

# The Discourse of the US Drone Strikes in FATA from the Perspective of International Law

Yousuf Storai\* and Abdul Wadood

Department of International Relations, University of Balochistan, Pakistan

## Abstract

This article is the descriptive analysis of the US Drone strikes that have been carrying in FATA since 2004. The study focused on what is the legal ground of the US Drone campaign in FATA. Whereas analysis of the legality discussed in the paper is from the perspective of international law only. While for this paper, the qualitative approach is adopted. The data for this study is collected in the shape of semi-structured interviews that are taken from the people who hold expertise in the field of law and existing data are utilized too. Further, the indicators derived from the data substantiated that the US Drone strikes in FATA have some legal ground in the light of international law. This study is guided by the philosophy of "Just War" theory. Finally, the purpose of the paper is to remove the misunderstanding prevailing among the people of Pakistan regarding the legality of the US Drone strikes in FATA.

**Keywords:** Legality; US drone strikes; FATA; Terrorists; International law; Self-defence

## Introduction

Before all else, the human price of terrorism has been almost felt in virtually every part of the world. Therefore, terrorism is the use of those actions, which are designed to influence government, intimidate public or any organization. In more simple words, terrorism is a process of imposing your will forcefully upon others. So to trace out the roots of terrorism in the South Asian region and particularly in the countries like Pakistan and Afghanistan, two incidents in past had played a very significant role in this regard. First Mujahideen, which emerged in Afghanistan right after when Soviet troops landed in Afghanistan in the late 1970's. Second, the incident of September 11, 2001, reinvigorated the concept of terrorism. Consequently, both the above-mentioned turning points have given birth to the rise of terrorist groups in Afghanistan and Pakistan respectively [1]. To punish the Terrorists, who had orchestrated the September 9 incident, the US and NATO forces launched Operation Enduring Freedom (OEF) and attacked Afghanistan in 2001. The US operation within few days crippled the government of Taliban in Afghanistan, apart from that it also forced the Taliban and other fighters towards the tribal area of FATA. So, the US operation pushed a large number of high profile as well as ordinary militants to the border area of Pakistan via crossing Tora Bora mountains [2]. These fighters remained dormant or inactive for few months but later on, they organized their networks and started counterattacks both on NATO and US forces in Afghanistan as well as on Pakistani paramilitary troops. Pakistani troops tried their best to exterminate the hideouts of these terrorists but their counterterrorism efforts proved insufficient as these terrorists were continuously meddling in the affairs of Afghanistan. Consequently, this situation paved the way for the US administration to utilize Drone technology against armed groups in FATA and the first Drone strike was reported in June 2004 [3]. The objective of starting the air campaign by Americans in the shape of Drones were primarily aimed to disrupt and decapitate the Al Qaeda, Haqqani network, Afghan Taliban and Foreign militants in FATA, which have been posing a serious threat to the peace of the international community [4]. These US Drones have been operated by the CIA from the bases in Afghanistan. During the second term of the George W Bush presidency, the number of Drone strikes in FATA increased. However, President Obama further increased the frequency of Drone strikes. According to the reports of

the New American Foundation, US Drones strikes in FATA have been targeting a large number of high profile leaders of the various terrorist groups. As a result now the upper tier of terrorist groups are totally killed, further due to persistent hovering of the Drones in the sky has been totally undermining the capability of effectively running their networks. While sometimes, civilian's casualties are also reported after the strike and in fact, this is the most difficult task to ascertain it. Because targeting an unarmed terrorist has given birth to various legal questions regarding jus in Bello and jus ad bellum. However, the sophistication of the Drone technology is increasing day by day, as a result, the chances or the option of civilian casualties are largely fading away [5]. Overall, US Drone is attacking militants throughout the FATA but a majority of the attacks are taking place either in North or South Waziristan [6]. Thus, the employment of Drone technology by the Pentagon in the battlefields with special reference to FATA has greatly weakened the militants' capability of effectively operating their networks any more.

## Literature Review

The writer opined that the US administration is justifying the US Drone targeted strikes in FATA under the notion of pre-emptive doctrine. Whereas, the incident of September 11, 2001, infringed the security of the USA and resulted in the killing of dozens of people. Therefore, that terrorist act was an open challenge for the US administration from non-state actors and it was expecting that any time such another incident could happen again. So, therefore, US administration decided to punish those non-state actors, who were responsible for the heinous episode of September 11. Consequently, the US along with some other NATO member countries started the global

\*Corresponding author: Yousuf Storai, Department of International Relations, University of Balochistan, Tel: +92 (81) 2880410, Extn: 808; E-mail: [yousuf.storai@gmail.com](mailto:yousuf.storai@gmail.com)

Received October 22, 2018; Accepted January 18, 2019; Published January 26, 2019

Citation: Storai Y, Wadood A (2019) The Discourse of the US Drone Strikes in FATA from the Perspective of International Law. J Civil Legal Sci 8: 258. doi: 10.4172/2169-0170.1000258

Copyright: © 2019 Storai Y, et al. This is an open-access article distributed under the terms of the Creative Commons Attribution License, which permits unrestricted use, distribution, and reproduction in any medium, provided the original author and source are credited.

war on terror and launched Operation Enduring Freedom (OEF) in Afghanistan. Meanwhile, Drone technology has been introduced, with the aim to target the members of non-state actors such as Al Qaeda, Taliban and foreign fighters. These groups have had their hideouts in FATA; apart from that the members of such groups are also attacking the security forces both in FATA and on another side of Durand line. So these all created the ground of pre-emptive strikes for the US authorities [7].

Drone technology can be used inside war zones. However, certain questions like that of transparency, collateral damage, violation of human rights and legal fraternity must be taken into consideration. Whereas the clauses dealing Jus ad Bellum and Jus in Bello of international law is giving the right to any country to use Drone technology or military escalation in right self-defence [8].

Murphy believes that US Drone strikes are the example of Washington's cross-border attacks. These attacks are to pursue those fighters who are frequently staging attacks over NATO troops in Afghanistan and the come back to hide in FATA. While Pakistani authorities have been nominally criticizing such attacks and consider this as against their territorial sovereignty. Contrary to this mock criticism, authorities had provided air bases to US authorities, from where US Drones had operated for few years; bases included Shamshi and Shahbaz airbase. So based on this, one can easily assume that these Drone strikes have been conducting with the prior permission of the Pakistani government. Further, not preventing the US practically from such action again endorses that government of Pakistan has a secret deal with the Pentagon. Therefore, carrying any such military operation with the consent of host government means, it has legality and does not violate any grave obligation of the state under international law [9].

The International Court of Justice (ICJ) in the Nicaragua Case of 1986 has laid the grounds of justification of self-defence. In the light of Nicaragua Case, ICJ has held that "if a state suffers from an armed attack of irregular forces, which are operating or harbouring in the territory of another state, so in such a situation the country has the legal right to take an armed action against the harbouring state". Now this clause of ICJ can be taken into two different contexts, firstly experts believe that state is having kind of relations with these armed groups, so American Drones are attacking the hideouts of terrorists. Secondly, these terrorist groups in FATA are not only attacking NATO and US troops in Afghanistan; they also frequently target Pakistani troops. Therefore, in such case, American Drones are an act of self-defence both for the US as well as for the government of Pakistan. Consequently, this notion of self-defence provides a legal framework to the US for conducting Drones in FATA [10].

## Methodology

This study is an attempt to deconstruct the US Drone strikes in FATA, in the light of international law. It will examine the grounds on which these strikes have been carrying by the US administration since 2004. These US Drones are striking the Taliban hideouts in the Federally Administrated Tribal Area or across the Pak-Afghan border. The strikes so far have resulted in the killing of hundreds of people and many more injured. Therefore, this paper will play a very important role in discussing the legality of the US Drone strikes. Apart from this, the study will be also helpful for the policymakers of the country as well as future researchers. Moreover, the research has a qualitative design, where data is collected in the shape of semi-structured interviews, conducted with legal experts in the relevant field. Finally, yet importantly the "Just War Theory" has been employed in the study as a theoretical framework.

## Contextual Framework of FATA

Federally Administrated Tribal Area is comprised of roundabout 27,500 square kilometres, lying near the Pak-Afghan border and is the home of 3.6 million population mostly Pashtuns and it makes 2% total population of the country. Geographically FATA is situated in North West of Pakistan, so it has a border with Balochistan in South, Khyber Pakhtunkhwa in East, and while on other hand FATA touches the nine provinces of Afghanistan divided by 2460 km long Durand line. For running FATA administratively, it has been divided into seven agencies and six Frontier Regions (FR) [11].

FATA has a long history, during the era of British Raj the area was controlled by Political Agents (PA), who were appointed by the colonial power and responsible managing the affairs of the area to them. Political Agents were assisted by Assistant Political Agent (APA), Deputy Tehsildar, Khasadar and Levis. However, the people of the area had waged several wars against the colonial power; this greatly undermined the might of British Raj. Because of constant fear from the tribes of the FATA and to hit them hard, Britishers introduced a discriminatory law for the area, known as Frontier Crimes Regulations (FCR 2005). The other name for the FCR was Draconian law, this law provided extensive power to the Political Agents for running FATA. Later on after 1947, the area of FATA came under the control of Pakistan but FCR remained enacted until the year 2018 when FATA was merged into Khyber Pakhtunkhwa. This step of merging FATA into Khyber Pakhtunkhwa was largely hailed by the people as it mainstreamed the long-neglected area of the country [12].

## The Objective of Research

To highlight the legal grounds of conducting the US Drones Strikes in FATA in the light of international law.

## Theoretical Framework

The very word justice has been traced from the writings of the Plato and Aristotle. Whereas in a different epoch of time intellectuals refined the word, finally Thomas Aquinas presented justice in 1274 the shape of "Just war theory". This theory totally revolves around the ethical perspectives of war means, how to respond or behave in a war (Lacewing n.d.).

Following are the essentials of this theory.

War is always to be fought for the just cause, in other words, there shall be no personal motives rather than self-defence. Most important, the presence of a flagrant threat is necessary for waging war.

Second, war is waged by a legitimate authority, means to do by country rather than party, groups, non-state actor.

Thirdly, going for war must be a last resort, in other words, all available peaceful means for settling an issue is to be utilized at an optimal level.

Fourth essential of this theory is regarding the probability of success of the war. So, war is to be waged by a state keeping in mind the chances of success, if there are fewer chances of success than war must not be waged because it will face the people with the only destruction stand violence.

The last point of this theory is about proportionality, the very word here means during any war, the civilian population may neither be victimized nor targeted. Thus, drawing a clear line between civilian and enemy in a war.

In this section of the study, the application of the theory is discussed. So, let's talk about the first essential of the theory that is about just caused. USA did not intend to launch the military operation against militants until it was the September 9 incident that made the USA take action against the armed groups, which had endangered their national security. Later on, the counter attacks on NATO troops across the border from FATA provided again excuse for the US to extend their operation beyond the Pak Afghan border. So, the later one was in the shape of Ariel defence. Meantime the US Drone strikes have been carrying by the country rather the by any party or organization so again this full fill the criteria of the theory. Furthermore, the sophistication of the Drone technology is up to the mark as it precisely targets the point, therefore each US Drone strike in FATA is carried after a detailed enquiry of the targeted person, and the aim by doing so is to avoid any kind of civilian casualties. Hypothetically, the US Drones in FATA are very successful in eliminating the hard-core terrorists; these strikes have almost killed the upper as well as the lower tier of terrorist of various militants' organization.

### Nature of Conflict

Actually, in the light of international law, conflicts are classified into international armed and non-international armed conflict. Therefore, international and humanitarian law deal with each in a particular way. However, some of the main clauses are equally applicable to both types of the conflict. So before starting discourse regarding the legality of US Drones in FATA, we have to understand the nature of the conflict that we have in Afghanistan and its extension to FATA. While a conflict, where the forces of two countries are directly engaged against one another, with the aim to compete will be called an international armed conflict. Contrary to this, non-international armed conflict is, where state armed forces are in a war against a particular group or any non-state actor. So, to narrow down the debate regarding the nature of the on-going conflict, now one can easily say that the conflict in FATA as well as in Afghanistan is non-international armed conflict as Taliban, Al Qaeda, Haqqani networks and foreign fighters have been declared as non-state actors [13].

### Self-Defence from the Charter of the United Nation

The Security Council of the United Nations has entrusted the power of maintaining peace and security at the global level. In addition to this, it has also the power to any kind of flagrant threat or an aggressive threat. These all can be deduced from the article of 51 of the UN.

"Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a member state of the UN until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security." (Charter of UN n.d.)

This article can be explained in two different ways. First explains the futuristic aspect, means a country "B" can only go for a war against country "A", if country "A" is preparing for an attack over that country "B" in near future, this is also attributed as an anticipatory attack. Second, it also explain that if a non-state actor or any country attack another country so the country has the right to wage war against the aggressor under the umbrella of self-defence.

### US Drones Strikes as a Collective Action

It has been stated that the article 51 of the United Nations has given the right of self-defence to any country of the world. However, this step of self-defence must not be taken unilaterally rather it has to be supported by other member states. Further, this act also endorses the consent of other states regarding the action of self-defence is necessary. Similarly, the US operation against militants in Afghanistan and FATA is not a unilateral act, rather it has been supporting by NATO troops [14]. It means the war against terror is not the war of the USA, it is the war which is waged by more than 28 countries including Pakistan and other non-NATO countries. In addition to this, it also encapsulates that the US before launching action, took dozens of other countries on board, apart from this Pakistan itself is also an ally to the US in this war [15]. Thus, this war against terrorism is supported by the members of the United Nations in one way or in other way and none of the countries has so far shown their disgust on the on-going war.

### Importance of Authorization in International Law

Consent of a state or authorization plays a very important role in international law. It is because authorization makes thing legal and it does not violate the law of any state [2]. Therefore, this section will discuss various indicators that will help us in the authorization of the US Drone strikes in FATA. After the incident of 9/11, the USA decided to go for a war against the militants who had orchestrated the incident. For this, US president Bush urged Pakistan to opt an option; either Pakistan wants to be on the part of US or to be with terrorists. In response to this, the then the president of Pakistan, General Pervez Musharraf extended support to the USA in war against terror and also accepted the demands which were presented by the president Bush. By this step leaning towards the USA, Pakistan was granted with the title of "Non-NATO ally" [16]. Apart from this, there are few indicators, which will further tell us about the consensus between Pakistan and USA regarding the Drones strikes. The indicator includes the provision of Shamsi air base, which is located in Balochistan. This air base had been handed over to US administration and from the same base, the US Drones were being operated for a long period. Probably the base was under the US administration until the Salala incident that occurred in the November of 2011 [17]. Therefore, it means, Shamsi airbase was used by the US for the Drones strikes in FATA for somewhat 7 years. Not only Shamsi airbase but also Shahbaz airbase near Jaccobabad Sindh had also used for the same purpose [18]. Even emergency landing facility was also provided to the US Drones at Kohat and Zhob air bases. Pakistan's support to the US was only limited to the provision of airfields only but has also provided supply routes for the logistics as well as intelligence sharing with the US and NATO troops in Afghanistan. The two common routes are from Karachi port to Chaman through the national highway of Balochistan and to Torkham border. To conclude, the above indicators are more than enough to understand that there is consent between Pakistan and USA regarding Drone strikes in FATA. Therefore, in the light of international law, the consent of state has eroded the concept of illegality and these strikes which are being carried in FATA has a sort of legal grounds on the basis of consent as well as legitimacy.

### Conclusion

Thus, terrorism is a threat to the peace of the world, whereas the paper analyses the legality of the US Drone strikes from the perspective of international law. It argues that under the charter of the United Nations a state has the right of self-defence against another state or non-state actor. In addition to this, the action of self-defence must

not a unilateral act rather it should be supported by other actors; it also means that other states regarding action must be taken on board. Keeping this in mind, the US Drone strikes are not a unilateral act rather is the part and parcel of war on terror and the same war is not only waged by the US but also the western countries including NATO members. So this shows that the strikes have a legal ground. However, the international law strictly prevents a state targeting or harming civilians during the course of a war. Therefore, sometimes due to lack of ground information, a complexity regarding the targeted people arouse, in such a situation US Drone lose credibility. Because people in such cases criticized the sophistication of the technology. Overall, the comparative analysis of the civilians targeted by the US Drone with the hardcore militants will lead us to the fact that the technology has badly crushed the networks of militants from working effectively. Thus, the US Drone strikes that have been conducting in FATA since 2004 seem to have a validity and legitimacy in one way or in another way from the prism of international law.

### References

1. Stephen R (2009) Framing the War on Terror. Journalism, pp: 776-796.
2. Peter B (2009) The Account of How We Nearly Caught Osama bin Laden in 2001.
3. Joseph (2017) Pakistan: Reported US Drone Strikes 2017. Bureau of Investigative Journalism.
4. Mehmood TK (2013) The Social, Political and Economic Effects of the War on Terror: Pakistan 2009 To 2011.
5. Gareth E (2017) UAV innovation: what are the new concepts taking hold?
6. Glyn WB (2010) The CIA's Covert Predator Drone War in Pakistan: 2004–2010: The History of an Assassination Campaign. PP: 871-892.
7. Ahmed SS (2010) War on Terrorism: Self Defense, Operation Enduring Freedom, and the Legality of U.S. Drone Attacks in Pakistan. Global Studies Law Review, pp: 78-128.
8. Mahmood A, Karim A (2015) US Drone Attacks in Pakistan: An International Law Perspective. International Journal of Business and Social Review.
9. Murphy SD (2009) The International Legality of US Military Cross Border Operations from Afghanistan Into Pakistan.
10. Wali A (2011) A critical evaluation of American drone strikes in Pakistan: Legality, legitimacy and prudence.
11. Naveed S (2008) Understanding FATA. Community Appraisal and Motivation Programme.
12. Imtaiz A (2018) Mainstreaming Pakistan's Federally Administrated Tribal Areas.
13. Casey-Maslen S, Giacca G, Bellal A (2011) International law and Armed Non State Actors in Afghanistan. International Review of the Red Cross, pp: 45-67.
14. Philip GH (2001) NATO and the War on Terrorism: A Changing Alliance.
15. Shaheed SH (2010) Pakistan-US Policies on the 'War on Terror' and the Taliban: Allies at Loggerheads, pp: 51-67.
16. Jayshree GB (2008) US Pakistan Military Cooperation.
17. Iftakhair F (2011) 24 soldiers killed in NATO attack on Pakistan check post.
18. Saeed S (2011) Pakistan orders US to leave airbase in row over deadly Nato assault. The Guardian.