

Targeted Killings in Pakistan: A Defense

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Abstract

Since coming to light, the CIA's UAV program in Pakistan has drawn criticism and raised several questions concerning its legality within International Law and overall effectiveness as a tool of counter-terrorism and foreign policy. Islamabad has little to no control over the tribal regions where the UAVs operate and the influence of the Taliban over it has only grown since they relocated into the area. Using the Caroline case of 1837 as precedent along with Article 51 of the United Nations Charter, one can argue that self-defense against armed attacks by non-state actors within a country we are not at war with are permissible under International Law. Furthermore, Predator strikes have proven to be an effective counter terrorism tool, comparable to Israel's own targeted killing program. Not only do Predators introduce greater discrimination in targeting than large-scale warfare would permit, despite the civilian losses, they are the most expedient and discriminatingly humanitarian method to neutralize a terrorist without unduly jeopardizing either civilians or American forces. They are legal under International Law and the United States needs to actively defend its position on the international stage lest it lose its ability to utilize it in the future.

Key Words: International Terrorism, Insurgency, Targeted Killings, Counterterrorism

Introduction

Last August, during a hot summer evening in South Waziristan, within Pakistan's Federally Administered Tribal Area (FATA), Baitullah Mehsud, the leader of the Taliban in Pakistan, was reclining on the roof of his father in law's house (Mayer). His wife and uncle, a medic, were also in his company (ibid.). Approximately 7,046 miles away at the Central Intelligence Agency (CIA), officials were receiving video of the terrorist with such clarity that they could discern that Mehsud, who suffered from diabetes and a kidney ailment, was receiving an intravenous drip (ibid.). The video was being transmitted via satellite from an armed MQ-1 Predator drone that was orbiting overhead. Satisfied that they had the correct individual, the CIA operator fired an AGM-114 Hellfire missile at his target. Once the dust settled all that remained of Mehsud was a detached torso (ibid.). His seven bodyguards, a lieutenant, wife, uncle and his in-laws also perished (ibid.).

The government of Pakistan held Baitulla Mehsud responsible for the majority of terrorist attacks inside the country, including the assassination of Prime Minister Benazir Bhutto and the bombing of the Marriott hotel in Islamabad (ibid.). He was additionally wanted by the United States government for cross-border operations into Afghanistan, where he helped to carry out countless suicide bombings and attacks against U.S. and coalition troops (ibid.; Bergen & Tiederman).

Mehsud's death was another notch for the CIA's ongoing and semi-covert Counter-terrorism (CT) program that utilizes unmanned aerial vehicles (UAV) to target Al Qaeda and Taliban operatives within Pakistan's lawless FATA region. Since coming to light, the CIA's program has drawn stark criticism and raised several questions from detractors, primarily dealing with its legality within International Law. Its overall effectiveness as a tool of counter-terrorism and foreign policy has also been hotly debated. This paper will address the questions raised by this operation and will attempt to defend it as a viable and effective tool of CT policy against a non-state actor.

FATA

In October of 2001, just under a month after the attacks of 9/11, the United States and its allies began combat operations in Afghanistan with the express purpose of toppling its authoritarian Taliban government and denying Al Qaeda safe haven. One month later the Taliban government lay toppled and Al Qaeda uprooted. The surviving Taliban and Al Qaeda leadership sought refuge across the border in neighboring Pakistan, specifically in a region known as the Federally Administrated Tribal Areas (FATA).

The FATA comprises a region buffering Islamabad-controlled Pakistan and the eastern border of Afghanistan (Johnston & Taylor). It was originally acquired by the British in the 19th Century as a buffer between British controlled India and Russia, but was never successfully controlled (FATA). In an attempt to divide and conquer, the land was subsequently divided into tribal principalities, each with a British assigned representative holding wide powers who reported to the General-Governor of India (*ibid.*). In the end and despite numerous military campaigns, the British hold on the region was at most tenuous, and the tribal leaders of the region signed a loyalty agreement to Pakistan's government upon their independence in 1947 (*ibid.*).

To that end, the FATA has always retained semi-autonomous control over its own affairs (*ibid.*). The area is considered relatively lawless except for the practice of tribal law and the recent increase of a particularly brutal version of Sharia law, based on fundamentalist Islamic beliefs promoted by the Taliban. Islamabad has little to no control over the region and the influence of the Taliban over it has only grown since they relocated into the area.

The lack of governmental oversight along with the tribal customs native to the region and its mountainous geography offered the perfect asylum for Al Qaeda and Taliban operatives on the run from U.S. forces.

UAVs

Although they have only recently come into the spotlight, UAVs have been in use since before manned flight (Krock). From its first iterations as surveillance kites in the early 1900s, UAVs evolved into unmanned explosive laden aircraft such as the infamous German V-1 rocket and intelligence gatherers like the AQM-34 drones used during the Vietnam conflict (*ibid.*). Throughout the last century, UAVs have gained prominence as viable tools with which to safely conduct both spy craft and war craft without endangering human lives (*ibid.*).

Manufactured by General Atomics Aeronautical Systems Inc. in San Diego, the most popular drones in the U.S. arsenal, and the ones employed by the CIA in their operations, are the MQ-1B Predator and its larger and more lethal variant, the MQ-9 Reaper (USAF). Operated

remotely from either the United States or from within the combat theater itself, the aircraft are approximately 27 feet long with a 55 foot wingspan (36 feet and 66 feet respectively for the MQ-9) and are capable of conducting reconnaissance as well as close air support (ground strikes in support of troops) with two Hellfire missiles in the MQ-1B and the additional capability of carrying laser guided bombs on the MQ-9 (ibid.). Their ability to remain relatively undetected, they have a service ceiling of 50,000 feet, and long loiter times make them an invaluable intelligence and combat asset.

Currently the United States reportedly operates two separate drone programs in the Afghanistan-Pakistan region (Bruno). One, run by the U.S. military, focuses on surveillance and support operations in Afghanistan (ibid.). The other, and the focus of this paper, is believed to be operated by the CIA from within Pakistan's tribal regions.

Drone Operations

With his accession into office in 2008, U.S. President Obama inherited two wars, which had been ongoing for close to a decade. Although the war in Afghanistan had successfully routed the Taliban and Al Qaeda from their homes, their ability to conduct strikes into Afghanistan and then slip across the border into the relative safety of Pakistan, a U.S. ally on the "War on Terror," posed a strategic and diplomatic problem for the administration.

Al Qaeda established the FATA as their new home base and mounting evidence pointed to the fact that both Al Qaeda and its affiliates had set up training camps in the region and were utilizing their new home as a launching point for international operations (Bergen & Tiederman). The personnel who masterminded the July 7, 2005 transit system attacks in London that killed 52 people had trained in the tribal regions, as well as two Germans and a Turk who were apprehended while planning to attack Ramstein AFB, in Germany in 2007 (ibid.). Additionally, Osama Bin Laden and his deputy, Ayman al-Zawahiri, presumed to be living in the FATA, continued to release audio as well as video tapes touting their continued operational status (ibid.).

During his election campaign, then candidate Obama stated "if we have actionable intelligence about high value terrorist targets and [then Pakistani] President [Pervez] Musharraf won't act, we will," while in another speech he commented "it would be clear that if Pakistan cannot or will not take out al Qaeda leadership when we have actionable intelligence about their whereabouts, we will act to protect the American people. There can be no safe haven for al Qaeda terrorists who killed thousands of Americans and threaten our homeland today (Anderson, p.2, 2009)." Promising he would utilize drones to "take the fight to Al Qaeda," the Obama administration embraced the use of drones to strike militants as a cornerstone of its counter-terrorism policy (Anderson, p.26, 2010). Only three days into his administration, President Obama ordered three Predator strikes, destroying two terrorist compounds and claiming the life of a high value target (Anderson, p.2, 2009).

Although accurate data is hard to come by, most of it is culled from different news sources throughout the world and statistics are not released by the U.S. government, the number of terrorist and Taliban operatives killed by drone strikes is extensive, to say the least. Two leading aggregators of such information, the Long War Journal's *Senior al Qaeda and Taliban leaders killed in US airstrikes in Pakistan, 2004 - 2010* and New America Foundation's *Analysis of Drone Strikes in Pakistan* actively collect statistics on the strikes. According to the two websites, drone strikes have accounted for roughly between 729 and 1,321 militant (Taliban &

Al Qaeda) deaths, with the majority of the strikes taking place within North Waziristan (Roggio & Mayer; Bergen & Tiedermann).

Among these numbers lie some of Al Qaeda's most wanted personnel, including Al Qaeda's leader in Afghanistan, its senior military commander in Afghanistan, the chief of their WMD program, master bomb makers, a senior commander from the Helmand province, an explosives expert from Saudi Arabia and the chief of Al Qaeda's intelligence branch as well as personnel wanted for involvement in the 1998 African Embassy bombings and Pakistan's Taliban leader (Roggio & Mayer). Additionally, a member of Abu Nidal, responsible for the 1986 hijacking of Pan Am flight 73 in Karachi was also killed (ibid.).

Targeted Killings under International Law

With such an impressive record of accomplishment as a counter terrorist tool, one would think the international community would applaud the efforts, but certain aspects of the operation have drawn international criticism. Although targeting terror suspects with UAVs in officially declared combat areas is generally deemed legal, the use of drones outside the boundaries of a declared combat zone has sparked criticism (Bruno). The fact that these missions are believed to be operated by the CIA has only added fuel to the fire (ibid.).

Although no official statement has been made, a number of disclosures by senior U.S. officials and a statement by CIA Director Leon Panetta calling drone strikes "the only game in town" in targeting Al Qaeda leaders in the FATA have all but confirmed the identity of the man behind the curtain (ibid.). Its use by civilians vice military personnel, and issues regarding the collateral damage caused and the legal justification have all become points of contention (ibid.).

By far the most argued case against the continuation of CIA drone operations in Pakistan is its legality under International Law (IL) and the United Nations Charter. The strongest case against the continued killings is the argument that the killings are extrajudicial in nature, in other words, assassination or murder and thereby classified as war crimes. Critics, comprised mainly of Non Governmental Organizations (NGOs) such as Amnesty International, law experts and some government officials argue that the alleged terrorists are killed without an attempt at arrest and the ability to hear the evidence against them in a court of law. Additionally, critics such as eminent legal scholar Gary Solis state that in order for targeted killing to be lawful,

“An international or non international conflict must be in progress. Without an ongoing armed conflict the targeted killing of a civilian, terrorist or not, would be assassination... (Anderson, 2009, p.10).”

Along the lines of Solis's argument, others argue that the fact that these operations are taking place outside of a recognized combat zone in the territory of a state not involved in hostilities is in violation of Pakistan's sovereignty and in direct violation of the United Nations Charter, of which the United States and Pakistan are both signatories (UN, 2006).

To summarize, the major legal arguments against the practice state that the United States is carrying out attacks on a nation that we are not at war with, without an attempt to arrest the individuals being targeted and that in doing so, it is in blatant violation of International Law.

A Legal Case for the Killings

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The best legal case for the targeted killings of terrorists by CIA operated drones is that of self-defense. Using the Caroline case of 1837 as precedent along with some earlier events and Article 51 of the United Nations Charter, one can argue that self-defense against armed attacks by non-state actors within a country we are not at war with are permissible under International Law.

The Caroline case affirmed the ability of states to employ the use of force in self-defense by non-state actors (Paust, p.7). The case stemmed from an incident involving the British-Canadian use of armed force within the territorial waters of the United States (ibid.). Acting in self-defense against insurgents who were routinely harassing the British and operating both from British controlled Canada and the United States, the British government destroyed the vessel Caroline that had been resupplying the insurgents from within the United States (ibid.). The attack resulted in two deaths, several wounded and the burning and subsequent loss of the ship (ibid.). Although the United States argued that the British could have waited until the Caroline crossed into British waters, they agreed that attacks by non-state insurgents could trigger the state's right of self-defense under international law "within the territory of a power at peace (ibid., p.8)"

The U.S. government did call for strict limitations on such acts, stating:
"At peace, nothing less than a clear and absolute necessity can afford ground of justification," and that use of such force should only be permissible when the "necessity of self-defense" is "instant, overwhelming, leaving no choice of means, and no moment for deliberation"; since the act, justified by the necessity of self-defense, must be limited by that necessity, and kept clearly within it. (ibid.)."

It is also important to note that the United States was not behind the insurgency and the British did not claim that the insurgent's attacks were attributed to the U.S. government. Although the United States did not feel the attack met the aforementioned stipulations, the fact remains that both sides established the ability of a state to use force outside the context of war and without consent of the territorial state from which the non-state actor attacks originated (ibid. p.10)

Another notable use of such force was the United States' occupation of Amelia Island in 1817, then under Spanish control, due to the inability of the Spanish government to control piracy originating from its islands off the Florida coast. The United States took similar action against Seminole tribes for ongoing attacks against the U.S. originating from Spanish controlled Florida (ibid.). As with the Caroline, both states were at peace and neither one considered the acts a violation of sovereignty nor felt a need for consent prior to the attacks (ibid.).

Article 51

Critics have claimed though, that the United Nations Charter has superseded the Caroline precedent and the attacks into Pakistan's FATA violate the UN Charter (Shah). They specifically cite Article II, Ch.4, which 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 (U.N., 1947)”

The ability to conduct acts in self-defense though, is defended in Article 51 of the charter when it states the following:

“Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security (U.N., 1947)”

Nothing in Article 51 of the Charter stipulates that it cannot be a non-state actor against which measures are taken, or that the state must gain consent from whence the instigating attacks are originating although one could surmise that such consent is implicit through treaty as a signatory of the U.N. Charter (Paust, p.15).

The United States has consistently held that self-defense encompasses three categories: 1) Self-defense against an actual use of force or hostile act; 2) preemptive self-defense against an imminent use of force, and 3) self-defense against a continuing threat (Anderson, 2009, pp.18-19). It has served as a source of customary law for the United States and as justification for preemptive and preventative self-defense (ibid.).

It is not just the United States that prescribes to this doctrine though, a number of other states have had to deal with belligerents who have sought refuge in neighboring states. That might account for the lack of formal outcry from states regarding the targeted killings in Pakistan. Israel is an obvious example, as are Turkey’s incursions into Northern Iraq to fight Kurdish insurgents and Colombia’s attacks of FARC guerilla camps in Ecuador (ibid., p.21). In fact, two separate opinions by judges of the United Nations’ own International Court of Justice (ICJ) in 2005 stated the following:

“...if the ICJ still endorses a literal reading of Article 51, limiting self-defense to an attack by another state, then the ICJ is no longer consistent with either state practice or the practice of the Security Council. (ibid., pp.20-21)”

Now that the ability for a state to defend itself against non-state actors has been established, regardless of consent, we must define the link between Al Qaeda and Taliban operatives and the “armed attack” the United States is defending against, specifically the attacks of September 11, 2001. These attacks resulted in the United States, backed by U.N. Security Council resolutions authorizing force and a near-declaration of war by Congress in the form of the “Authorization for Use of Military Force”, invading Afghanistan (ibid., p.16). Moreover, the United States enjoyed what appeared to be widespread agreement from the international community that it was acting within its rights and authorized to undertake military action against the perpetrators (ibid.). If the same terrorist can be killed in Afghanistan without a complaint from the international community, one must wonder what new rights he magically acquires when he walks across the border into the FATA, an ungoverned region where he can seek refuge, continue to plot, and launch attacks against the United States.

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Some continue to argue that the U.S. would need the express consent of Pakistan to carry out its acts of self-defense. Even though the preceding paragraphs have argued against that, one must take at face value that unlike strikes such as the 1998 cruise missile attack against Al Qaeda training camps in Afghanistan, sustained drone operations originating from Shamsi airfield in Pakistan could not be taking place without the express consent of the Pakistani government (ibid., p.13; Page; Bruno). In fact, one may surmise that the Pakistani government, despite its public rhetoric, is welcoming of the strikes in light of Al Qaeda's increased terrorist activity within the state and Ayman Al-Zawahiri's desire to destabilize the apostate government [of Pakistan] (Hirsh, et al.).

The Law Enforcement Option

In response to the call by several NGOs that the United States work with the Pakistani government in an attempt to arrest these targets, one must wonder the means by which this would be accomplished. Although it is correct to believe that the ideal manner by which to bring retribution upon these terrorists is through the legal process, it would imply that we are dealing with a government possessing such capabilities.

As mentioned earlier in the paper, the region has remained semi-autonomous throughout history specifically because of the difficulty in securing the area. Not only does it encompass a sizeable parcel of harsh mountainous terrain, the Pashtunwali code by which most in the region live by has been exploited by Al Qaeda and the Taliban for protection (Shah). Furthermore, recent attempts by the Pakistani military to enter the region and arrest such individuals have resulted in heavy fighting and little to no gain.

As in Somalia, an attempt to send in U.S. troops into the region to capture these individuals would be foolhardy at best and cost untold casualties on both sides (Anderson, 2009, p.7). The idea that these individuals could be prevented from carrying out further terror attacks by issuing an arrest order to the Pakistani government is tantamount to Israel demanding that the Palestinian Authority hand over all the Palestinians involved in plotting against it (Statman).

Collateral Damage

The issues that underlie the criticisms from the international community seem to be primarily rooted in the possibility of excessive collateral damage (Anderson, 2010, p.28). Inaccessibility to the region and inflated statistics released by the Taliban for propaganda purposes pose a dilemma in acquiring accurate numbers of civilian casualties. Pakistani news agencies take data from U.S. media agencies as admission from the U.S. government, but neither has access to the region (The Daily Times, 2010). The Long War Journal (LWJ) website is considered on the more conservative end of the spectrum regarding this data. Although data is not available for the first two years of the strikes, 2004-2005, the LWJ reports that out of the 1,325 Taliban and Al Qaeda (along with affiliates) deaths, 97 civilian casualties were reported, for an overall ratio of 14 militants killed for every 1 civilian death (Roggio & Mayer).

Aside from the loss of innocent life, we must additionally evaluate how the cost of such deaths affects public opinion towards the United States. Much has been said by the media of the outrage directed at the United States over the loss of innocent life by the Pakistani people. Even though their outrage is well founded, little mention is made of the effect that the Taliban has had on the lives of the people living within the FATA. The people of Waziristan, one of the most

targeted regions within the FATA, have had to endure a brutal occupation under the Taliban and Al Qaeda (The Daily Times, 2010). A recent Time magazine cover bore witness to the brutality of the Taliban, who ordered that an 18 year old girl have her nose and ears cut off for fleeing her abusive in-laws while another article told of the lashing and execution of a pregnant woman for having an illicit affair (Time; Dawn). Additionally, the Taliban has executed dozens of FATA citizens that it suspects of spying for the U.S. with no outcry from the Pakistani government or the international community (Hirsh, et al.; The Daily Times, 2010).

Notwithstanding the fact that the loss of every innocent life is tragic, from a strategic and realist standpoint the state must weigh the option of killing an innocent in order to save the lives of hundreds of its own citizens. There is no set way to judge "disproportionality," and it is ultimately up to the commander and a good faith requirement from the law that he/she decide if the target is worth risking an innocent life (Anderson, 2010, p.33).

A More Humanitarian Option

Regardless of the possibility of civilian deaths, if the United States continues its policy of targeted killings, which by all signs it appears to, then the humanitarian benefits of drone strikes far outweigh their costs of the alternative. Predator strikes introduce greater discrimination in targeting than full-scale military assault or large-scale warfare would permit (Anderson, 2009, p.8). They allow the United States to seek out those who mean it harm without having to launch a full-scale invasion or placing U.S. forces at risk. Without placing U.S. and coalition forces at risk, the government can go after the terrorist without the fear of a counterassault that might increase the use of force and cause more collateral damage (Anderson, 2009, pp.7-8).

Although some may see military action on the ground more palatable than a standoff killing, invading a hostile area that is predominantly civilian would inevitably result in the death and injury of far more innocent people than those caused by targeted drone strikes. In addition, this measure is more commensurate with the conditions of self-defense, that those killed be responsible for the threat being posed (Statman). Furthermore, as a strategic option, drone strikes are a prudent alternative to what may otherwise result in a larger, costlier and undesirable conflict (Anderson, 2010, p.32).

Some critics of the drone operations would rather see Pakistan go after these terrorists, but from a humanitarian standpoint, one need only consider the political unreliability of their government along with the ineffectiveness of the Pakistani army and its penchant for long range artillery barrages over counterinsurgency (The Daily Times, 2010; Anderson, 2009, pp.8-9). Pakistani researchers state that attacks by the Pakistani military have caused far more collateral deaths than those by drones with relatively no success (Rodriguez & Zucchini).

Does It Work?

In the end, what matters to the policy makers is whether the targeted killings are an effective means of counter-terrorism. The nature of transnational terrorist groups means that large-scale military operations will not be particularly effective against them (Anderson, 2009, p.7). They are few in number, dispersed across several borders and more efficiently targeted through narrower means (ibid.). Although overt warfare is most useful in eliminating a regime

that harbors terrorist groups, it is not an effective means of going after the terrorists themselves (ibid.).

A former CIA officer compared the Predator strikes to attacking a beehive one bee at a time, "you can kill some very important bees, but the hive is going to remain (Raddatz, p.42)." What counter-terrorism specialists are counting on though is that such strikes will eliminate not just the queen bees, but also their most valuable workers, those with the knowledge that takes years to acquire, such as some of the bomb makers and paramilitary specialists who have been killed. While a long list of charismatic leaders willing to take the fight to the U.S. will probably remain, those who possess the knowledge to actually inflict damage as well as pass on to others the training required to do so, will dwindle. There is therefore good reason to believe that targeted killings will weaken and demoralize organizations that already suffer from no clear institutional structure (Statman). Killing such individuals should in the end make it more difficult for the terror machinery to function (ibid.).

Taliban spokesperson Tariq Azam has stated that their meetings within the FATA no longer take place in direct view of the skies and that they have been forced underground (Khan & Arnoldy). Citizens of the tribal regions have begun to form armed posses and have torched the homes of Taliban members and their supporters as well as destroyed training camps (ibid.). Still drone strikes are a counter-terrorism option, not a counter insurgency strategy. Drone attacks have empowered the people of the region to act against the Taliban but failure on behalf of the government to stabilize the regions will only result in their return (ibid.).

We might also look to Israel's experience with targeted killings as a possible window into the future success of this policy. Israel's repeated killing of Hamas leaders and operatives drove the organization underground, placing a heavy burden on its leaders and members (Byman, p.103). They are no longer able to travel freely or visit their families and face the difficulty of motivating their personnel or recruit new followers (ibid., p.104). In 2005, Hamas called for a "period of calm" due to the heavy losses it was experiencing among its leadership (ibid., p.105). Israel however, has had time to refine their tactics as well as their policies. Their program is surprisingly transparent and their security services regularly work with the media to educate their citizens on the means by which they choose their targets (ibid., p.110). Rather than weaken their program this has apparently strengthened it by highlighting the policy's risks and difficulties as well as educating the public about its practical and moral tradeoffs (ibid.).

Conclusion

Targeted killings are, despite the civilian losses, the most expedient and discriminatingly humanitarian method to neutralize a terrorist without unduly jeopardizing either civilians or American forces. (Anderson, 2009, p.2) They are legal under International Law and the United States needs to actively defend its position on the international stage lest it lose its ability to utilize it in the future. These operations have resulted in the deaths of some of Al Qaeda's top operatives and are on equal footing with the targeted killing of Zarqawi and the hunt for Bin Laden. Furthermore, such operations will likely increase as CT policy begins to shy away from full-scale warfare as a means of targeting terrorism (Anderson, 2009, p.8).

Unfortunately, as long as human beings are at the controls, the system will not be infallible. Such operations need to be supported with an effective and rigorous intelligence process that can successfully vet the targets for killing. Finally, the United States government needs to develop clear, transparent and legitimate procedures for deciding when the targeted

killings are appropriate. Lack of such a process will only continue to draw negative attention at the policy (Byman, p.108).

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