

Legality of US Drone Strikes in Pakistan

Wafa Azhar

M. Phil. Scholar

Department of Political Science,

Kinnaird College for Women, Lahore, Pakistan

Khushboo Ejaz

Assistant Professor

Department of Political Science,

Kinnaird College for Women, Lahore, Pakistan

ABSTRACT

Legality of US drone strikes in Pakistan is a long debate among U.S. and Pakistan. U.S. has tried to justify these attacks in Pakistan and Pakistan's government has condemned these attacks publicly and the citizens of Pakistan have continued to question the legality of drone strikes despite of U.S. justification. This research has been conducted in order to understand whether the U.S. justifications are enough to call the drone attacks legal or not, using historical, analytical and descriptive approach. It is a qualitative research with secondary sources of information. This research concludes that U.S. justifications are not enough in order to declare the drone strikes in Pakistan as legal. U.S. drone attacks are illegal in context of self-defense explained by UN Charter, International Humanitarian Law, Collateral Damage, Jurisdictions of International court of Justice in different events and violation of sovereignty of Pakistan. Moreover, U.S. is not only to be blamed for these strikes but also Pakistan is responsible for these attacks in Pakistan keeping the double-faced and vague policy of Pakistan's government towards these strikes in its own territory. The attitude of Pakistan's government has proven to be ineffective in this regard. An appropriate solution is required for this major international issue.

Keywords: *Legality of US drones strikes, Pakistan*

Introduction

Drone Technology

Drones are basically the unmanned aerial vehicles as these are the 'aircrafts' without pilots sitting inside. They are also termed as UAV's. Sometimes the abbreviation UAV is prolonged to UAVS that stands for Unmanned Aircraft Vehicle System. They are also known as remotely piloted vehicles (RPVs). The pilot operates the vehicle from ground through advanced technology. These aerial vehicles are in various sizes, shapes and functions. UAV's are not the ordinary missiles. They are different from missiles on the basis that UAV's can be controlled, have a continuous level flight and driven by a responding engine. According to a BBC report (2012), when it is difficult to use manned flights, unmanned vehicles are used. The Unmanned Vehicle System may consist of the following elements:

- Unmanned aircraft
- Control system, like Ground Control Station

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- Control link, a specialized data link
- Other related support equipment.

UAVs can be used for different purposes but mostly used for military reasons and special operations. Tice (1991) said that drone usage involves three Ds; dull, dirty and dangerous. Use of these drones is very lethal and immoral. UAVs can perform six important functions. The functional categories of UAVs which are given below:

- UAVs are used for target and decoy purpose that provides ground and aerial gunnery a target that simulates an enemy aircraft or missile.
- UAVs used for reconnaissance purposes in which it provides battleground intelligence.
- The ones used for Combat provide attacking ability for high-risk missions.
- UAVs are also used as Logistics. They are specially planned to perform cargo and logistics operations.
- Sometimes UAVs are used for research and development for more development in UAV technologies to be used into UAV aircraft
- Civil and Commercial UAVs are specially made for civil and commercial operations

The above mentioned are different uses of Unmanned Aerial Vehicles but the most important and often use is for combat purposes. BBC called the drones as “eye in the sky”. The most common drones in use by US are the MQ-9 Reaper and the MQ-1B Predator. US Air Force CIA used these predators for the first time in late 2001 from Pakistan and Uzbekistan bases. Mostly they targeted high profile persons e.g. terrorists, political leaders, and other important personnel inside Afghanistan. Such attacks started and have continued to carryout in countries like Pakistan, Afghanistan, Yemen and Somalia (Cole and Wright, 2010).

Historical Background of Drone Attacks

Drone attacks and the use of unmanned aerial vehicles are not new to the world. The foundation of these attacks can be outlined back in August 1849 when a war was fought between Austria and Venice. The Austria attacked Venice through “unmanned balloons” which were filled with explosive bombs. It is said that the number of balloons used at that time were two hundred approximately (Kennett, 1982). Though, those air-balloons don’t satisfy the conditions of the present UAVs which are now in use in combat but still the impression of those unmanned balloons was quite operational and different. That effective idea used in 1849 can now be observed in present world in the form of UAVs.

Though unmanned air attacks were not used in WW1 but after World War 1, the first aircraft without a pilot was introduced known as the Aerial Target (AT). It was a radio-controlled, unmanned airplane made in 1916, designed for two purposes; defense purpose and as a flying bomb against Zeppelins which is a German airship. The idea for the Aerial Target was given by Captain Archibald M. Low (Taylor, 1977). Lee (n.d.) stated that soon after Aerial Target, the Hewitt-Sperry Automatic Airplane was introduced. They are also known as flying bombs

which were made to be used as aerial torpedo by Elmer Sperry of the Sperry Gyroscope Company. These were basically the older form of cruise missiles. Then in 1917, "Kettering Bug" was flown representing the U.S. The development in the technology of unmanned aerial vehicles continued. Later in 1931, the British developed the Fairey "Queen" and soon after that developed "Queen Bee". All the advancement in this technology is still ongoing. It includes Chilean Lascar UAV, Lehmann Aviation LA300 that is the world's first drone which works with Nokia Lumia mobile phone and enables to capture professional quality aerial images, Dragonfly Pictures, Inc. DP-14, Aeryon SkyRanger that is ideal for having a continuous eye on target for situational awareness, operations in confined environments, and low-risk launch. The list of the advancements and improvements in this technology continues as the world is flourishing rapidly and so are the demands for such technologies. British and U.S. are the countries most involved in these advancements. Including India's name would also be appropriate.

Along with these advancements, the number of drone attacks has also been increased in the world. The Combat Drones or the Unmanned Combat Air Vehicles is the type of UAV that are usually armed. These are much lower in weight and size as compared to the manned aircrafts due to which they have a long range and easy movements. The General Atomics MQ-1 Predator (drone) and The General Atomics MQ-9 Reaper (drone) are one of the combat drones. Combat drones are being used by U.S. in war against terrorism. In the recent years, Pakistan has been a victim of such attacks lead by the U.S. government in the name of War on Terrorism. The number of strikes is increasing day by day. The drone attacks started in 2002 in Yemen which was led by CIA (Drone Wars, n.d.). This covert target killing was discussed openly among public, Congress meetings, administration and media. On the other hand many organizations also criticized the transparency of these attacks.

Background of Drone Attacks by U.S. in Pakistan

Pakistan has been facing these attacks since 2004 but the reason behind these attacks has a long history. It can be traced back when U.S. led Afghanistan war started and many militants took refuge in areas of Pakistan known as FATA. Fata is divided into seven tribal agencies out of which three agencies (Bajaur, North Waziristan and South Waziristan) are those where Talibans and Al-Qaeda took refuge. These areas were then being used to attack NATO supplies as well as plan other attacks abroad. Events like September 11 attacks led U.S. to take strict actions against terrorists, as a result of which Pakistan became a target. Moreover, Pakistan's government and its intelligence agency (ISI) were also blamed for having links with the militants group involved in terrorist activities. Drone strike was a part of their effective measures taken against terrorism (Aslam, 2011).

According to New America Foundation's report the drone attacks by the U.S. on Pakistan started from 2004 in George. W. Bush's period. Bush stated after 9 September attacks that "We will make no distinction between the terrorists who committed these acts and those who harbor them." These attacks are also led by the Central Intelligence Agency (CIA). Federally Administered Tribal Areas most of which are located by the side of Afghan Borders are the main targets of such attacks. These attacks are carried out in the name of war against the terrorist

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leaders and in order to kill the terrorists and militants who have hidden themselves in those areas of Pakistan. Some refer it to the term “drone war”. The “drone war” has caused a lot civilian casualties which have been hidden under the figures of militant casualties. Basically these attacks are causing “collateral damage” in North West of Pakistan. By using the term “collateral damage”, the drone attacks are somehow being criticized as it means deaths, injuries, and damage to the property of people who are not in the military during a military operation (Merriam-Webster Dictionary). It is difficult to get the exact number of civilian as well as militant casualties.

According to New America Foundation report more than 2000 persons have been killed in the drone attacks carried out in Pakistan and most of those deaths were civilians. They declared 2010 as the deadliest year as far as casualties are concerned with 134 strikes inflicting over 900 deaths (U.S. Drone Attacks Are Ineffective In Pakistan, 2011). According to New America Foundation, there have been 44 strikes in George. W. Bush’s period that further increased under Obama’s administration. There were 53 drone attacks in 2009, 118 in 2010 and 53 attacks till 10th August 2011. A September 2012 report by researchers from Stanford University and New York University criticized the drone campaign, stating that it was killing a high number of civilians and turning the Pakistani public against the United States. The report, compiled by interviewing witnesses, drone-attack survivors, and others in Pakistan provided by a Pakistani human rights organization, Foundation for Fundamental Rights, concluded that only 2% of drone strike victims are "high-level" militant leaders (Zucchini &David, 2012). Pakistan strongly condemns these attacks but there are rumors that the Army Chief of Pakistan AshfaqPervaizKayani has secretly allowed the U.S. for such attacks in 2008. This is an ongoing issue between U.S. and Pakistan.

The debate over the collateral damage continues among both the states. George W. Bush vastly accelerated the drone strikes during the final year of his presidency. Obama has increased these attacks to destabilize Pakistani civilian government and the attacks of 14 and 16 February 2009 were against training camps run by BaitullahMehsud. U.S. justifies these attacks on the basis of self-defense, war on terrorism, world peace, and the list of justifications goes on(US Preemptive Doctrine). On the other hand, if we closely observe the International Humanitarian Law, Concept of Sovereignty under Article 2(4) of United Nation Charter, Human Rights Charter, Resolution 1368, 1373 and 1540 of United Nation Charter, Article 51 of International Law we can clearly observe the violation of all these by U.S. through carrying out drone attacks in Pakistan. U.S. attacks fail on all these accounts. These strikes are using inappropriate and deceptive force by the unlawful combatants of CIA causing collateral damage in Pakistan.

Rationale

Drone strikes carried out in Pakistan are causing a lot of problems for Pakistan’s sovereignty and civilians are also becoming a victim of it. It is the need of time to understand that when such attacks come under the violation of state’s sovereignty then how they have been justified due to which Pakistan government has been unable to tackle with the problem. The purpose for conducting this study is to analyze the legal justifications of drone strikes conducted in Pakistan by U.S. and to understand if they have violated the International Laws, UN Charter, International Humanitarian Law and most importantly Pakistan’s sovereignty.

Hypothesis

US led drone strikes in Pakistan are a clear violation of International Humanitarian Law, International Law and rules of sovereignty of a state.

Research Questions

- 1) What is the background of Drone strikes?
- 2) Are drone attacks violating the Human Rights Charter?
- 3) Are drone attacks violating the International Humanitarian Law?
- 4) Are drone attacks violating the sovereignty of Pakistan?
- 5) What is the stance of UN and other international organizations over Drone Attacks?
- 6) How the U.S. justify these attacks?
- 7) Are these attacks legal, keeping in view the answers to the above mentioned questions?

Research Objectives

- 1) To give a brief explanation of the drone technology.
- 2) To review the literature on the legality of drone strikes in Pakistan by the U.S.
- 3) To analyze the effects of Drone Attacks on Pakistan through view point of different experts and scholars.
- 4) To understand the Human Rights Charter and international concept of state sovereignty in detail.
- 5) To understand the stance of International Humanitarian Law and International Law over this issue.
- 6) To analyze the justifications given by the U.S. over such attacks.
- 7) To recommend policy for protecting its territorial sovereignty in the light of International Law to government of Pakistan.

Statement of Problem

The drone attacks in Pakistan by the U.S. are violating its sovereignty and International Humanitarian Law but still Pakistan is unable to stop them.

Literature Review

A lot of work has been done on drone attacks in Pakistan and the legality of such attacks. This is so because it's an important issue and the International world is concerned about it. The 11 September attacks on U.S. played very important role in formulating and changing the American foreign policy towards Pakistan. The former president of Pakistan Pervaiz Musharraf decided to support U.S, in war on

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terror. As a result of this financial and diplomatic support was provided to Pakistan by U.S. Later on Pakistan was criticized for having a double-faced policy that meant that Pakistan is supporting U.S. in war on terror as well as supporting militant groups (BBC News, 2006). This was when U.S. adopted the policy of drone attacks in tribal areas of Pakistan where they thought that terrorists were hiding themselves. These areas are known as Federally Administered Tribal Areas (FATA). Pakistan has condemned these attacks in its territory but they still continue (Aslam, 2011). U.S. justifies these attacks. General David Petraeus, the former head of US CentralCommand, claimed that they are actually helping Pakistan by such attacks as these attacks are killing the terrorists taking refuge in Pakistan and harming Pakistan as well (Khan, 2008). Moreover, the former U.S. Secretary of Homeland Security, Michael Chertoff, justified that “international law must make it clear that the responsibility of sovereignty is the responsibility to make sure that your own country does not become a platform for attacking other countries”. He also claimed that international law must also recognize the need of a country to take actions against terrorism outside its own territory even if it demands preemptive actions (Dawn, 2008). U.S. has many justifications for the drone strikes. One of them is its responsibility being the great power. It is stated so because America has not just targeted the terrorists demanded by its government but also by other governments. Rashid Rauf’s example can be taken in this regard who was suspected mastermind of the 2006 plan to destroy the airline flying from U.K. to the U.S. (Aslam, 2011). Pakistan has been unable to clean the areas of FATA from terrorists and militants groups for which U.S. had to interfere (Jones, 2009).

Drone strikes have been justified on the basis of the purposes of these strikes. Many arguments have been proposed in this regard. It is being said that the most important purpose of these air attacks is to destroy the Al-Qaeda’s network and to prevent them from attacking U.S. Another reason behind conducting these strikes is to destroy Talibans in Afghanistan as well as in Pakistan which is causing instability in Pakistan (Roggio and Mayer, 2009).

Murphy (2009) discusses that the drone attacks by the U.S. in Pakistan can be considered legal only if they are conducted under specific circumstances. These circumstances are if Pakistan allowed these attacks, if these attacks are conducted as a self-defense against the non-state actors with the permission of UN Security Council or self-defense from Pakistan itself. The ground invasion by U.S. has been done in order to tackle the Talibans who have attacked the coalition forces in Afghanistan and have taken refuge in Pakistan. The government of Pakistan has always criticized this ground invasion by U.S. and claimed that such invasions have been made without the permission of Pakistan’s government. But the case of drone attacks is quite unclear. These attacks are said to be conducted without the consent of Pakistan government but there are records of such strikes which have been carried out from Shamsi airbase in Baluchistan. If Pakistan government has not given its consent over drone strikes then how can they be conducted from a Pakistani airbase? On the other hand if these strikes are conducted with the authorization of Pakistan’s government then the drone strikes are legal. If the Security Council had allowed these attacks then the debate of legality of drone strikes in Pakistan would have been different. Security Council has sanctioned many proposals after 9/11 attacks regarding this region but none of them are capable enough to declare these attacks as legal. According to Murphy (2009),

Drone attacks can be said as legal under the Article 51 of UN Charter which allows US to conduct cross-border attacks when the coalition forces were being attacked in Afghanistan. If this sort of justification is made for the drone attacks in Pakistan then it means that US is still defending the drone war under 9/11 attacks. Murphy called this justification under 9/11 attacks as “problematic”.

One of the justifications of drone war is the preemptive action taken against Al-Qaeda and Taliban. The Secretary of State, Daniel Webster, once said that the preemptive action is allowed when the state is left with no other mean. If we follow this statement of the Secretary, the case of Pakistan drone war is not well justified because U.S. has carried out various drone attacks in Pakistan out of which only one or two can meet the criteria of the statement whereas the rest of them don't (Davies, 2009). Another justification is made through International Court of Justice's order which was given during the Nicaragua case that if any attack is conducted towards a state by irregular forces from a particular state then that particular state can be held responsible for the attacks of irregular forces. But it has to be proved that there is a relationship between the State and the irregular armed forces. In case of Pakistan Drone wars, it needs to be proved that Pakistan government and all the militants groups are in connection and relation. This has not been proved yet as there are many militant groups which are fighting against Pakistan itself (Waisberg, 2009).

The advocates of the drone war call it as the “costless war”. They call it so because of two reasons; risk and army has been reduced from the battleground and drones seem cheaper than the other combat aircrafts with pilots. On the other hand, it may be not that “costless” as it looks like. Credibility cost, Political instability and Economic problems are the ones that Pakistan has to face due to U.S, led drone attacks in Pakistan. Those who criticize drone attacks also state that it is a short-term gain for which both the victim state and the attack-leading state have to go through long-term costs. Boyle pointed out that 83 percent of Pakistanis are in contradiction of the use of drone strikes against political extremists; 74 percent believe the US is an enemy; and 50 percent think that Pakistan must not accept aid from the US (Boyle, 2013).

This is a western opinion and one side of the story but interestingly, there are people with in Pakistan who support U.S. drone warfare within Pakistan, though they are very few in number. An interview of a CIA informant who is a Pakistani, ethnically a Pashtun, by SPIEGEL reflects his support. He stated that the drone attacks conducted by U.S, are the right thing to counter terrorism in Pakistan and better the situation in the tribal areas of Pakistan as the Pakistani government was unable to impose state laws over there and the tribal laws were all that matter. The Pakistan's government is just pretending to be against these drone strikes, creating a public show and propaganda. He, on the other hand, did not deny the risk of civilian casualties caused by a drone strike but mostly these civilians, though not Taliban themselves, are supporting the Taliban in one way or the other. The informant also accepted that the majority is against the drone strikes but there are many people in tribal areas that are in favor of it as they want peace in their region but they can't speak or raise a voice against Taliban as they are afraid of them. If anyone in the region says a word in favor of the drone attacks, he will be killed (Kazim, 2013).

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President Obama's tenure is said to be more destructive with reference to drone war than that of President Bush. It is said that during the first term of Obama as a president, the drone attacks increased six times more than they were conducted in Bush's tenure. Most of the citizens of America are unaware of this fact. There has been a long debate going on over the legality of the drone attacks in Pakistan in light of International and domestic laws. Such increase in drone warfare is taking the international system towards a "destabilized, violent and polarized" between those who possess drones and those who are being attacked by it. The Defense Secretary Leon Panetta has justified that drone attacks are more specific, cause least collateral damage and the only way to disturb the network of Al-Qaeda. Former CIA Director Michael Hayden argued that the drone attacks have made Pakistan no more a safe haven for Al-Qaeda. The chief counter-terrorism advisors of both President Bush and Obama have declared drones as ethical and necessary. As far as the collateral damage is concerned, there have been no exact facts and figures available according to which could be criticized or justified for example, John. O. Brennan, CIA's Director, clearly stated that there have been no civilian deaths during the drone strikes of June 2010 till June 2011. Whereas another American official stated that there were civilian casualties in "single-digits". Thus the debate between the effectiveness and critics of drone strikes continue (Boyle, 2013).

The Pakistan's democratic government has been continuously criticizing the drone strikes in the territory of Pakistan. Former President Asif Zardari and the Former Prime Minister Gillani have held the drone strikes responsible for increasing insurgencies and instability within Pakistan (Anonymous, 2012). The Former Foreign Minister of Pakistan, Hina Rabbani Khar, answered one of the questions over drone attacks in Pakistan by Tom Nagorski of Assia Society during her visit in New York and objected drone strikes by declaring them as "unlawful, illegal and counter-productive". She stated that before 9 September attack, there was only one suicide bomb attack in Pakistan and from 2007 till 2012 there have been 352 attacks within Pakistan killing the innocent people of Pakistan. These people are definitely are enemies as well. That is why we call these attacks as counter-productive as its not tackling the problem rather increased it. She also stated that "this has to be our war. We are the ones who have to fight against them. As a drone flies over the territory of Pakistan, it becomes an American war again. And this whole logic of this being our fight, in our own interest is immediately put aside and against is war which is imposed on us" (Asia Society, 2012).

Moreover a senior diplomat of Islamabad, Wajid Shams-ul-Hassan, has called drone strikes as a clear violation of Pakistan's sovereignty in an interview by the Bureau Investigative Journalism. He stated that the drone strikes in Pakistan are disturbing the Democratic institutions of Pakistan and by now there are very few in Pakistan who will side by America because of its counter-terrorism policy towards Pakistan. He explained it as a clear violation of the UN Charter as it has killed 2500 to 3000 people in Pakistan since 2004 (Woods, 2012). Jemima Khan also made a documentary criticizing drone attacks in Pakistan from a view point of a former American men involved in drone program and by taking the opinion of people residing in the attacked areas of Pakistan, mostly who have been disturbed by these attacks in one way or the other. The documentary explains that collateral damage has been caused by the drones striking the tribal areas of Pakistan which is totally not the right thing to do. Drone strikes can be the last option to tackle

terrorism. Primarily, other ways should be adopted and if they don't work then drone strikes can be used and justified. Unfortunately, this is not the case. Civilians are being killed but for public they are told to be militants. The main purpose of the drone program is said to be "to kill people and break things". With this motive one can imagine the outcomes of the program (Khan, 2013).

Research Methodology

The approaches that will be used in order to conduct this research will be historical, analytical, descriptive and interpretive. As there are not any as such facts and figures involved so basically it is a qualitative research. Sources to gather data and information are secondary. The design of this research is case study design.

Data Collection

Data collection has been done using various sites of World Wide Web, books, documentaries over drone strikes and newspapers. PDF articles were important source of data collection. Facts and figures related to drone strikes in Pakistan have been taken from online sources.

Results and Analysis

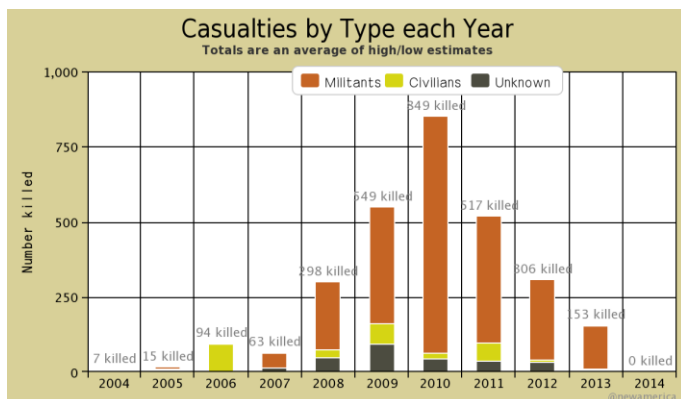
Casualties due to Drone Attacks in Pakistan

According to New America Foundation reports, drone strikes are being conducted in Pakistan since 2004 under Bush's administration but the strikes have exceeded in number in Obama's period. The exact number of drone strikes till the year 2013 in Pakistan according to New America Foundation is given below:

Total Strikes	370
Total Killed	2080-3428
Civilians Killed	258-307
Militants Killed	1623- 2787
Unknown Killed	199- 334

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The following table given by the American Foundation shows the number and type of casualties:



This is just one source of information. The distinction between killing of civilians and militants varies from study to study. According to Connell (2010), the number of militant leaders killed from 2004-2010 is 20 whereas the number of unintended victims varies from 750-1000.

Collateral Damage in Drone Attacks in Pakistan

In 2009, counter-terrorism experts David Kilcullen and Andrew Exum stated in The New York times that every intended target of drone attack in Pakistan involve 50 unintended targets. This indicates a higher number of civilian casualties. Connell (2010) mentioned the most popular example of high collateral damage is the drone strike of 23rd January 2009 which was the third day of Obama as a President of U.S. In the first attack four people were killed which were associated with Al-Qaeda but in the second attack the wrong house got hit by the drone which was actually the tribal leader's house. The whole family of the tribal leader died because of the wrong targeting of Drone.

Public Support towards Drone Attacks in Pakistan

Drone attacks in Pakistan have frightened the people of tribal areas. The counter-terrorism experts Kilcullen and Exam also support this statement. Pakistan's public is not happy with the drone warfare conducted by U.S. within the territory of Pakistan. The Pew Research Center provides some data regarding the Pakistan's public support for U.S. drone attacks:

Public support to U.S. drone strikes in year	Percentage of public support to U.S. drone strikes
2010	23
2011	21
2012	17

Jus in Bello and Jus ad Bellum

When it comes to legality of drone attacks in Pakistan, Jus ad bellum (Right to war) and Jus in Bello (Laws of War) are focused with reference to these attacks. Jus in Bello are the laws of war and the Americans are said to be not training its military according to the laws of war. One of the drone commander said that in his 17 years of duty he has not experienced training according to the laws of war. Another army lawyer said that he had experienced only 3 days of training according to the International Law during his army course. If the legality of drone attacks in Pakistan is questioned, the first thing that is to be observed is Jus ad Bellum which will indicate that whether U.S. has the right to use these attacks inside the territory of Pakistan or not. Jus ad Bellum provides us to observe that the drone attacks in Pakistan are conducted for the right cause, right intention, under legitimate authority, in terms of proportionality, as a last resort and for there is probability of success. All these things get cleared by an overview of UN Charter, International Law, general principles and the rulings of International Court of Justice in relevant cases. After getting a clear picture of all these things, it is observed that how this force can be used if fulfilling the requirements of Jus ad Bellum. For this, Jus in Bello is focused. Jus in Bello are the laws of war which explains that how force should be used. Again the details regarding the use way of using force in case of drone attacks can be referred from International Court of Justice, International Law and International Humanitarian Law.

Drone Attacks under UN Charter

The right to use force is prohibited by the UN Charter and is allowed only under specific conditions. Article 2(4) of UN Charter disallows the use of force except under certain minimum level. It states “All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations”. The specific conditions under which a country can use force are mentioned in chapter 7, article 51. One condition is that Security Council is allowed to use force if there is threat to peace or international security and the second condition is that if an armed attack has taken place, the country can use force in response to self-defense until the Security Council has taken measures to maintain peace and international security (UN Charter). U.S. used force against Afghanistan in 2001 in the name of self-defense justified in light of Article 51. Then again the Afghanistan government asked for U.S. help and thus, the U.S. involvement in Afghanistan was justified. Pakistan is also suspected of inviting the U.S. for help though the invitations have not been publically announced or officially made. But in Yemen, no such assistance was demanded from U.S. Moreover, U.S. claims that the drone strikes are conducted in name preemptive self-defense. Such a self-defense is supported neither in UN Charter nor in International Law. However, International Human Rights Law Standards of Enforcement can be considered for its justification.

Drone Attacks under Jurisdictions of ICJ

Force in any armed attack must be used in proportion to the attack in response of which the force is undertaken. The proportionality and intensity of action taken in the name of self-defense is not discussed in the UN Charter. However, the International Court of Justice has talked about it during the Nuclear Weapon case

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that the self-defense must be in proportion to the armed attack. It's a rule which is well-established in the customary International Law. The International Court of Justice declared by unanimous vote that "Any use of force by means of nuclear weapons that is contrary to Article 2, paragraph 4, of the United Nations Charter and that fails to meet all the requirements of Article 51, is unlawful".

In 1986, Nicaragua incident occurred between U.S. and Nicaragua. The International Court of Justice sided with Nicaragua when U.S. used force in the name of self-defense. At that time, International Court of Justice clearly stated that an act which led to usage of force for self-defense must be itself accounted as armed attack. It means that states can use force for a defensive purpose in reference to self-defense and also the state against which the force is used must be legally responsible for the armed attack (Connell, 2010).

As far as the cross-border incursion is concerned, the case of Congo vs. Uganda is important in which ICJ gave ruling in support of Congo. The matter was such that there was an armed group in Congo acting against Uganda and Uganda responded to that group by entering the territory of Congo. According to International Court of Justice Uganda violated the Article 2(4) of UN Charter. Defensive actions were supposed to be taken by Uganda by remaining within its own territories not by attacking the Congolese territory. This means a state must not be attacked or its territory must not be violated if the state is not declared to be involved with the armed groups.

Drone Attacks under International Human Rights Law

International Human Rights Law also disallows the use of force even by the government against a specific armed group. The military force of state can be used only in that case if the use of force is significant by that armed group. According to Murphy (2009), even a state seeks help from any other state on any International Organization, the helping state or organization is subject to use only that much force as that much allowed to the state itself. International Human Rights Law applies in all armed conflicts. International Human Rights Law Standards for the Law Enforcement allows the use of firearms in case of self-defense is required, prevention from a serious threat to life or arresting of a person who may pose such a threat, subject to the condition that in all these cases less extreme measures have been proved insufficient. If the events are still unavoidable, intentional use of lethal firearms can be made.

Distinction between Combats and non-Combats

Another important rule to be taken into account is the rule of distinction between combats and non-combats. It is important to make distinction while using force. International Law demands that non-combats must not be intentionally targeted. Only combats who directly take part in the armed attack must be targeted. Even it is ICRC's study of customary International Humanitarian first rule. According to ICRC, criminal movements, political help, financial backing, or indirectly war assisting acts are not measured as a conduct included in 'direct participation in hostilities' as much that the person involved in such things could be attacked.

Violation of Pakistan's Sovereignty

Violation of Pakistan’s sovereignty is the important concern for the critics of drone attacks led by U.S. in Pakistan. These attacks are said to be constantly violating the territorial sovereignty of Pakistan under the International Law. International Law defines sovereignty of a country and also states that “State has sovereignty over its territory and the invasion into its territory by the armed forces of any other State without permission is considered as breach of international law”. International Law disallows the use of force against any other state subject to the conditions that the attacked state has given its consent or the attacking state is responding in case of self-defense.

Legal Documents Concerned

All these concerns regarding the legality of drone strikes conducted in Pakistan by CIA of U.S. can be explained through legal documents and other principles. The following tables give a nutshell in this regard:

Legality Concerns	Documents Concerned
Self-Defense	UN Charter and Jurisdictions of International Court of Justice
Preemptive Self-Defense	International Human Right Law Standards of Enforcement
Violation of Sovereignty	International Law
Collateral Damage	International Human Rights Law
Proportionality of Armed Attack	Jurisdictions of International Court of Justice
Cross-Border Incursion	Jurisdictions of International Court of Justice
Use of Force	International Human Rights Law Standards of Enforcement and UN Charter
Distinction of Combats and non-Combats	ICRC Customary International Humanitarian Rule

Discussion

One of the most important concerns for the Pakistan’s political philosophers is the violation of Pakistan’s sovereignty that is being done by the CIA led drone attacks in the tribal areas of Pakistan. U.S. is not allowed to use force within Pakistan’s sovereignty unless Pakistan has allowed it to do so or U.S. has been doing this for self-defense keeping the International Law in concern. Moreover, if the government of Pakistan is not proved to be involved in the terrorist attacks then keeping the jurisdictions of ICJ during the Congo vs. Uganda issue in view, U.S.

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can't use drone strikes in the territory of Pakistan even in case of self-defense. When we analyze the former condition, it is worth noting that Pakistan has not formally made any complaint in the International community regarding using force in its territory without its permission, thus, giving consent in one way. Moreover, if drone strikes have been conducted using Pakistan's Shamsi airbase in Baluchistan from 2001 till 2011 then how is it possible that all these movements are not in knowledge of Pakistan's intelligence agencies and the government. If Pakistan could have created a big issue when NATO attack in 2011 killed 24 army officials of Pakistan and Pakistan demanded Shamsi airbase back from U.S. along with dismissal of NATO supply then how can't violation of sovereignty by drone attacks in Pakistan be highlighted internationally by Pakistan's government. This thing leads us towards three doubts. The Pakistan government and the Intelligence agency is secretly involved in these strikes with the U.S. and has consented for the drone strikes but in view of public's criticism in response to these attacks, Pakistan's government is avoiding to admit that it has given its consent. This can be viewed as double-faced policy of the government. The other option is that Pakistan's government has failed to control the situation in FATA and tribal regions and have asked for U.S. assistance. In order to avoid the International and national criticism of Pakistan's government failure, they have decided not to publically announce it. Another option could be that U.S. is financially assisting Pakistan and this could be viewed that Pakistan has been kept quiet by this financial funding. Thus, the issue of violation of sovereignty of Pakistan seems quite clear as Pakistan is involved somehow or the other. If we view the case even after Pakistan's consent for drone attacks, the International Human Rights law applies to the situation as collateral damage has been taking place since the start of these strikes. Killing the non-combats or civilians is illegal by International Law and ICRC's rule but in the drone strikes of Pakistan, the distinction has not been made. The drone strikes are no doubt targeting the High-Value Targets. Baitullah Mehsud is one of them. According to Jane Mayer, Mehsud was targeted in an area of South Waziristan in Pakistan when he was seen along with his wife and father-in-law on the roof top of a house. The drone hit the house and Mehsud was shot dead along with his wife and father-in-law as well as seven other people who were then declared as his body guards with a lieutenant. But the case is that 16 more strikes were previously made while targeting Mehsud and have caused deaths as well. Due to so much collateral damage, most of the public opinion in Pakistan has turned as anti-American opinion. America has turned the majority of Pakistan's citizen as against it due to these drone attacks in Tribal areas of Pakistan. This creates problem for the international image of U.S. on one hand and for Pakistan government in conducting its foreign affairs on the other.

Distinction between combats and non-combats is a serious issue faced by both the authorities of Pakistan as well as U.S. On the other hand, a Pakistani CIA informant in his interview raised this point that why would U.S. spend so much money just to attack non-combats civilians who are not a threat to them. The point then raises that U.S. might be considering the one residing under the militant's authority as helping them either directly or indirectly. There are different interpretations of combats and non-combat thus, one cannot agree on the same interpretation. For example, according to ICRC customary International Humanitarian rule, those who are indirectly involved in armed forces cannot be intentionally targeted. In case of Pakistan, the distinction gets difficult because of

factors like society, environment etc. There are two types of drone usage; usage in combat zones and usage in non-combat zones. In combat zones, military led drone strikes are conducted where the U.S. military is engaged in armed conflicts for example in Afghanistan. Such usage is easily justified but the other type of usage involves CIA led drone strikes which are not a part of U.S. military in areas where the military is not engaged in any sort of armed conflict. Pakistan is an example of experiencing such CIA led drone strikes. Therefore, they are civilians, not military, who directly involves in hostilities. It is criticized that as CIA is not a part of U.S. military then their conducting and operating drone strikes becomes a serious legal issue. Those who are allowed to directly involve in hostilities are lawful combats but those who don't have this right are unlawful. As CIA is not a part of U.S. military, is not allowed to directly take part in hostilities in Pakistan so they are unlawful (Dormann, 2003). Thus, the CIA led attacks make the justifications of drone attacks in Pakistan more difficult. The drone strikes, even if conducted after the consent of Pakistan, face this legal issue of distinction. U.S. as well as Pakistan's government seems failed in fulfilling the requirements of the rule of distinction. Drone strikes in Pakistan are heavily criticized on these bases.

The later condition for using force in Pakistan's territory is the reason of self-defense. U.S. do not rely its justifications for drone attacks in Pakistan only on the consent given by Pakistan but heavily relies on self-defense against Al-Qaeda and militant groups involved with the armed forces in Afghanistan. The UN Charter and the jurisdictions of the International Court of Justice can be viewed in this regard. If Article 2(4) of UN Charter is taken into consideration then U.S. cannot use drone attacks in name of self-defense unless Security Council has tried using its authorities in the area to control terrorism. But Security Council has not taken such notice. On the other hand if any member of Security Council has taken such measures of self-defense, they are supposed to be informed to the Security Council but no such report has been submitted by U.S. to Security Council. So drone attacks in Pakistan were definitely not the last possible measure against terrorism as no other measures prior to it have been taken either by U.S. or Security Council. Then U.S. calls drone attacks as a preemptive self-defense i.e. using force when there is no armed attack. Moreover, the Security Council Resolution 1368 states that September 11 attacks have allowed U.S. to act in self-defense.

U.S. used its force against Al-Qaeda in Afghanistan and this use of force was justified well in name of self-defense because the Talibans are said to be the de facto government of the state and helping Al-Qaeda openly. Thus, U.S. made its concern of self-defense against Al-Qaeda as well as Taliban. In that case, the government of Afghanistan was involved so self-defense was justified but when we talk about Pakistan, the entire scene seems different. After 11 September attack, suicide bombing in Pakistan is heavily increased. Pakistan itself is a victim of terrorism and the forces of Pakistan have been attacked many times by the terrorist activities. Pakistan's army men and police men are be-headed by these terrorists. Pakistan cannot be blamed as involved in terrorism. So this condition of self-defense which U.S. used for Afghanistan fails. Even if the Security Council Resolution 1368 has allowed U.S. for self-defense, still Pakistan has not been specified against whom self-defensive measures are to be used. Pakistan has not attacked U.S. If any individual of Pakistan is involved in the September 11 attacks then it would be Pakistan's government and military forces taking action against

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that person. U.S. still gets no right for attacking Pakistan's territory unless Pakistan has allowed it. U.S. can have armed conflict with Al-Qaeda but not with Pakistan.

U.S. drone strikes must meet the criteria of proportionality according to which if Pakistan has caused damage to U.S. by conducting armed attack then U.S. can use armed forces in proportion to the damage caused. The jurisdictions of ICJ in nuclear weapon case can be considered in regard of proportionality in armed attacks. In case of Pakistan drone attacks, this rule of war does not meet the criteria. If one person of Al-Qaeda is supposed to be targeted, several drone strikes are conducted in which many other casualties occur. Roughly speaking, 12-6 persons at minimum are killed in proportion to one person. But when U.S. justifies its attack as a preemptive self-defense, the point of proportionality is minuses there.

CIA is conducting these strikes in order to counter terrorism and kill the terrorists. Drone strikes can be "Unmanned Target Killing" as terrorists are targeted by the drones. If drones are used for the target killing, they should fulfill some conditions; target killing is taking place during an armed conflict, the armed conflict is an act of self-defense keeping the UN Charter in view and there are no chances left for arrest provided by IHL. The drone strikes in Pakistan mostly don't fulfill these conditions of target killing (Connell, 2010). Another important concern regarding the target killing by drone strikes is humanity. Critics of drone attacks point out that while Baitullah Mehsud was attacked, it was told by American officials themselves that it was clear that he was receiving intravenous transfusion. According to ICRC customary international humanitarian law 2005, a person who is defenseless because of unconsciousness, wounds or illness cannot be attacked.

After focusing on all the legality concerns of U.S. drone attacks in Pakistan, it is to be noticed as well that how much is there probability for success in these attacks. Probability of success is an important part of Jus ad Bellum. By over viewing the so far performance of these strikes, more problems rather than solutions have evolved. Number of damages and negativity is more than solutions and positivity for both U.S. and Pakistan. Thus, the probability of success seems very less in case of drone attacks in Pakistan.

The literature that has been reviewed and discussion correlate with each other. All the points discussed above have been again and again mentioned in various studies and researches by different western as well as different Pakistani political scientists and experts. Pakistan has been criticized for their ineffective attitude and U.S. has been criticized for its insensitive approach towards drone strikes in Pakistan.

Conclusion

Keeping all the above discussed points of legality of drone strikes in Pakistan in view, it can be concluded that the legality of drone attacks is not well justified by U.S. government on the basis of self-defense under the legal documents concerned. Even though if Pakistan has given its consent to U.S. secretly, it has not been publically announced which means that the position of U.S. drone strikes still remain an illegal concern. U.S. drone strikes in Pakistan can be viewed as a wrong step as it has brought U.S. with international criticism and public hatred. As Pakistan has not publically given its consent then U.S. is violating the sovereignty

of Pakistan. U.S. is also violating the International Law and Human rights by the collateral damage being done by drone attacks. Moreover, U.S. is using drones for preemptive self-defense which means force against terrorists but that force is not only hitting terrorists but the territory of a sovereign country as well as civilians of that country which has not been allowed by any law in any case of self-defense. On the other hand, the government of Pakistan also does not seem concerned about this issue because being a sovereign state Pakistan has full right to raise voice if any other country tries to overrule its laws within its territory but Pakistan has not raised its voice on the International grounds. Only protests and public addresses have been made on national level for public show only in order to avoid criticism of the respective party in power. This attitude of Pakistan's government proves it to be ineffective in controlling drone strikes in its tribal regions. So the problem lies in acts of both U.S. and Pakistan. Not only U.S. is responsible for the illegal drone attacks but also Pakistan's ineffectiveness or may be the double-faced policy of Pakistan towards U.S. and its public, has made these drone strikes possible in Pakistan.

Recommendations

- 1) Pakistan should be clearer about its stance towards drone attacks by U.S. on international grounds i.e. if Pakistan has any problem regarding it, it should mention it to the international community openly.
- 2) Pakistan must use an open diplomacy towards U.S. regarding the allowance of drone attacks in its territory so the public remains clear about it.
- 3) U.S. should have asked Security Council to take actions in Pakistan rather than doing it on its own. U.S. can still adopt this method.
- 4) U.S. should have used drone attacks as the last resort not the first possible option against terrorism especially in any other's country territory.
- 5) U.S. and Pakistan both are victims of terrorism so instead of criticizing each other, should work in collaboration but rule of equality should be adopted in this collaboration otherwise U.S. would do what it feels like doing because of its great powers.

Limitations

- As there was a lot of data available on legality of drone strikes in Pakistan, collecting and organizing the data was the main problem.
- There have been a long debate over drone attacks and their legality from both sides; U.S. as well as Pakistan so it was difficult to conclude about the legality of drone attacks in Pakistan as both sides justifies their view points with facts and figures.
- The vague and double-faced policies of both the countries made the research a little difficult.

References

- Anonymous. (2011). U.S. Drone Attacks Are Ineffective In Pakistan. Islamabad: Conflict Monitoring Center
- Anonymous. (2012). Drone attacks adding to insurgency: PM'. The News. Pakistan. Retrieved from <http://www.thenews.com.pk/article-32961-Drone-attacks-adding-to-insurgency:-PM>
- Asia Society, (2012). (Interview). Tom Nagorski's interview of Hina Rabbani Khar about the "drone war." Retrieved from www.youtube.com/watch?v=qoODMjf4Us8
- Aslam, M. W. (2011). A critical evaluation of American drone strikes in Pakistan: legality, legitimacy and prudence. UK: Department of Politics, University of Surrey
- Boyle, M. J. (2013). The costs and consequences of drone warfare. *International Affairs*, 89 (1), The Royal Institute of International Affairs.
- Cole, C. & Wright, J. (2010). What are drones? Peace News.
- Connell, M. E. (2010). Unlawful Killing with Combat Drones, A Case Study of Pakistan, 2004-2009 (Legal Studies Research Paper No. 09-43)
- Connell, M.E. (2010). Drones under International Law: Washington University Law.
- Davies, N. (2009). The Caroline case and American drone strikes in Pakistan. *Peace Review*, 21 (4), 429–436.
- Dörmann, K. (2003). The legal situation of “unlawful/unprivileged combatants. Retrieved from <http://www.icrc.org/eng/resources/documents/misc/5lphbv.htm>
- Johnston, P.B. & Sarbahi, A.K. (2013). The Impact of US Drone Strikes on Terrorism in Pakistan and Afghanistan: Rand Corporation.
- Jones, O. B. (2009). Pakistan: eye of the storm. London: Yale
- Kazim, H. (2012). Interview of CIA informant by German organization. (Interview). Retrieved from <http://www.spiegel.de/international/zeitgeist/interview-pakistani-cia-informant-on-drone-warfare-and-taliban-a-937045.html>
- Kennett, L. (1982). A History of Strategic Bombing. New York: Charles Scribner's Sons
- Khan, A.N. (2011). Legality of Targeted Killings by Drone Attacks in Pakistan.
- Khan, I. (2008). Petraeus asked to try the political approach. Retrieved from Dawn News: <http://www.dawn.com/news/426856/petraeus-asked-to-try-political-approach>

Khan, J. (2013). Unmanned: America's Drone Wars (Video File). Retrieved from <http://www.pakistantv.tv/2013/10/26/jemima-khans-full-documentary-drone-attacks-unmanned-americas-drone-wars-26th-october-2013/#sthash.vONZQR0p.17I5b2Kn.dpbs>

Legality of Drone Attacks in Pakistan. Center for Research Security Studies. Retrieved from crss.pk/downloads/...Posts/Legality-of-US-Drone-Strikes-in-Pakistan.pd on 4th October 2013.

Murphy, S. (2009). The international legality of US military cross-border operations from Afghanistan into Pakistan. (GWU Legal Studies Research Paper no. 451). DC: Washington University Law School. Retrieved from: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1296733

Nawaz, S. (2011). Drone Attacks inside Pakistan, Wayang or Willing Suspension of Disbelief: *Georgetown Journal of International Affairs*.

Pakistan's Taliban in peace deal. (2006). Retrieved from BBC News: news.....

Roggio, B. & Mayer, A. (2009). Analysis: a look at US airstrikes in Pakistan through September 2009. *The Long War Journal*. Retrieved from: http://www.longwarjournal.org/archives/2009/10/analysis_us_airstrik.php

Taylor, A. J. P. (1977). Jane's pocket book of remotely piloted vehicles robot aircraft today. In J.W.R. Taylor & K. Munson (Eds.), New York: Collier Books

Tice, B. P. (1991). Unmanned Aerial Vehicles – The Force Multiplier of the 1990s. *Airpower Journal*.

Waisberg, T. (2009). The Colombia-Ecuador armed crisis of March 2008: the practice of targeted killing and incursions against non-state actors harbored at terrorist safe havens in a third party state. *Studies in Conflict & Terrorism*, 32 (6), 476–488.

Woods, C. (20102). CIA drone strikes violate Pakistan (Interview). Retrieved from <http://www.theguardian.com/world/2012/aug/03/cia-drone-strikes-violate-pakistan>

Zucchini & David (2012). Study Slams Drone Use in Pakistan (Report, Los Angeles). Stanford University and New York University