

THE US' POLICY OF TARGETED KILLINGS BY DRONES IN PAKISTAN

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Abstract

This article analyses the US' policy of drone attacks in Pakistan. It explores the claims and counter-claims about their effectiveness and the charge that they are counterproductive. The issues regarding civilian casualties, political consequences and limitations of the policy from the human rights perspective, which outweighs any other consideration, are also examined. The US should revisit its counterterrorism tactics and work closely with other states like Pakistan as a partner in a common strategy to combat terrorism while respecting human rights and the international law.

Introduction

U nmanned airborne Vessel (UAV) or drone¹ is a weapon of choice² for the US in the 21st century. The drones were first used by the US military in Kosovo and Bosnia Herzegovina³ for surveillance purpose but now these are widely deployed in Iraq and Afghanistan war for surveillance and targeted killings of enemy combatants. They are under much discussion due to their use in targeted killing of suspect terrorists in Pakistan: a state which is not at war with the US.⁴

This article explores the rhetoric and reality of the US' policy of targeted killings by drone attacks in Pakistan. It is argued that indiscriminate killing⁵ of

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¹ Predators, Reapers or Global Hawks are three different models of UAVs with different engine power, speed and capability to carry missiles.

² Christopher Drew, "Drones are Weapons of Choice in Fighting Qaeda," *New York Times* (New York), March 16, 2009, http://www.nytimes.com/2009/03/17/business/17uav.html?_r=1&hp

³ Rick Rozoff, "Decade Of The Drone: America's Aerial Assassins," *Global Research* (March 10, 2010), <http://www.globalresearch.ca/index.php?context=va&aid=18027> "They have become Washington's preferred 21st century weapons for perpetrating international assassinations."

⁴ Roger Cohen, "An Eye for an Eye," *New York Times* (New York), February 25, 2010, <http://www.nytimes.com/2010/02/26/opinion/26iht-edcohen.html>

⁵ Philip Alston, "UN Special Rapporteur on Extrajudicial Killings, Philip Alston: Record AfPak Drone Attacks under Obama May Violate International Law," *Democracy Now*, June 4, 2009, http://www.democracynow.org/2009/10/28/un_special_rapporteur_on_extrajudicial_killings

suspected terrorists by drone attacks in Pakistan cannot be justified on moral grounds because these attacks do not discriminate between terrorists and innocent women, children and the elderly. This tactical move of using the drones is counterproductive and “unwittingly helping terrorists”⁶ in their recruitment process which will result in the continuance of the cycle of violence, killing of more civilians than the terrorists. The US’ international counterterrorism efforts can be successful by devising a clear strategy; adopting transparent, legitimate procedures with the help of Pakistan to bring the culprits to book and to achieve long- term results.

The article is organized into four parts: part one demonstrates the background and strategic logic behind this programme of targeted killings⁷ of the US. Part two summarizes the positions taken by proponents and opponents of the policy based on effectiveness, cost and public opinion. Part three discusses limitations of this tactical use of drones to combat terrorism in Pakistan. Part four offers some recommendations about the future course of action for the US to address issues of terrorism in Pakistan. The concluding premise is that the current policy should be abandoned because it clashes with fundamental human rights of life and liberty of innocent citizens of Pakistan who become unintended victims of these attacks.

The US’ Policy of Targeted Killings by Drones

Background

The drones have been used by the US in Iraq and Afghanistan wars. Now in Pakistan, it is a regular part of its counterterrorism strategy to kill, rather than capture, suspects accused of taking part in terrorist activities. Professor Gary Solis of Georgetown University argues that “In our current armed conflicts, there are two drone offensives⁸. One is conducted by our armed forces in war theaters, and the other in Pakistan by the Central Intelligence Agency (CIA). Drones are remotely operated by CIA headquarters from Langley, West Virginia, USA or from its bases in Khost, Afghanistan and Pakistan⁹. The two

⁶ “Drone Wars, Without Rules” *Huffington Post*, March 23, 2010, http://www.huffingtonpost.com/2010/03/24/drone-wars-without-any-ru_n_511056.html

⁷ Kenneth Anderson, “Targeted Killing in US Counterterrorism strategy and Law,” *Brookings Institution*, Working Paper on “Counterterrorism and American Statutory Law,” no. 9, May 11, 2009.

⁸ Gary Solis, “CIA Drone Attacks Produce America's Own Unlawful Combatants,” *Washington Post* (Washington), March 12, 2010, <http://www.washingtonpost.com/wp-dyn/content/article/2010/03/11/AR2010031103653.html>

⁹ Senator Diane Feinstein, Chair of the Senate Intelligence Committee, “As I understand it, These [drones] are Flown out of a Pakistani Base,” *Dawn* (Karachi),

programmes may not be as clearly separated as Professor Solis suggests, because many facts about the use of drones are classified, making it difficult to get a full and accurate picture¹⁰. However, the use of drones is part of “responsibility of US to its citizens, to use force, including lethal force, to defend itself, including by targeting persons such as high-level al-Qaeda leaders who are planning attacks”¹¹. The US policy in Afghanistan and Iraq has not been questioned because the US was at war with these states and still has military presence there, but drones strikes in Pakistan have raised questions.

However, this is not the first time that the US has used unmanned drones for targeted killing in a country not at war with the US. The first such state was Yemen¹². In 2002, a suspected al-Qaeda operative Qaed Salim Sinan al-Harethi, who was allegedly involved in killing 17 US sailors in USS Cole case, was killed in a drone attack while traveling in a car with six other companions. “Administration officials, intelligence operatives and military analysts, frustrated with the slow, torturous pace of locating and capturing individual terrorists in lawless areas of countries such as Yemen praised the CIA strikes as an “innovative way” to get the job done”¹³. Legal justifications were offered in the light of International Humanitarian Law (IHL). The US claimed that al-Qaeda had been at war with the US since September 11, 2001. Al Harethi was therefore a legitimate military target and the US had acted in its right of self defence¹⁴. National Security Advisor Condoleezza Rice defended¹⁵ the US position by saying that killing was “well within the bounds of accepted practice”¹⁶. The US also tried to kill Saddam Hussein by drones in the

February 14, 2009; *New York Times* (New York), November 6, 2002; *News* (Rawalpindi), October 27, 2008.

¹⁰ Mary Ellen O’Connell, “Unlawful Killing with Combat Drones: A Case Study of Pakistan, 2004-2009,” *Notre Dame Law School*, Legal Studies Research Paper no. 09-43.

¹¹ Harold Hongju Koh, Legal Adviser US Department of State, “The Obama Administration and International Law,” *Annual Meeting of the American Society of International Law*, Washington DC, March 25, 2010, <http://www.state.gov/s/1/releases/remarks/139119.htm>

¹² Dana Priest, “CIA Killed US Citizen in Yemen Missile Strike: Action's Legality, Effectiveness Questioned,” *Washington Post* (Washington), November 8, 2002.

¹³ Ibid

¹⁴ Howard Witt, “United States: Killing of al-Qaeda Suspects Was Lawful,” *Chicago Tribune* (Chicago), November 24, 2002.

¹⁵ “[t]he president has given broad authority to US officials in a variety of circumstances to do what they need to do to protect the country.” Interview with Condoleezza Rice, National Security Advisor, by Tony Snow, *Fox News TV*, November 10, 2002, <http://www.foxnews.com/story/0,2933,69783,00.html>

¹⁶ Ibid.

Presently Wikileaks has exposed that later missile strikes in Yemen were taking place with the tacit but private approval of President Ali Abdullah Saleh. Scott Shane, “Yemen Sets Terms of a War on al-Qaeda,” *New York Times*, December 3, 2010.

beginning of Iraq war but without success. So the present policy is continuation of the approach adopted by President Bush, and President Clinton¹⁷. However, it will be hard to predict the future use of drones by the US since now other states, including Pakistan, Russia, Georgia, Brazil, China, Iran, Israel,¹⁸ and non-state actors like Hamas, and most recently a gang of Taiwan thieves¹⁹, are also acquiring the drone technology.

Drone Attacks in Pakistan

Strategic Logic

“The Predator and Hellfire missile were identified early on by candidate Obama as the weapons of the future, as the US gradually seeks to ratchet down its full-on, overt wars”²⁰. The Obama Administration unambiguously believes in the strategic advantages of the drone policy because it offers them “best hope for regional stability and success in dealing with al-Qaeda and ‘incorrigible’ Taliban”²¹. It is based upon the premise that failed or near failed states²², allegedly like Pakistan, do not have the capacity or willingness to deal with terrorists who are a threat to the US interests, its people and soldiers. This incompetency of such states confers more authority on the US to take necessary steps, like drone attacks, to neutralize these threats. The policy is domestically saleable because it does not endanger lives of the troops on the ground. Reliance on the technology is an attractive idea to target terrorists and

Bob Woodward writes that the then-CIA Director Gen. Michael Hayden disclosed the killings to Pakistani president Asif Ali Zardari during a meeting in New York on November 12, 2008 but he was reportedly not bothered by collateral damage. Bob Woodward, *Obama's Wars* (New York: Simon & Schuster, 2010).

¹⁷ Peter Bergen and Katherine Tiedemann, “The Drone War: Are Predators Our Best Weapon or Worst Enemy?,” June 3, 2009, <http://www.tnr.com/article/the-drone-war>

¹⁸ Alex Rodriguez, “Pakistan Turns to Drones of Its Own,” *Los Angeles Times* (Los Angeles), October 9, 2009.

¹⁹ Peter Singer, quoted by Dan Froomkin “Drone Wars, Without Rules” *Huffington Post*, March 23, 2010, http://www.huffingtonpost.com/2010/03/24/drone-wars-without-any-ru_n_511056.html

²⁰ Barak Obama, “The American Promise,” *Speech, Democratic National Convention*, Denver, CO, August 28, 2008, Also quoted by Kenneth Anderson, “Targeted Killing in US Counterterrorism Strategy and Law.”

²¹ Kenneth Anderson, “Targeted Killing in US Counterterrorism strategy and Law.”

²² Kenneth Anderson has not defined the term in his paper but according to *The Fund for Peace* “A state that is failing has several attributes. One of the most common is the loss of physical control of its territory or a monopoly on the legitimate use of force”. For detail see frequently asked question number 6 on following website: http://www.fundforpeace.org/web/index.php?option=com_content&task=view&id=102&Itemid=151#5

to win the war without proclaiming a new war in Pakistan after Afghanistan and Iraq²³.

In a public speech, on March 25, 2010, Harold Hongju Koh, legal advisor to State Department, couched the above strategy in more elaborated manner and reiterated that the US should aggressively pursue this policy of drone attacks because it is in a continuous war against non-state actors like al-Qaeda, Taliban and their affiliates²⁴. His speech was full of rhetoric of respect for international law, legal norms and human rights concerns²⁵. The policy echoes the opinion expressed by eminent professor Kenneth Anderson on the subject in May, 2009²⁶.

For the last eight years there has been no legal justification offered by the US for the drone attacks. The effectiveness and success of drone attacks was considered to be the answer to all objections. In the following section an analysis of these claims is presented.

Drones: Claims and Counterclaims; the US' Point of View

Frequency of Attacks

The US has been using drones to target suspected terrorists in Pakistan since 2004²⁷. "The numbers show a sharp upsurge²⁸ in operations against al-Qaeda and its allies in Pakistan since Barack Obama took office"²⁹. "According to the US official, there were 55 Predator drone strikes last year in the Pakistani tribal areas. That's nearly double the peak level during the Bush years, which reached the mid-30s in 2008. If that rate continues, the total number of attacks this year could roughly double again, to more than 100", claims David Ignatius³⁰. He adds that "since the beginning of 2009, the drone attacks have killed "several hundred" named militants from al-Qaeda and its allies, more than in

²³ Kenneth Anderson, "Targeted Killing in US Counterterrorism strategy and Law."

²⁴ Harold Hongju Koh, Legal Adviser, US Department of State, "The Obama Administration and International Law," *Annual Meeting of the American Society of International Law*, Washington, D.C., March 25, 2010, <http://www.state.gov/s/1/releases/remarks/139119.htm>

²⁵ Ibid.

²⁶ Kenneth Anderson, "Targeted Killing in US Counterterrorism strategy and Law."

²⁷ Rahimullah Yusufzai, "Profile: Nek Muhammad," *BBC News*, June 18, 2004, http://news.bbc.co.uk/2/hi/south_asia/3819871.stm

²⁸ Christopher Drew, "Drones are Weapons of Choice in Fighting Qaeda," *New York Times* (New York), March 16, 2010, <http://www.nytimes.com/2009/03/17/business/17uav.html>

²⁹ David Ignatius "What the Partisan Squabbles Miss on Obama's Terror Response," *Washington Post* (Washington), February 17, 2010, <http://www.washingtonpost.com/wp-dyn/content/article/2010/02/16/AR2010021605043.html>

³⁰ Ibid.

all previous years combined³¹. On a typical day, there are roughly a half-dozen Predators in the air over the tribal areas of western Pakistan, looking for targets, sources say³². According to one estimate there were 120 drone attacks till December 2, 2010³³. However, there are different claims and counterclaims about the number of strikes and body counts as given below.

Accuracy and Effectiveness in Eliminating top al-Qaeda Leadership

Harold Koh and CIA Chief Leon Panetta³⁴ are of the view that execution carried out by drones is very precise and accurate. In November 2009, Senator John Kerry claimed that 14 of the top 20 terrorists had been eliminated due to this effective drone programme³⁵. Peter Bergen and Katherine Tiedemann report that about 20 leaders of al-Qaeda, the Taliban, and allied groups, had been killed since January 2008. “These raids have ravaged the top tier of al-Qaeda's lieutenants³⁶. Al-Qaeda and its allies are indeed "on the run", Vice President Joe Biden holds the view³⁷. Baitullah Mehsud, head of Tehrik-e-Taliban Pakistan (ITP) of Pakistan was the most prominent target hit by these drones³⁸.

Civilian Casualties

Peter Bergen and Katherine Tiedemann of American Foundation compiled a report named “The Year of the Drone”³⁹. They studied 114 drone raids in which more than 1200 people were killed. “Of those, between 549 and 849 were reliably reported to be militant fighters, while the rest were civilians. The

³¹ Ibid.

³² Ibid.

³³ Zeeshan ul Hassan Usmani, “Pakistan Body Count,” *Florida Institute of Technology*, March 15, 2010, <http://www.pakistanbodycount.org/drn.php>

³⁴ Mary Louise Kelly, “Officials: Bin Laden Running Out of Space to Hide,” *National Public Radio*, June 5, 2009, <http://www.npr.org/templates/story/story.php?storyId=104938490>

³⁵ Roger Cohen, “An Eye for an Eye.”

³⁶ David Ignatius mentioned that the targets include Saleh al-Somali, the chief of external operations, who was killed Dec. 8; Abdullah Said al-Libi, the chief of operations in Pakistan, who was killed Dec. 17; and Tahir Yuldashev, the leader of the Islamic Movement of Uzbekistan, who was killed in August.

³⁷ Roger Cohen, “An Eye for an Eye.”

³⁸ Declan Walsh, “Air Strike Kills Taliban Leader Baitullah Mehsud,” *Guardian* (UK), August 7, 2009.

³⁹ Peter Bergen and Katherine Tiedemann, “The Year of the Drone: An Analysis of US Drone Strikes in Pakistan, 2004-2010,” *Pak Tea House*, February 24, 2010, <http://pakteahouse.wordpress.com/2010/03/02/the-year-of-the-drone-by-peter-bergen-and-katherine-tiedemann/>

true civilian fatality rate since 2004 according to our analysis is approximately 32 per cent," the Foundation reported⁴⁰.

Public Support

It is mentioned, at least in one report of Aryana Institute for Regional Research and Advocacy that these attacks enjoy public support in FATA and Pushtuns welcome these attacks⁴¹. According to the authors, "the report is based upon the interviews of hundreds of Pashtuns in FATA and found that 52 per cent of them considered the air strikes to be accurate, 58 per cent of them did not believe that the strikes caused anti-Americanism, 60 per cent of them felt that the strikes damaged the militants, and 70 per cent of them felt that the Pakistani army should also target the militants"⁴². Farhat Taj, an Oslo based contributor of this website says,

According to the people of Waziristan, the only civilians who have been killed so far in the drone attacks are women or children of the militants in whose houses/compounds they hold meetings. But that, too, used to happen in the past⁴³. In the same article she accepts that "The Pakistani government and media take the figure appearing in the American media as an admission by the American government. The US media, too, do not have access to the area. Moreover, the area is simply not accessible for any kind of independent journalistic or scholarly work on drone attacks. The Taliban simply kill anyone doing so⁴⁴.

No US Loss

Proponents of the policy say that drones are fascinating because anybody sitting in Nevada, the US can operate the drones and there are no chances of any loss to American soldiers on ground.

Cost Effectiveness

Economy of resources is also critical because a drone costs 4.5 million dollars and it is 30 times cheaper than a jet fighter and there are no human costs even in case of failure of a mission, if any⁴⁵. There is no need of extensive training

⁴⁰ Ibid.

⁴¹ Farhat Taj, "Drone Attacks: Challenging Some Fabrications," *Daily Times* (Lahore), January 2, 2010, http://www.dailytimes.com.pk/default.asp?page=2010\01\02\story_2-1-2010_pg3_5

⁴² Ibid.

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ Mary Ellen O'Connell, "Unlawful Killing with Combat Drones."

required to operate these drones. Marry Cummings, a pilot and professor at MIT, says that it is as easy to use as an iPhone and “there is an app for that”⁴⁶.

Other point of View

Opponents of the policy say that policy makers in the US are not getting the true picture and understanding the effects of violence on the society which bears the consequences of such attacks.

Innocent Casualties

“According to the statistics compiled by Pakistani authorities, the Afghanistan-based US drones killed 708 people in 44 Predator attacks targeting the tribal areas between January 1 and December 31, 2009. For each al-Qaeda and Taliban terrorist killed by US drones, 140 innocent Pakistanis also had to die. Over 90 per cent of those killed in the deadly missile strikes were civilians, claim authorities”⁴⁷. Another updated independent research has detailed data about each drone attack and it claims that there were only 35 al-Qaeda terrorists killed in these strikes and the rest were all 2317 civilians dead and 523 injured during this campaign till December 2, 2010⁴⁸. This research by Dr. Usmani shows 98.5 per cent of those killed in drone attacks are civilians.

Unpopular

The drone attacks are highly unpopular in Pakistan⁴⁹. The sentiments are anchored on legal bases like violation of sovereignty among the informed people. A large segment of society fears that drone strikes will result in increase in suicide attacks by the Taliban targeting the civilians in Pakistan. On moral and political grounds, killing of innocent children, women and the elderly by the drones is generating anti-US feeling⁵⁰. A poll conducted by

⁴⁶ Mary L. Cummings, “Unmanned Robotics & New Warfare: A Pilot/Professor’s Perspective,” *Harvard National Security Journal*, March 24, 2010, <http://www.harvardnsj.com/2010/03/unmanned-robotics-new-warfare-a-pilotprofessor%E2%80%99s-perspective/>

⁴⁷ *Dawn*, January 2, 2010, <http://www.dawn.com/wps/wcm/connect/dawn-content-library/dawn/news/pakistan/18-over-700-killed-in-44-drone-strikes-in-2009-am-01>

⁴⁸ Zeeshan ul Hassan Usmani, “Pakistan Body Count,” *Florida Institute of Technology*, March 15, 2010, <http://www.pakistanbodycount.org/drn.php>

⁴⁹ Peter Bergen and Katherine Tiedemann, “The Year of the Drones.”

⁵⁰ Brian Glyn Williams, “Death from the Skies: An Overview of the CIA’s Drone Campaign in Pakistan - Part One,” *Terrorism Monitor* 7, issue 29 (September 25, 2009).

Gallup Pakistan for Al-Jazeera in July last year found that only 9 per cent of Pakistanis supported the drone strikes and 67 per cent people are against it⁵¹.

Bringing War Home

Professor Gary Solis opines that use of CIA in drone attacks is making CIA personnel⁵² a legitimate military target for al-Qaeda according to International Law of Armed Conflict (ILOAC). Jeffery Smith, a former CIA officer, had warned as early as 2002 that “assassination as a norm of international conduct exposes American leaders and Americans overseas”⁵³. The suicide attack on the US Consulate on April 4, 2010 in Peshawar was also linked to drone attacks. Tariq Azam, spokesman of TTP said, “We accept the attacks on the American consulate. This is revenge for drone attacks. We will target any place where there are Americans.”⁵⁴

Human Cost

The argument of economy of resources is convincing from the US perspective because operators are private contractors or public servants. But Peter W. Singer, author of “Wired for War”, calls this perception of cost to be a very seductive idea⁵⁵. Operators, being far away from victims, are insulated from political and moral implications caused by these drones when they hit innocent people due to false information or any other mistake in targeting. Critics want to know the number of civilians who can be dispensed with to get one known al-Qaeda target.

Counterproductive

Many experts stress that drone attacks are counterproductive in counter-insurgency campaign⁵⁶. Bruce Hoffman, a Georgetown University professor,

⁵¹ “Exclusive: Al Jazeera-Gallup Pakistan Survey, Pakistan: State of the Nation,” *Al Jazeera* (Online Edition), August 13, 2009,

<http://english.aljazeera.net/focus/2009/08/2009888238994769.html>

⁵² Gary Solis, “CIA Drone Attacks Produce America's Own Unlawful Combatants,” *Washington Post* (Washington), March 12, 2010.

⁵³ Jane Mayer quotes Jeffery Smith’s interview with Seymour M. Hersh in 2002.

⁵⁴ “Taliban Attempt to Storm US Consulate in Peshawar, Pakistan,” *Daily Telegraph* (UK), April 5, 2010,

<http://www.telegraph.co.uk/news/worldnews/asia/pakistan/7556166/Taliban-attempt-to-storm-US-consulate-in-Peshawar-Pakistan.html>

⁵⁵ Jane Mayer, “The Predator War,” *New Yorker*, October 26, 2009,

http://www.newyorker.com/reporting/2009/10/26/091026fa_fact_mayer

⁵⁶ Major General Michael T. Flynn, USA, Captain Matt Pottinger, USMC, Paul D. Batchelor, DIA, “Fixing Intel: A Blueprint for Making Intelligence Relevant in Afghanistan,” January 2010. Jane Mayer, and also Peter Bergen and Katherine Tiedemann report the similar argument.

widely regarded as the dean of terrorism studies, says, "We are deluding ourselves if we think the drone program is going to be the answer"⁵⁷. He points out that in 2006, following Abu Mus'ab al-Zarqawi's death by the US air strikes, violence in Iraq accelerated⁵⁸. The same trend was followed by the death of Nek Muhammad and recently Baitullah Mehsud in Pakistan. Major General Flynn of the US Army opines that "... inescapable truth asserts that merely killing insurgents usually serves to multiply enemies rather than subtract them"⁵⁹. This counter-intuitive dynamic is common in many guerrilla conflicts and is especially relevant in the revenge-prone Pushtun communities whose cooperation military forces seek to earn and maintain. The Soviets experienced this reality in the 1980s, when despite killing hundreds of thousands of Afghans, they faced a larger insurgency near the end of the war than they did at the beginning⁶⁰. The present targets of drones are also Pushtuns of Pakistan and the above analysis of Soviet Union army is relevant because Pushtuns have a culture of revenge. The death of innocent people gives the victim family strong reason to join the Taliban rather than working against them.

The claims of effectiveness cannot be sustained when compared with collateral damage and killing of innocent civilians including women, children and elderly people in the civilian population. This is the same logic which suicide terrorists use to justify the loss of any number of civilians if their targets happen to be present among them.⁶¹

Anti-American Sentiments and Radicalization

From the strategic point of view, radicalization in Pakistan is a serious concern for the policy makers. According to the PEW Research Center's Global Attitude project about different countries, 79 per cent people in Pakistan are concerned about growing extremism in the country. Only 16 per cent of Pakistanis have confidence in the US government and only 4 per cent support the war in Afghanistan⁶². While there is little doubt that the strikes have disrupted al-Qaeda's operations, the larger question is to what extent they may have increased the appeal of militant groups and undermined the Pakistani

⁵⁷ Bruce Hoffman is quoted by Peter Bergen and Katherine Tiedemann, *American Foundation Report*, February 24, 2010.

⁵⁸ Ibid.

⁵⁹ Major General Michael T. Flynn, Captain Matt Pottinger and Paul D. Batchelor, "Fixing Intel: A Blueprint for Making Intelligence Relevant in Afghanistan," *Center for a New American Security*, January 4, 2010.

⁶⁰ Ibid., 8.

⁶¹ Personal Interview with an Arrested Terrorist in Mianwali, Pakistan, June 2009.

⁶² "Concerns About Extremism in Our Country: How Concerned are You About Islamic Extremism in This Country?," *PEW Research Centre*, <http://pewglobal.org/database/?indicator=22&country=166>

state⁶³. In FATA, with widespread illiteracy, militants exploit drone attacks to recruit, and there are fears that Pakistan's perceived role undercuts its own counter-insurgency campaign against homegrown radicals. Renowned journalist Rahimullah Yusufzai says, "Drone attacks are radicalizing other people who may not have supported the Taliban"⁶⁴. The Taliban leaders, earlier Baitullah Mehsud and now Hakimullah Mehsud, have used the unpopularity of the drone attacks and stated that suicide bombings in Pakistan are a reaction to drone attacks in Pakistan⁶⁵.

The psychological impact of violence on the community is horrific regardless of the tactic used; whether it is the suicide bomber or a drone. "Terror thus spreads not simply in the village where the drone attack has taken place but far and wide in the bazaars of Peshawar and the streets of Lahore and the offices of Islamabad where these recruits avenge their anger against the drone attacks"⁶⁶.

Recruitment of Terrorists

Professor Paul Hoffman who teaches international human rights law at USC Law School and Oxford University and Chair of the International Executive committee of the Amnesty International in 2004, opines that a state's failure to adhere to fundamental human rights norms makes it more likely that terrorist organizations will find it easier to recruit adherents among the discontented and disenfranchised and among the family and friends of those whose human rights have been violated⁶⁷. "We've forgotten Rumsfeld's question: 'Are we creating more terrorists than we're killing?' And we probably are. The drones may be killing a lot of Taliban and al-Qaeda but they're alienating the tribesmen we need to win the war", former ambassador to Pakistan Robert Oakley, in his interview to the Atlantic Council, said⁶⁸. "Every one of these dead non-combatants represents an alienated family, a new revenge feud, and more recruits for a militant movement"⁶⁹. Similarly, Professor Bruce

⁶³ Peter Bergen and Katherine Tiedemann, "The Drone War."

⁶⁴ Rahimullah Yusufzai, "US Drone War Delivers Results, But at What Price?," *Dawn* (Islamabad), January 10, 2010, <http://www.dawn.com/wps/wcm/connect/dawn-content-library/dawn/news/world/18-us-drone-war-am-10>

⁶⁵ Ibid.

⁶⁶ Rafia Zakariya, "Drones and the Law," *Dawn* (Islamabad), January 27, 2010, <http://www.dawn.com/wps/wcm/connect/dawn-content-library/dawn/the-newspaper/columnists/19-rafia-zakaria-drones-and-the-law-710-hh-07>

⁶⁷ Paul Hoffman, "Human Rights and Terrorism," *Human Rights Quarterly* 26, no. 4 (November 2004).

⁶⁸ James Joyner, "5 Questions for Robert Oakley," *Atlantic Council*, April 15, 2009, http://www.acus.org/new_atlanticist/5-questions-robert-oakley

⁶⁹ David Kilcullen and Andrew McDonald Exum, "Death from Above, Outrage Down Below," *New York Times* (New York), May 16, 2009.

Hoffmann⁷⁰ and Major Gen Flynn⁷¹ are of the view that target killings multiply the insurgents. “At all times, however, the Taliban capitalize on the ensuing mayhem and gain new recruits and re-energize old ones”⁷².

The conclusion can be drawn about the necessity of the policy. If the attacks are immoral, highly unpopular, fomenting anti-American sentiment in Pakistan and creating more terrorists than killing, then short-term claims of efficiency cannot be sustained. It is worth pondering in the face of these long-term implications about continuation of targeted killings by drones in Pakistan. Short-term gains may be useful to address the galleries but this rationale may be difficult to justify looking into the limitations of these strikes.

Limitations of Drone Attacks

The drone programme is a tactic, mere fire fighting but not a strategy⁷³. It might be useful in disrupting the terrorist network but it will be too early to write an obituary of al-Qaeda on the basis of successes obtained by drone attacks as claimed by proponents of this policy⁷⁴. The application of this policy may have different implications in Pakistan than in Gaza where it was the primary precedence to use this tactic. Pakistan is one of the most populous countries in the world. If the terrorists are diffused in thickly populated cities and targeted then this tactic will create very serious concerns for the US and Pakistani government. This predictability of location makes this tactic less strategic despite the rhetoric of President Obama⁷⁵.

Moreover, this policy of use of force is inconsistent and diametrically opposite to the aim of winning the hearts and minds proclaimed by the US in Afghanistan and Iraq which is much needed in Pakistan. The counterinsurgency manual (COIN) of the US forces stresses that war cannot be won without a comprehensive approach⁷⁶. People on ground know that

⁷⁰ Quoted by Peter Bergen and Katherine Tiedemann, “Revenge of Drones,” *New America Foundation*, October 19, 2009.

⁷¹ Major General Michael T. Flynn, “Fixing Intel: A Blueprint for Making Intelligence Relevant in Afghanistan.”

⁷² David Kilcullen, “Death From Above.”

⁷³ Thomas Risse and Kathryn Sikkink, “The Socialization of International Human Rights Norms into Domestic Practices,” introduction to Risse, Stephen Kopp, and Sikkink (eds.), *The Power of Human Rights: International Norms and Domestic Change* (1999).

⁷⁴ On January 23, 2009, then Director of CIA General Michael Hayden expressed his concerns that tactical use of drones will not win the war unless facts on grounds are changed with a strategy. Bob Woodward quoted a conversation between White House Chief of Staff Rahm Emanuel and General Hayden. *Obama’s Wars* September 2010.

⁷⁵ Peter Bergen and Katherine Tiedemann, “The Drone War.”

⁷⁶ *Counterinsurgency Manual of US Army*.

“lethal targeting alone will not help the US and allied forces win”⁷⁷. They specifically mention about the culture of the Pushtuns that these people have survived much longer insurgencies, so mere lethal killing will not be a key to success⁷⁸. Drone attacks are producing a “generation of martyrs” which is not helpful in winning the hearts and minds of people at all⁷⁹.

Sustainability is a key component to determine the effectiveness of any policy. More and more voices are being heard now in opposition to this policy primarily due to human rights violations. The Universal Declaration of Human Rights has become part of customary international law and it is applicable in war and peace times.⁸⁰ Same is true of the International Covenant on Civil and Political Rights (ICCPR) which forbids extra judicial killings by states⁸¹. The right to life and liberty has become part of *jus cogens*⁸². In a German court decision, targeting a hijacked plane embarked on a terrorist mission is also forbidden⁸³. The Court said that the lives of those in the planes were as important as those on the ground who might be killed by using the hijacked plane as a weapon. The US courts have taken up some cases like *Hamdan vs Rumsfeld*⁸⁴ in which the court mentioned that "a state of war is not a blank check for the president when it comes to the rights of the nation's citizens," and declaring that Yaser Hamdi had to be permitted to challenge his detention. This trend signals that domestic justice systems are alert to check the encroaching state authority against the individual's rights, the main theme of human rights movement. Arbitrary killings by drone attacks will not be surviving the test of the time in the face of these high moral precepts and values because excessive civilian deaths cannot be justified to kill a terrorist

⁷⁷ Major General Michael T. Flynn, “Fixing Intel: A Blueprint for Making Intelligence Relevant in Afghanistan.”

⁷⁸ *Ibid.*

⁷⁹ Daniel Byman, “Do Targeted Killings Work?,” *Foreign Affairs* 85, no. 2 (March-April, 2006).

⁸⁰ Rosa Ehrenreich, “War Everywhere: Rights, National Security Law, and the Law of Armed Conflict in the Age of Terror,” *University of Pennsylvania Law Review* 153, no. 2 (December, 2004): 675-761.

⁸¹ Article 5, International Covenant on Civil and Political Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of December 16, 1966, entry into force March 23, 1976, <http://www2.ohchr.org/english/law/ccpr.htm#art4>

⁸² Rosa Ehrenreich Brooks, “War Everywhere: Human Rights, National Security, and the Law of Armed Conflict in the Age of Terrorism,” *University of Pennsylvania Law Review* 153 (2004).

⁸³ “Authorization to Shoot Down Aircraft in the Aviation Security Act Void,” *German Constitutional Court*, Press Release No. 11/2006, February 15, 2006,

⁸⁴ *Hamdi v. Rumsfeld*, 296 F.3d 278, 281 (4th Cir. 2002), vacated and remanded by 124 S. Ct. 2633 (2004).

whose identity and crimes are not open to any democratic accountable mechanism.

Harold Hongju Koh, legal advisor to State Department, is of the opinion that the US should aggressively pursue this policy of drone attacks because the US is in a continuous war against non-state actors like al-Qaeda, Taliban and their affiliates⁸⁵. He says: “Whether a particular individual will be targeted in a particular location will depend upon considerations specific to each case, including those related to the imminence of the threat, the sovereignty of the other states involved, and the willingness and ability of those states to suppress the threat the target poses”⁸⁶. It is highly discriminatory policy towards some countries because the US decides about the target, location and capability of other countries to act against terrorists without involving any international body like United Nations or even the target country. Unlike Yemen and Pakistan, it may not be possible to kill a suspect terrorist going in a car in UK, Germany or France by the US. Even surveillance by drones will be called into question by such countries as it impinges upon the sovereignty of the states. It is a violation of the basic tenets of international law since all states are equal.

Moreover, if target killings are legitimized, by drone attack or by other means, then it may have dangerous outcomes. Any such attempt by India to target some suspect terrorist in Pakistan may cause an armed conflict between the two nuclear states. Even more dangerous is a scenario where the US may become the theater of killing of some suspect terrorist by some third state. “But one need only remember the Chilean government's killing of Orlando Letelier, a former official in Salvador Allende’s government, with a car bomb in Washington, D.C., in 1976 to realize that the policy could pose a real danger”⁸⁷. Daniel Byman says that the ban on assassinations has been to the benefit of the US as well but the use of drone attacks for target killings may open the doors for such practice for other states⁸⁸.

The US policy makers assert that being a super power it can change the rules of the game as its unilateral action in Iraq showed. Two Chinese writers

⁸⁵ Harold Hongju Koh, Legal Adviser, US Department of State, “The Obama Administration and International Law,” *Annual Meeting of the American Society of International Law*, Washington, D.C, March 25, 2010, <http://www.state.gov/s/1/releases/remarks/139119.htm>

⁸⁶ Ibid.

⁸⁷ Daniel Byman, “Do Targeted Killings Work?,” *Foreign Affairs* 85, no. 2 (Mar. - Apr., 2006), also see Kenneth Anderson, The still-disputed account of the 2006 poisoning of former Russian FSB agent Alexander Litvinenko, also in London, by alleged Russian government agents. Most recent case is killing of Hamas military commander Mahmoud Al-Mabhouh who was killed in Dubai by Israeli agents and it involved using fake passports of the UK and Australia for Israeli agents, http://news.bbc.co.uk/2/hi/middle_east/8486531.stm

⁸⁸ Daniel Byman, “Do Targeted Killings Work?”

have predicted that this attitude may lead to an unrestricted war⁸⁹. "The first rule of unrestricted warfare is that there are no rules, with nothing forbidden⁹⁰." Elaborating on this idea, they asserted that strong countries would not use the same approach against weak countries because "strong countries make the rules while rising ones break them and exploit loopholes . . . United States breaks [UN rules] and makes new ones when these rules don't suit [its purposes], but it has to observe its own rules or the whole world will not trust it." Being the leader of the comity of nations, the US cannot depart from norms which were held by her for a long time. "Yet because targeted killings are not widely accepted as a legitimate instrument of state, the United States risks diminishing its status as an upholder of the rule of law if it embraces them"⁹¹. For this, the US should think beyond the "only game in town"⁹² approach of Director Leon Panetta of CIA.

Recommendations

A Comprehensive Strategy

Any tactical approach is not an answer to the scourge of terrorism. Tactics will not work in the absence of a comprehensive strategy. Improving the capacity of Pakistani state agencies to eliminate breeding grounds of terrorism is a strategic goal and it calls for consolidating the successes gained by Pakistan in fighting terrorism. It will require physically securing areas, not only in Khyber Pakhtunkhwa (former NWFP) but also in Punjab, Sindh and Balochistan. David Kilcullen, an advisor to General David Petraeus in Iraq, has rightly suggested that areas of Punjab and Sindh should be prioritized for development to prevent Talibanization in those areas which are safe from violence as compared to Khyber Pakhtunkhwa, so far⁹³. It becomes more alarming when we hear about the demand in some quarters to start military operation in south Punjab to check growing Talibanization in the area.

In FATA, necessary steps should be taken by the state to deal with the situation to ensure protection of human rights. Implementing Political Parties Act and establishing a capable law enforcement mechanism like other provinces can be the starting points. It is required to reach out to people and establish physical presence of state institutions and functionaries in the area to prevent further losses borne by innocent people who are too poor to

⁸⁹ Qial Liang & Wang Xiangsue, *Unrestricted Warfare* (Beijing: PLA Literature and Arts Publishing House, February 1999), 12,

<http://www.iwar.org.uk/iwar/resources/china/iw/unrestricted-warfare.pdf>

⁹⁰ Ibid.

⁹¹ Ibid.

⁹² Mary Louise Kelly, "Officials: Bin Laden Running Out of Space to Hide," *npr*, June 5, 2009.

⁹³ David Kilcullen, "Death from Above, Outrage Down Below."

leave the area. Pakistan should also allow International Committee of the Red Cross (ICRC) to prevent the humanitarian crisis simmering in FATA.

There is need to build the capacity of Pakistani law enforcement agencies by imparting better training and sophisticated equipment to neutralize the terrorists threats according to law and human rights standards. Politicization of bureaucracy is another hurdle in the way of improving the lot of public institutions like Police where frequent postings and transfers on political grounds are the order of the day. Building up a meritorious police, refocusing on security, economic development and good governance is a long term and unavoidable need of the time for Pakistan. These targets cannot be achieved overnight and in the absence of strong democratic and accountable institutions.

Winning Hearts and Minds

“Failure to respect universal human rights norms not only undermines our shared values, it undermines the international cooperation and public support so crucial to developing effective antiterrorism efforts”⁹⁴. The US administration claims that it is trying to win the hearts and minds of people in Afghanistan and Iraq by bringing them in the decision making process and investing in the local economies and infrastructure to improve the quality of life of ordinary people. This approach requires sincere efforts in Pakistan today more than ever. Eventually, it will be the people of Pakistan who will single out extremists among themselves by exposing the networks of extremists in their neighborhood. This cannot be done by any surgical strike. Winning the trust of the people requires service delivery by the state in all aspects of life. If they can witness improvement in their daily life or any efforts by the state in that direction, they will be in the vanguard to fight terrorism.

Transparent and Accountable Process

Information about suspect terrorists and their criminal activities should be made public. Electronic and print media should be widely used to publicize the inhuman criminal acts of terrorists. If they are killed in any use of force application, then proper investigation should be conducted to justify the circumstances and presented in the courts according to applicable laws. Regardless of Pakistan’s role in drone attacks, it is still the responsibility of the state to take proper care of innocent people affected by drone attacks and the state should pay reparations to them like people who are affected by terrorist acts in Lahore, Karachi or Peshawar because they are all citizens of Pakistan.

The drones are not the panacea against terrorism. Getting drones from the US may increase the surveillance capacity of the armed forces but to use

⁹⁴ Paul Hoffman, “Human Rights and Terrorism,” *Human Rights Quarterly* 26, no. 4 (November 2004).

drones for target killings without following any transparent and accountable procedure will be tantamount to legalizing the extra judicial killings. It will be a mistake. Targeted killing on mere suspicion is a fundamentally flawed thinking which may have appeal for the physically and emotionally detached and unaccountable tacticians. But such use of force by Pakistan will further cement the extremists against the democratic government of Pakistan and will foment alienation among the local population.

State Cooperation

Lisa Curtis, a research fellow at the conservative Heritage Foundation, explains that the Obama administration relies more on drones but the long-term costs are that it is raising anti-Americanism in Pakistan, which in turn makes it more difficult for us to cooperate with Pakistan⁹⁵. In the given circumstance drones are not the only option for the US. The US should liaise with Pakistan to arrest the suspect terrorists, as it has been done in the recent case of the arrest of Mullah Baradar, the Taliban's second in command⁹⁶. "The capture of Khalid Sheikh Mohammad (one of the masterminds of the 9/11 attacks) involved the intense cooperation of the security services of Germany, Pakistan, and Switzerland. Because arrest is always a better option than killing, it usually makes much more sense for the United States simply to arrange for local security services to apprehend the terrorists than to antagonize locals with extrajudicial killings"⁹⁷. Using drones for surveillance by getting the consent of Pakistan will phenomenally enhance the capacity of law enforcement agencies of Pakistan.

Action by Human Rights Advocates

It is time that human rights instruments are used as a criterion to judge the state policies. NGOs should call upon the US to comply with international standards. Press has also made such strides with the help of internet that it is not possible to make unilateral policies and implement them without being noticed. Allison and Deutch write, if "many Pakistanis see covert actions carried out inside their country as America 'invading an ally,'" the problem is not the drone campaign, they write; it is, rather, merely that "the US government no longer seems capable of conducting covert operations without

⁹⁵ "US Drone War Delivers Results, But at What Price?," *Dawn* (Islamabad), January 10, 2010.

⁹⁶ M Ilyas Khan, "How Significant is Mullah Baradar's Arrest?," *BBC News*, February 16, 2010, <http://news.bbc.co.uk/2/hi/8518127.stm>

⁹⁷ Daniel Byman, "Do Targeted Killings Work?"

having them reported in the press [emphasis added].”⁹⁸ This compliment for press shows that press is very crucial partner in this coalition for protection of human rights and capable of exposing the weaknesses of state policies. Issues of Darfur have been on the agenda of states because of efforts of the NGOs and the press. The same is required in the case of targeted killings by drones in Pakistan. In the absence of a vibrant media campaign, it will be very difficult to mobilize support for victims of drone attacks in Pakistan.

Conclusion

The subject of application of International Human Rights Law (IHRL) in this Pakistani context has not been touched in most of the circles. History shows that when societies trade human rights for security, most often they get neither⁹⁹. Sometime this trade off comes in the form of mass murder, genocide and sometime in arbitrary killings. Addressing the Security Council session on counterterrorism measures, Kofi Annan said, "We should all be clear that there is no trade-off between effective action against terrorism and protection of human rights. On the contrary, I believe that in the long term, we shall find that human rights, along with democracy and social justice, are one of the best prophylactics against terrorism"¹⁰⁰. In the war against terrorism, human rights norms are not respected by many countries but if great powers also be the violators then it will be open doors to “unrestricted wars”¹⁰¹.

Human Rights Watch observed, “Since September 2008, US aerial drones are believed to have carried out dozens of missile attacks on suspected militant hideouts in Pakistan's tribal areas, killing hundreds of civilians in addition to alleged militants, and prompting allegations that the US attacks have violated the laws of war”¹⁰². How these violations affect the state practice? It took fifty years for the international community to establish a “public order system”¹⁰³ based upon universal human rights policies in the

⁹⁸ Graham Allison and John Deutch, “The Real Afghan Issue is Pakistan,” *Wall Street Journal*, March 30, 2009. Also quoted by Kenneth Anderson.

⁹⁹ Paul Hoffman, “Human Rights and Terrorism,” 932-955.

¹⁰⁰ Kofi Annan, UN Secretary General, in his address to the UN Security Council meeting on counterterrorism measures, New York, January 18, 2002, SG/SM/8105SC/7277 21 January 2002, <http://www.unis.unvienna.org/unis/pressrels/2002/sgsm8105.html>

¹⁰¹ Qial Liang, *Unrestricted Warfare*.

¹⁰² “Pakistan: Military Undermines Government on Human Rights,” *Human Rights Watch*, January 20, 2010, <http://www.hrw.org/en/news/2010/01/20/pakistan-military-undermines-government-human-rights>

¹⁰³ Brownli quoted by Rosa Ehrenreich, “War Everywhere: Rights, National Security Law, and the Law of Armed Conflict in the Age of Terror” *University of Pennsylvania Law Review* 153, no. 2 (December, 2004): 675-761.

world. The promotion of human rights was intended to reinforce the pursuit of collective security¹⁰⁴. The Cold War era was not focused on upholding these values but commendable work was done in establishing the framework of IHRL. The post Cold War era witnessed the rise of liberal values and even the use of force was justified to protect these values in other states by the US¹⁰⁵ on the premise of “responsibility to protect”, and the international community watched these novel steps anxiously. For the first time in history, the status of the individual and the protection of human rights were regarded as fundamental aspects of international law in the pursuit of international peace¹⁰⁶. Drone attacks are a trend in the opposite direction and will be tantamount to treading on a path leading to gross violations of established norms of human rights in the name of security and national interests. Drone attacks are depriving people of their fundamental right to life without following the due process of law. Nobody knows about the names of targeted people, their crime, and their role in any terrorist plans even after the strikes. Civilian casualties are accepted as collateral damage in this unannounced war in Pakistan.

Risse and Sikkink lay out a theoretical framework for norm socialization, a process whereby human rights norms become internalized in a state, “so that external pressure is no longer needed to ensure compliance. The repressive states go through a spiral of human rights violations leading to the third stage at which existence of any human rights violation is denied¹⁰⁷. It takes some time for states to translate their commitment to signing the human rights instruments into action. This period varies considerably. Democracies like Pakistan need to travel a long distance to reach the accepted standards of protection of human rights values. Power holders often present archaic arguments of multiculturalism to delay the protection of individual rights. During this journey if they are halted by as blatant a violation of human rights by the state as drones are, then it hampers their advancement in the right direction. Supporters of these values, mostly NGOs and sections of civil society, will take a long time to recover from such shocks. The process of internalization of norms of human rights suffers from expediency of the policies like targeted killings by drones. Although these attacks are not by the people’s own state, but when upholders of human rights like the US step

¹⁰⁴ Rosa Ehrenreich Brooks, “War Everywhere.”

¹⁰⁵ “Responsibility to Protect,” *International Commission on Intervention and State Sovereignty Report*, December 2001.

¹⁰⁶ Rosa Ehrenreich Brooks, “War Everywhere.”

¹⁰⁷ Thomas Risse and Kathryn Sikkink “The Socialization of International Human Rights Norms into Domestic Practices,” introduction to Risse, Stephen Kopp, and Sikkink (eds.), *The Power of Human Rights: International Norms and Domestic Change* (1999).

down from the principled track, they set precedence for repressive governments to sacrifice human rights of individuals at the altar of expediency.

The use of the drones is gaining currency with each passing day and “the United States is certainly the dominant player in this field at the moment, but this position will change as the technology is patterned and becomes more broadly available. Policy-makers in Washington would be well served, therefore, to do everything they can to retain the technological and legal edge by establishing the norms and standards of drone warfare before it is established by the Ivory Tower – or worse – our adversaries”¹⁰⁸. “In fact, it would be in the best interests of the US and those of the Pakistani people, to declare a moratorium on drone strikes into Pakistan”¹⁰⁹.■

¹⁰⁸ Brett H. McGurk, “Lawyers: A Predator Drone’s Achilles Heel?,” *Harvard National Security Journal*, March 11, 2010, <http://www.harvardnsj.com/2010/03/lawyers-a-predator-drone’s-achilles-heel/>

¹⁰⁹ David Kilcullen Testimony during Hearing of the House Armed Services Committee, Effective Counterinsurgency: the Future of the US Pakistan Military Partnership, April 23, 2009.