded as an expert 'propagandist' – his targeting and killing would be considered completely disproportional to his role.⁶⁹

An illustration of a combatant's role can be demonstrated through analysing the 'Continuous Fighting Function' Test,

"Not all persons associated with the non-state party would count as combatants for the purposes of distinction. Rather, only those members who directly participate in hostilities on a regular base would qualify, other group members would remain civilian"⁷⁰

The application of the above passage heavily depends upon the method adopted by the US government and guidelines used to determine the threshold employed to distinguish who is classified as a combatant and non-combatant. As the killing of al-Awlaki remains a covert operation, Al-Awlaki should remain innocent of the crimes alleged against him, due to the lack of transparency promised by the Obama administration.

Despite US allegations, if one would analyse the literature of Anwar al-Awlaki, he presents himself as an independent thinker to contribute and expose the US efforts to desensitise the global Muslim community with regards to foreign policy. The reader must appreciate that al-Awlaki received great protection from AQAP and Yemeni tribal leaders due to the anti-Saleh or US influences currently operating in Yemen, if al-Awlaki was an operational figure in the AQAP infrastructure; he most likely would have been addressed by AQAP as a leader in the eulogy or even declared the role himself.⁷¹

US Official Mr. Johnson stated, "... [A]ssociated force is not any terrorist group in the world that merely embraces the Al Qaeda ideology," he said. "More is required before we draw the legal conclusion that the group fits within the statutory authorization for the use of military force passed by the Congress in 2001."⁷²

CagePrisoners questions whether the same standard was employed to infer upon whether al-Awlaki was connected to AQAP or more significantly the alleged terror links, to establish whether Al-Awlaki posed a specific, imminent threat to US national security, as background investigation would prove otherwise.

A precedent to neutralise political opponents

The assassination of al-Awlaki was not a legal one and the threat which al-Awlaki posed to the national security of the US was predominantly rhetoric. Although efforts are underway in the US to justify the assassination of American citizens, it will be concerning if the US administration believes they have set a precedent in neutralising their 'political opponents' via targeted means. Due to the fact the US government have not shown a satisfactory level of evidence to match the claims of al-Awlaki playing a direct role in the terror acts of Nidal Hasan or Abdulmutallib, the US should have used non-lethal means, as al-Awlaki most likely did not poses a "concrete specific and imminent threat." Consequently the methods employed to neutralise 'political' opponents of the US administration was not reasonable. The US has not commented on the targeted assassination of al-Awlaki up until this day, as the sensitive case is highly covert. Although US officials have made clear that the US will target any US citizens who are directly involved in hostilities⁷³.

The political assassination of Anwar al-Awlaki grips many issues of violations of basic fundamental rights without due process of law and international humanitarian law. Although readers may come to a conclusion

69 Chapter 1, Who May Be Killed? Anwar Al-Awlaki as a Case Study in the International Legal Regulation of Lethal Force [Robert Chesney]

70 Interpretive Guidance on the Notion of Direct Participation In Hostilities under International Humanitarian Law [Neil's Melzer, Legal adviser, ICRC]

<http://www.icrc.org/eng/assets/files/other/icrc-002-0990.pdf>
71 [The Martyr of Dawaah] -The Biography of Sheikh Anwar

Al-Awlaki]

<http://theunjustmedia.com/>

72 'Pentagon Says US. Citizens With Terrorism Ties Can Be Targeted in Strikes' [22/02/12]

<http://atwar.blogs.nytimes.com/2012/02/22/pentagon-says-u-s-citizens-with-terrorism-ties-can-be-targeted-in-strikes/>

73 'Obama Admin Defends Killing American Terrorists' [23/02/2012]<http://security.blogs.cnn.com/2012/02/23/obama-admin-defends-killing-american-terrorists/>

that al-Awlaki's case is in legal limbo, it only mesmerises legal opinion on how the US will justify the killing of Anwar al-Awlaki's son – Abdul-Rahman al-Awlaki, who did not live to see past 16 years of age and was not an operational figure.

The assassination of Abdul-Rahman Al-Awlaki

Two weeks apart from the assassination of Anwar al-Awlaki, his son was reported to have been killed along with his cousin and friends in a US drone attack on 14th October 2011 in Azzan, Shabwa - Yemen. The Obama administration is reported to have created a secret legal memo on the justification of killing al-Awlaki which has not reached public notice till this day, nonetheless, the targeted assassination of Abdul-Rahman al-Awlaki will pressure the US administration in revealing more information.

Media fabrications of the killing of Al-Awlaki's son

US media immediately stated that Anwar al-Awlaki's son was 21 years old and killed among militants – illustrating a false depiction of a 'young man' joining Al Qaeda and targeted and killed among militants in Yemen through drone attacks. Two US Officials further noted that Al-Awlaki's son was in his 20's, describing him as 'military-age male', as this narrative under the laws of war may provide weight for the justifications of his killing⁷⁴.

The fabrications misguided the world in accepting that the attack was justified without any need to verify the legality or true facts, covering up the fact that he was a mere young teenager, 16 years of age.

Dr.Nasser al-Awlaki states in an Audio Message:

"...Two weeks later [after the assassination of Al-Awlaki], the greatest military power on Earth, has done the same to my sixteen year old grandson. When the American missiles came, he was having dinner with his teenage friends in our homeland Shabwah province in Yemen. [The media pictures facts – as if Anwar's son was travelling with combatants]. Abdul-Rahman was not 21 years old

militant as they claimed. He was not an operational figure, and he was not travelling with any high value target, as the Obama administration continues to lie..."⁷⁵

The killing of three US nationals in Yemen has only received silence from the Obama administration, in response from efforts by human rights organisations and the exercise of freedom of information requests. The son of al-Awlaki has been reported to have been travelling with militants, but the family of al-Awlaki rebutted the claim, stating, "...he left with some friends for dinner under the moon light."⁷⁶ Abdul-Rahman was not a high value target, nor was he travelling with combatants⁷⁷. The disparity between the media, US administration and family narratives are very clear, which questions the underlying motive of the killing of the teenage son.

Whether the targeted individual is 21 or 16 years of age, accountability and transparency is not evident, as drone attacks continue to target and kill civilians without a combat role in any conflict. The unequivocal weakness of UAVs is the lack of civilian protection, as witnessed in the attacks of the several teenagers who were killed with Awlaki's son.

A call for transparency and accountability on the UAV programme

The shortfall of transparency and accountability from governments in armed conflict with non-state actors is in complete contravention of IHL⁷⁸ and IHRL⁷⁹. In application to the targeted assassination of Anwar al-Awlaki, without accountability the US administration will ultimately have a license to assassinate its political opponents without any justification to the international community. Under Article 16 ILC⁸⁰, a state which aids or abets another in the commission of an "in-

75 Message from Anwar Al-Awlaki's father. [Link Active on 28/02/2012]

http://www.youtube.com/watch?v=IO--maFBjsw&feature=results_main&playnext=1&list=PL64CA24715E09F657

76 'Two Awlaki teenage relatives killed in Yemen attack: family' <http://www.reuters.com/article/2011/10/18/us-yemen-awlaki-idUSTRE79H71E20111018>

77 Message from Anwar Al-Awlaki's father. [Link Active on 28/02/2012]

http://www.youtube.com/watch?v=IO--maFBjsw&feature=results_main&playnext=1&list=PL64CA24715E09F657

78 Geneva Conventions, art.1; AP I, arts. 11, 85 (grave breaches), 87(3); Geneva Conventions I-IV, articles 50/51/130/147

79 Economic and Social Council Resolution 1989/65 of 24 May 1989

80 Article 16 ILC dictates:

A state which aids or assists another state in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if:

(a) that State does so with knowledge of the circumstances of the internationally wrongful act; and
(b) the act would be internationally wrongful if committed by the state.

74 'US. airstrike that killed American teen in Yemen raises legal, ethical questions'

http://www.washingtonpost.com/world/national-security/us-airstrike-that-killed-american-teen-in-yemen-raises-legal-ethical-questions/2011/10/20/gIQAAdvUY7L_story_1.html

ternationally wrongful act” will be responsible for the principle in conducting unlawful actions. Thus as illustrated, the gross systematic violations and extrajudicial killings by UAVs, accountability should be drawn not only from state officials but all operatives in the commissioning of the killings, including drone operators who make decision on targeted killings from drone intelligence.

“If US policy assumes that those who live with or assist combatants are also necessarily combatants, what about the wife of the drone pilot who drives him to work in the morning? How is that person any different from the people in the house that the Taliban combatant is living in?”[Professor Dapo Akande, Oxford University]⁸¹

Accountability for extrajudicial killings and targeted assassination is scarce in the paradigm of the UAV. Post-conflict societies are abandoned with unrecognisable infrastructure in areas where international development is less sufficient. With more sovereign countries opting to manufacture drones themselves, it becomes striking how international law will govern such technology, were

there is no framework or mechanism to monitor or account for breaches of law.

81 ‘A Question of Legality [04/02/2012]
<http://www.thebureauinvestigates.com/2012/02/04/a-question-of-legality/>

If US policy assumes that those who live with or assist combatants are also necessarily combatants, what about the wife of the drone pilot who drives him to work in the morning?

RECOMMENDATIONS

If the drone program is continued, it will result in the death of additional innocent civilians and further entrench – rather than eradicate – the belief that terrorist attacks against the US military and/or government are legitimate. The increasing trend of sovereign states employing such unmanned aerial vehicles for military purposes further underlines the need to regulate drones such that they are used only in accordance with international law.

With this in mind, CagePrisoners recommends:

1) Complete transparency about the process by which individuals are placed on the “kill list”. Holder’s claim that suspects are given “due process” before they are added to the “kill list” is meaningless given that these processes are shrouded in secrecy. Human rights advocates have no means of challenging these processes or holding the US government accountable to its obligations under national and international law. Specifically, CagePrisoners demands that:

A. The Justice Department release the legal memorandum which outlines the US government’s authority to use drones to kill suspected terrorists abroad, including individuals who are US citizens.

B. The US government make public any guidelines it uses in determining who may be added to its “kill list”, ie. what evidence is required to determine that an individual poses an imminent threat to the United States and that capture is not possible; how this threshold evidentiary level is set and measured; whether potential “kill targets” receive any internal advocacy or defense as would occur in a court of law; and the means by which internal debates about the legitimacy of particular targets are resolved.

C. The US government release any internal documents outlining potential conflicts between the use of drones and its obligations under the Constitution and international law, and the mechanisms or decision making process it uses to ensure it upholds these obligations to the greatest degree possible.

2. Independent investigations into civilian deaths and injuries during drone strikes, as called for by Ben Emmerson, UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism. Specifically, CagePrisoners demands:

A. If the US does not establish a mechanism to impartially investigate every drone-strike related death, a third party (e.g. the United Nations or another international body) must do so.

B. The US military must be willing to pass on video footage of the strikers onto independent investigators.

C. The US military must establish a means of prosecuting individuals involved in unlawful drone strikes and compensating innocent victims and their families.

3. An end to British complicity and the complicity of any other States, with US drone strikes. Specifically, CagePrisoners demands:

A. The UK government stop intelligence sharing with the US, as the drone operation in Pakistan and Afghanistan have witnessed a high number of innocent civilians killed and proved to be incompetent in abiding by the principles of distinction and proportionality under International law and the laws of Use of Force. As noted earlier, in September 2012, the former Director of Public Prosecutions in the UK, Ken MacDonald QC, commented that "There was compelling evidence that the Government's secret listening post, GCHQ, had assisted the US in locating al-Qaeda and Taliban chiefs before the strikes."

B. The British government investigate possible complicity in the assassination of British citizens, given that several UK passport holders have been reportedly killed in US drone strikes. The British government must similarly investigate whether by passing information onto the US, it has essentially been "forcing some of [its] own workers to break international law by passing on intelligence".⁸¹

C. The British government and all other states receiving Freedom of Information Requests should reveal their legal justifications for the use of drones and make public any other requested documents.

4. The US and all participating states employing drone warfare should abort the programme due to the large scale of civilian casualties killed by drone strikes.

A. These programs are immoral, unjustifiable, and illegal under national and international law.

B. Furthermore, they are considered by many regional experts to be counterproductive to the eventual elimination of terrorism. Drone strikes can only contribute to local hostility against the US government.

Although the above list is not exhaustive, CagePrisoners believes that such recommendations will be the establishment of reducing the scale of innocent civilian casualties within the War on Terror.

⁸¹. <http://dissenter.firedoglake.com/2012/09/19/uks-role-in-us-drone-strikes-challenged-by-former-law-chief/>



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