

DRONE WARFARE – A CRITICAL APPRAISAL

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Abstract

The US-led global war on terror, the US Af-Pak strategy, the phenomenon of terrorism and the employment of predator drones by the US administration in various parts of the world and particularly in Pakistan has drawn criticism on drone warfare. The introduction of armed drones to kill individuals or destroy targets inside other countries' territories has raised various important questions of the rationale, necessity, targeting strategy and mechanism of drone operations. Moreover, the important notions of state sovereignty, monopoly over use of force and territorial integrity have also been put to test by the use of force in the form of armed drones, against individuals inside other states, without the formal declaration of wars. In addition, whether global war on terror is to be conducted and fought inside only a few selected states or anywhere where the terrorists are actually or perceived to be based or not. Lastly, the technological, psychological, moral, social and legal implications of drone warfare also need to be considered in detail, which has a potential of expanding or becoming a norm on a global level, due to a rapid proliferation of drone technology, its cost effectiveness and safety of its operators. The purpose of this paper is to critically evaluate some of these important issues, significant for both 21st century international relations and modern warfare.

Introduction

Armed Drones are high-technology remotely controlled unmanned aircrafts armed with missiles employed for targeted killing. These are being used by the US on the pretext of war on terror in the Federally-administered Tribal Areas (FATA) of Pakistan, Somalia, Yemen, Iraq, Afghanistan and now in Syria. Strikes are planned and executed by the CIA against high value targets identified on the bases of intelligence reportedly received through multiple sources, including human and technical. The strikes have been claimed highly accurate and successful in killing the desired targets, but unfortunately large number of innocent civilians has also been killed as a result of their use. Nevertheless, this

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method of targeted killing is being described by American security experts as highly accurate and economical for the US, which can help eliminate key figures in the terrorist networks working against their forces, yet there are some serious implications posed to international peace and security as a direct consequence of their use. The legitimacy of these operations, violation of state sovereignty and threat to international system are issues of concern related to the use of drones inside other states, which are also US allies. Questions have been raised in many parts of the world, predominantly in America about all these issues but there has been no change in US policy. US administration continues to pursue its policy of reliance on drone operations, disregarding the anti-drone debate. There is a great resentment within the people of the target nations because there are many civilian victims of drone attacks, often termed as collateral damage.

In this short paper an effort has been made to discuss the challenges of drone warfare, how and why it is counterproductive and poses a serious threat to the international system. It is believed that drone strikes are creating more problems than solving, resulting in increased distrust, fears and uncertainty, weakening the state structure and gradually making it irrelevant. If this policy continues it may lead to dangerous consequences and prolonged conflict between the oppressor and the oppressed and also between the "claimed Powerful" and the "declared Weak".

Drone is an addition to the weapons of war which has substantially increased the reach and effectiveness of the adversary with virtually no direct threat to the life of operator. There is a lot of criticism on the concept and the manner in which they are being utilized but this cannot undermine their utility. There is a requirement of viewing this new technology more objectively without any national sentiment of oppressor and the oppressed. Weapons do not have nationalities, rather they are deigned to add to the power potential and reach of a nation whosoever possess them. Drones do add to the range and effectiveness of the military operations, but there are some operational challenges in the manner they are currently being used. An attempt has been made, without referring to the political statements and national positions, to highlight some of the challenges of Drones which are likely to have negative impact on the international system as a whole.

Legacy of War on Terror

The entire confusion in drone warfare is created by the very concept of war on terror declared by the US after 9/11. It is unclear who the terrorist enemy is? As former CIA Director R. James Woolsey pointed out immediately after the September 11 attacks, "It is clear now, as it was on December 7, 1941, that the United States is at war. The question is: with whom?" This clearly shows the problem at the very conception of war on terror, accentuating the problems of understanding and execution

in operations being conducted under this pretext, including the controversial drone strikes. United Nations Special Rapporteur on extrajudicial, summary, or arbitrary executions, Philip Alston mentions that the use of drones is:

...a highly probable blurring and expansion of the boundaries of the applicable legal frameworks – human rights law, the laws of war, and the law applicable to the use of inter-state force...The result has been the displacement of clear legal standards with a vaguely defined license to kill, and the creation of a major accountability vacuum... In terms of the legal framework, many of these practices violate straightforward legal rules...¹

Geography of the New War

This war being waged with drones has no fixed geography. It can move anywhere, wherever the suspected Al Qaida combatants can or may move. According to international law and international norms, the ISAF-led military operation inside Afghanistan to some extent are operations mandated under UN resolution, however, the US forces often cross these limits. Moreover military forces are stationed and conducting various operations with the consent of the internationally-recognized existing Afghan government. There is a clear legitimate armed conflict between two opposing forces inside Afghanistan i.e. Taliban and other resistance groups fighting against International forces and the Afghan government forces. But the drone strikes being conducted in other countries where there is no UN mandate like Pakistan (though recognized as a front-line Non NATO ally in war against terror) are by no mean legitimate. The territory irrespective whether it is tribal area or settled area is part of Pakistan and no use of force by any external power is allowed under international law. In fact drone warfare:

*...redefines the geography of war in ways that reveal an apparent lacuna in the laws of war (viz., the law of war's implicit reliance on a bounded geography). The laws of war have inchoate boundaries for where they apply, *lex specialis*, and where the Law of Everyday Life applies."²*

- 1 Philip Alston, "Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions", United Nations General Assembly Human Rights Council Study on Targeted Killings, May 28, 2010, 26, accessed on June 23, 2013, <http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.24.Add6.pdf>
- 2 Kenneth Anderson, "Targeted Killing and Drone Warfare: How We Came to Debate Whether There Is a 'Legal Geography of War'", accessed on July 3, 2013, <http://media.hoover.org/9D98363A-8CC0-4878-87DF-2B45F8DE5156/FinalDownload/DownloadId-2DCB571E1AAC27113D5D59B97BF028AC/9D98363A-8CC0-4878-87DF->

Challenge to the UN System

UN charter confirms and fortifies the foundation of state system on some fundamental principles. These include the sovereign equality of member states, peaceful settlement and resolution of international disputes in such a manner that international peace and security are not endangered, nonuse or the threat of use of force against the territorial integrity or political independence of any state.³In this back drop the drone warfare as unleashed by US is in clear violation of basic principles set up by UN charter i.e. breach of state sovereignty, use of force and interference in internal affairs. This unilateral intervention poses serious threat to UN state system and also to international peace and security. The emergence of non-state actors and the rapid globalization of economy have already diluted the power and control of state entity and now is further eroding by the conduct of drone attacks.

Use of Lethal Force

Use of lethal force has two broad legitimate grounds:⁴ One as part of law enforcement action within state boundaries as per laid down and recognized limits set by the law of the land. The attempt, however, is to arrest rather than kill the criminal so that proper judicial procedure may be followed for his conviction and punishment by the court of law. The other is use of force in self-defence, once attacked by any other state. This is covered under laws of war or armed conflict which has its own jurisdictions and implications. US drone strikes have not been able to satisfy either of the two and still struggling to find some legal ground. Interestingly the right of self-defence and pre-emptive doctrine has been used as a pretext to invade Afghanistan and Iraq but in case of drone attack, so far no position has been taken by the US and these have been termed as covert operations.⁵The question that critics increasingly raise is whether this activity by the CIA is lawful, or is it extra-judicial execution. Are there obligations to seek to capture rather than kill?⁶

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- 3 Article 2 of UN Charter, accessed on July 3, 2013, <http://www.un.org/en/documents/charter/chapter1.shtml>
- 4 Michael L. Gross, "Fighting by Other Means in the Mideast: a Critical Analysis of Israel's Assassination" *Political Studies*, vol. 51,(2003):350-368
- 5 Ibid., Kenneth Anderson, "Targeted Killing and Drone Warfare: How We Came to Debate Whether there Is a 'Legal Geography of War'".
- 6 Kenneth Anderson, "Hearing, Rise of the Drones: Unmanned Systems and the Future of War", Written Testimony Submitted to Subcommittee on National Security and Foreign Affairs, Committee on Oversight and Government Reform, US House of Representatives. http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1579411

Principle of Distinction and Proportionality

Drones have problem of both distinction and proportionality. Individuals who have been targeted in drone strikes have not been clearly identified as armed combatants and many innocent have also been killed on suspicious grounds in the same process. Moreover, those alleged of conspiring, abetting or sympathizing with Al Qaida or Affiliates have not been given fair chance to defend themselves. The harm they could have caused or may be planning to cause is not proportionate to what has been done to them, their families, homes, livelihood or their country.

Reliability of Intelligence

The CIA collects intelligence from multiple sources and has listed various Al-Qaida and its affiliate organization leaders and members as their legitimate targets. This process is not transparent and we don't know how they recognize these individuals and how they get the approval for their killing. Earlier, based on the intelligence collected, provided and confirmed by CIA and openly claimed by the US leadership, Iraq was widely suspected of possessing weapons of mass destruction. However, these weapons of mass destruction could not be discovered putting a serious question mark on the credibility of US intelligence agencies and reliance on intelligence information for waging combat or covert operations. The entire war effort along with its justification has been accepted as a mistake and as a result both the Bush administration and US intelligence community had to face public criticism and humiliation. But this is not the only instance where the US intelligence misled its leadership. There is a long history of failures during the cold war, the controversies of "Bomber gap" and "Missile gap" highlighting poor rather exaggerated threat assessments of Soviet nuclear and strategic capabilities are some additional examples. Acquiring reliable, accurate and actionable intelligence is a difficult task which an intelligence agency finds difficult to achieve thereby putting greater responsibilities on the political leadership to exercise wise judgment and caution. Based on its track record, one can safely assume that the intelligence provided by CIA for the conduct of drone strikes may be fairly accurate but not correct in all cases.

Legitimate Targets

Drones are a means to use lethal force against any desired target. But what are the criteria to identify a person as a legitimate target for Drone strikes? How are these targets identified on ground, calling for the strike and who confirms that they are the real targets. If all individuals affiliated with Al Qaida and affiliated organizations or sympathetic to such organizations are to be considered legitimate targets then what is the procedure to confirm that these individuals are actual members of these organization. There are no dossiers and records held by any agency

and neither has been claimed so far. The next step is even more difficult, once the membership or affiliation is established, how to establish that they are involved in terrorist acts against the US or actively involved in the planning process in this regard. Even if they are involved in planning, is it a justifiable ground for their killing. Most sovereign states plan military operations and train their military personnel, keeping in view their own threat perception, so by this definition, will all states which plan military operations or train their military personnel for combat operations will be considered legitimate targets for killing by the US through drone operations?

Accountability

The personnel, mainly from CIA, involved in operating drones are tasked to engage and kill their targets without following any legal procedure which may hold them accountable in court of law for their action and judgment. This is highly dangerous when few people sitting in some closed rooms of CIA analyze data and issue license to kill someone without giving him a chance to identify and defend him or herself. There is no public accountability of the officials involved and the efficacy of the procedures followed, thus making the process harmful to public interest and problematic.

Covert Operations

Drones are being used in covert operations by CIA. This is the first time when covert operations are being conducted overtly. Knowing fully well who is conducting these operation, where and against whom, taking full responsibility but without any legal cover. This is highly controversial and reminds one of the historical *Melian* dialogue "powerful exact what they can, and the weak grant what they must."⁷ This means that since the US is the most powerful state in the world, therefore it can do whatever it can and rest of the world is unable to oppose it so it does what they must, so did Pakistan and the rest of the world. But interestingly Taliban chose to fight against the US as did the *Melians* against the powerful Athenians.

Warfare or Video Game: Detachment from Battlefield

Drone operations are unique in character using technical instruments guided remotely by operators sitting thousands of miles away from the rugged mountainous battlefield, inside the secure and cozy comfort of an operation room within the US mainland. This physical displacement from the battlefield creates an artificial environment much like a video game where causalities are taken as hits and scores in a computer games. This process renders human killing as a video game, grossly reduces the sanctity and respect for human life and generates

7 The Milian Dialogue, accessed on June 5, 2013, http://web.mit.edu/dimitrib/www/Milos_Photos/Milian_Dialogue.html

complete disregard to the suffering and pain of those who are being killed with impunity. This physical detachment of the drone operators, who might have never been outside their own countries and might have never known any other society, are likely to regard warfare as a sport, insensitive to its human and psychological implications for humanity and society. Such type of war diminishes the ethical or moral issue of killing innocent civilian. For them it is just a screen display where they hear no screams, see no blood, witness no pain and smell no smoke. This kind of remote warfare tends to promote killing more and more achieving higher and higher scores as in a video game. The evidence of this psyche and mind-set is visible from the video released, which was based on the conversations between the US soldiers killing innocent civilian.⁸ Risk taking in drone warfare is also common as it poses no threat to the operator's life and can be considered as affordable by the drone operators.

War Casualties

The US has been sensitive to the issue of its own soldier's casualties in all its military operations. The body bags of soldiers returning home during Vietnam War had serious psychological impact on the nation. Similarly the growing discontent against the War on Terror is because of the increasing number of soldiers being killed or injured. If by some other means this human casualty can be reduced or minimized, the war or no war would be less of an issue for the Americans. These drones have done the same, where the drone fighter is away from the battlefield hazards and is immune to the retaliatory action of the enemy being targeted. This unique insulation from the hazards of war and battlefield breeds a culture where an average American is not bothered about the questions of state sovereignty, legality, or the unintended casualties that the drone strikes tend to inflict. "The message U.S. citizens take home when they hear about drone strikes in the FATA is that their government overrides such concerns in the pursuit of America's enemies – and it's a message they are mostly comfortable with."⁹

Implications for Conflict Resolution

Drones pose both social and political problems but it has another dangerous implication that it keeps the conflict warm if not hot. The use of force seems quite a possibility and at no human cost to the aggressor. This tendency reduces the chances of negotiated settlement based on

8 Video, *Collateral Murder: Iraq*, accessed on July 22, 2013, <http://readersupportednews.org/off-site-news-section/45-45/1427-video-us-apache-helicopter-kills-12-unarmed-iraqis>

9 Trefor Moss, "Obama's Drone War", *The Diplomat* (February 6, 2012) accessed on July 21, 2013, <http://the-diplomat.com/flashpoints-blog/2012/02/06/obamas-drone-war/>

give and take and compromise. The side possessing drones will try to dictate and destroy rather than negotiate as the cost of conflict seems affordable to the aggressor and there is no benefit in conceding to the demands of the victims. If this trend continues then the settlement of conflicts through peaceful means will become more difficult, seriously endangering world peace and security. In a recent drone attack which has resulted in killing of TTP leader Wali-ur-Rehman has done exactly the same. The strike has killed an undesired leader of the opposition at a time when the government was making an effort to negotiate and resolve problems with Taliban in Pakistan. The drone strike has done the damage and destroyed any prospects of dialogue and peaceful settlement of the conflict.

Proliferation of Drone Technology

Today US enjoys an overwhelming superiority in the use of armed drones but this is likely to end soon. Up to 70 countries already possess drone technology¹⁰ but are using them mostly for reconnaissance purpose. This may become complicated when these countries also start using armed drones for targeting. These new drones will gradually become more smart and undetectable, ensuring silent killing of undesirable individuals, irrespective of the fact whether they are legitimate combatant or not. This may seriously undermine the entire justice system of the free and civilized world and create new threats to world peace, security and regional stability.

Duplicity of Drone Warfare

When international law is applied and state relations are conducted, there is an increasing trend of double standards and lack of moral considerations for policy making. Pakistan has repeatedly been the target of this international duplicity and discrimination. The states are increasingly being categorized differently as per political and commercial interests by major powers. With regards to drones this duplicity is clearly evident. Here States are not all the same when it comes to terrorism, in other words, no rational US leader is going to take the solemn international law admonition of the "sovereign equality of states" too seriously in these matters— There will not be "Predators over Paris, France," any more than there will be "Predators over Paris, Texas," but Pakistan, Yemen, Somalia, and points beyond are a different story.¹¹ Understandable the double standards are there but now have

10 Micah Zenko, "10 Things You did not Know about Drones" *Foreign Policy* (March/April, 2012), accessed on June 23, 2012, http://www.foreignpolicy.com/articles/2012/02/27/10_things_you_didnt_know_about_drones?page=0,3

11 Ibid., Kenneth Anderson, "Targeted Killing and Drone Warfare: How We Came to Debate Whether There Is a 'Legal Geography of War'".

been exposed, the moral high ground of the free and fair liberal democratic systems, as they may call it to be, is being challenged.

State Institutions

There is an increasingly disappointing situation because drone warfare undermines the state institutions of the countries being targeted by terming them as failing states. It would be appropriate to consider them as new and evolving but are definitely not failing. The state apparatus is up against the menace which the world (though joined together) is finding difficult to control. The entire world coalition forces under ISAF and NATO have not been able to crush militancy and extremism with all their resources and technological, how can countries like Pakistan, Yemen, Somalia or Syria alone do so. On the contrary, if we compare the performance of coalition forces in Afghanistan with Pakistani forces operations in Swat Valley and Waziristan, the performance of Pakistani forces is far better than the performance of ISAF or the US forces in Afghanistan. Drones attack conducted on this ground that state forces are not capable of doing the task is thus not valid.

Ungovernable Territories

The argument of ungovernable territories has frequently been used to justify drone strikes especially in the tribal areas where there is limited writ of the government. If this issue of ungovernable territories is raised then many other countries will have serious problems and new issues of interference in internal affairs will emerge. India in Kashmir has serious governance problems and also in many other districts (Maoist movement) where it has no control. Can another state start targeting some suspected criminals inside India using drones on the pretext that these are ungovernable areas and are being used by terrorists as safe heavens? Similarly US has problems with Cuba, Mexico and other Central American countries with many weakly-governed border areas, so can this argument be used to justify killing of suspects in these countries. The world has large ungovernable territories which not under tight state control, so what would be the future of military operations within the state boundaries if they are ungovernable. Should it not be the same state or the UN to decide? What actions are required to be taken? Or a single state should be allowed to interfere unilaterally.

Democratic Norms

If by any means and on any ground these drone operations are considered as essential and only way to bring the culprit to justice then what will happen to the so called democratic norms considered as desired objectives of a free and civilized world. The regime of Col Qaddafi which has recently been removed for being oppressive and accused of committing atrocities on its own people violating human rights and not giving legitimate chance to the opposition parties and individuals to

express their opinion and engaging in extrajudicial killings and imprisonment of own people. Is this not the same crime which the US is committing in other states, under the guise of covert operations by using drones and private contractors, to assassinate individuals without giving them a fair chance to defend themselves?

Conclusion

The drone strikes inside state territories not engaged in any armed conflict have raised serious debate at various levels regarding their legitimacy and efficacy. The UN system, does not allow continuation of this policy and more so the public opinion is also against it. Despite all this opposition, the US administration continues to pursue this policy which is detrimental to the contemporary international system based on the principles of state sovereignty and territorial integrity. There are serious issues related to the violation of state sovereignty, acts of aggression against citizens of other states and new form and emerging norm of extrajudicial killing and civilian assassinations. There are no transparent accountability procedures in place to verify the credibility of the intelligence and necessity of drone attacks in other states. Additionally, this concept of remote targeting is producing a new culture of warfare which is inhuman in nature and dangerous for negotiated settlement of disputes. The world today is becoming a dangerous place to live where remotely controlled drones are targeting people by the choice of few without affording them an opportunity of fair trial and chance of self-defence.

Some of the issues highlighted in this paper indicate that drone strikes have serious, technical and legal challenges. Moreover, killing few individuals arbitrarily on the basis of suspicion will not eliminate terrorism. There are genuine and core issues related to the notion of terrorism which must be understood and addressed. Ironically, these issues are used by the extremist groups to rally support, collect funds and recruit young people to perpetrate acts of terrorism. Unless these issues are resolved, the fight against extremism will never end.

It is believed in Pakistan that drone strikes have failed to control or reduce terrorism. However, whilst attempting to eliminate the militant leadership, it is also leading to the killing of innocent civilians, thus further breeding terrorism by providing legitimate grounds for the recruitment of new members and suicide bombers. These attacks are used as a plea by extremists to carry out suicidal attacks inside Pakistan, leading to further spread of violence, destabilization and insecurity

within the society. The Joint-Parliamentary statement¹² clearly calls for the end of drones strikes inside Pakistan, a true reflection of public demand of the Pakistani nation. In the greater good of the world at large and improving friendly relation and cooperation with Pakistan, under the Obama administration's second term, the US should revisit its policy of using drone strikes inside the territory of a frontline ally, and stop further drone strikes.

The new government which is taking over (has taken over) in KPK under Pakistan Tehrik-e-Insaf (PTI) and in the center under PML(N) have both expressed their serious concerns to end drone strikes but ironically there is no shift in the US policy. President Obama in his recent address to National Defence University, Washington has reiterated continuation of drone policy though with some modifications. Hope better sense may prevail and the entire policy is objectively revised in the greater interest of humanity and peace and security for all nations.

12 "Resolution on Guidelines for Terms of Engagement with USA/NATO/ISAF and General Foreign Policy", National Assembly of Pakistan: Resolutions, April 12, 2012, accessed on June 23, 2013, http://www.na.gov.pk/en/resolution_detail.php?id=61

