

US DRONE ATTACKS INSIDE PAKISTAN TERRITORY: UN CHARTER

*Nadia Sarwar**

The US President, George W. Bush, in his address to the US. Military Academy at West point on June 1, 2002, declared that America could not always rely for its security on traditional strategies of deterrence and containment. Instead, he claimed that faced with the perils posed by the terrorist networks, the US must strike first before the danger had materialized.

The terrorist attacks on September 11, 2001 brought about a fundamental change in the nature of American primacy. The US in the post 9/11 environment acting as the world's hegemonic power; relied on unilateralism, military force, and preventive war instead of traditional diplomatic tools to deal with security related issues. Also, the 9/11 attacks provided the US an opportunity to interpret the doctrine of self-defense in a way it desires along with the invention of doctrine of 'pre-emptive strike' to seek legitimacy for use of force in self defense.

Thus, under these interpretations made by Bush administration, the Pentagon in 2004 was secretly authorized to carry about 12 attacks against Al-Qaida militants in Syria, Pakistan, Yemen, Saudi Arabia and other Persian Gulf states where Al-Qaida and militants were believed to be operating. These secret operations were authorized under a classified order signed by the former Defense secretary, Donald Rumsfeld, with the approval of President George W. Bush.

Accordingly, in the wake of these secret Pentagon operations to strike al-Qaeda network worldwide, a Navy Seal team raided a suspected militant compound in Bajaur region in 2006, according to a former CIA official. In another attack, the CIA Predator aircraft, in the predawn hours of January 29, 2008, flew above the Pakistani town of Mir Ali. The drone's operator, relying on information secretly passed to the CIA by local informants, attacked a cluster of mud-brick buildings a few miles from the town center with two Hellfire missiles.

Besides this, on September 3, 2008, heavily armed commandoes, believed to be US Special Forces, landed by helicopter and attacked three houses in a village named Jala Khel area close to a known Taliban and al-Qaida stronghold. In this early morning attack upto 20 people were killed that comprised mostly women and children. All the above mentioned attacks were carried out during President Bush's era.

Many of President Obama's advisors are urging him to sustain orders issued by President Bush to continue Predator drone attacks against a wider range of targets in the tribal areas of Pakistan. The newly born 'Obama administration' has also expanded the covert war run by the CIA inside Pakistan. The drone strikes are another sign that President Obama is continuing, and in some cases extending, Bush administration policy in using American spy agencies against terrorism suspects in Pakistan. Using Predators and the more heavily armed Reaper drones, the CIA has carried out more than 30 strikes since September 2008, according to American and Pakistani officials.¹

* *Ms. Nadia Sarwar is a Research Fellow at the Institute of Strategic Studies, Islamabad.*

In these attacks, it was believed that a number of senior al-Qaeda figures, including Abu Jihad al-Masri and Usama al-Kini were killed. These two were believed to have helped plan the 1998 American Embassy bombings in East Africa and 2008 bombing of the Marriot Hotel in Islamabad, Pakistan. (Obama expands Missile strikes). Apart from the American claim of killing of al-Qaeda persons, 300 civilians have also been killed in these strikes. The extensive missiles strikes being carried out by the CIA-operated drones have until now been limited to the tribal areas of Pakistan.

However, President Obama and his national security advisors have recommended to him to expand the American covert war in Pakistan far beyond the unruly tribal areas to strike at a different centre of Taliban power in Baluchistan, particularly in and around the provincial capital of Quetta. The reported CIA plan to use Predator drones in Baluchistan, would further destabilize security situation there and would create a severe domestic backlash within that particular area.

In addition, the CIA strikes inside Baluchistan would also have its affect on Chinese activity in the region. The Chinese have focused most of their investment in the country in that area, notably around the Gwadar seaport. Gwadar seaport, just 624 nautical kilometers east of the Strait of Hormuz, gateway to the Persian Gulf, lies about the 1,000 kilometers from Quetta. Plans for expanded and improved transport links between Gwadar and Quetta and a planned oil pipeline linking the port to China's western region could also be threatened due to drone attacks. Nonetheless, due to strong resistance from the Government of Pakistan the Obama administration dropped the plan of using predator attacks inside Baluchistan.

The legal validity of these American strikes on Taliban and al-Qaeda hideouts in Pakistan, under the UN charter, is debatable. According to the international law experts, Washington appears to be ordering the attacks based on broad legal arguments that the US can act in self-defense to protect US and the coalition soldiers in Afghanistan, if neighboring countries are unwilling or unable to crack down on militants. However, legal scholars also say that this is per se illegal unless it is proved that the state is supporting or encouraging the militants.

Washington has long claimed that Pakistan has not taken adequate steps to stop the flow of militants across its border into Afghanistan. The previous Bush administration and the current Obama administration appears to be operating under article 51 of the UN Charter, which allows countries to use military force in another country in self-defence. Ruth Wedgwood, a professor of international law said that the US and many other nations have over time viewed the article as a legal basis for acting against non-state actors such as terrorists plotting attacks in another country. She said that the same UN article was the basis of the UN Security Council resolution authorizing military intervention in Afghanistan following the September 11, 2001, terrorist attacks.

Though Americans are there in Afghanistan under the UN sanction, they are restricted only to Afghanistan under the UN mandated operation. Also, if under the UN Security Council resolution 1373, all the UN member states are obliged to cooperate in UN-sanctioned international efforts to counter terrorism, then equally all nations under Article 51 of the UN Charter have the right to act in self-defense.

Article 51 states that; "Nothing in the present Charter shall impair the inherent right of individual or collective self defense 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-defense 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."

So, Article 51 of the UN Charter also gives the right of self-defense to every state. For this reason, the US drones attacks and ground offensives are naked aggression, and Pakistan should take this matter to the UNSC. What's more, the CIA ground assault operation inside Pakistan was a far cry from a UN-mandated operation. Importantly, the Article 2 (4) of the UN Charter states; "All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations."

Additionally, the same no war resort was affirmed by the International Court of Justice to exist in the customary international law in the famous Nicaragua v USA case (1986).² In this case though it was proved against Nicaragua that it has helped anti US militants/guerrilla, International Court of Justice (ICJ) undoubtedly ruled that the US could not rely on the right of self defense to justify its use of force. Again, in Congo v Uganda (2005) case, the International Court of Justice in its decision said that Uganda could not use force under the self defense doctrine in an action targeted against the militants in Congo violating its territorial boundaries.

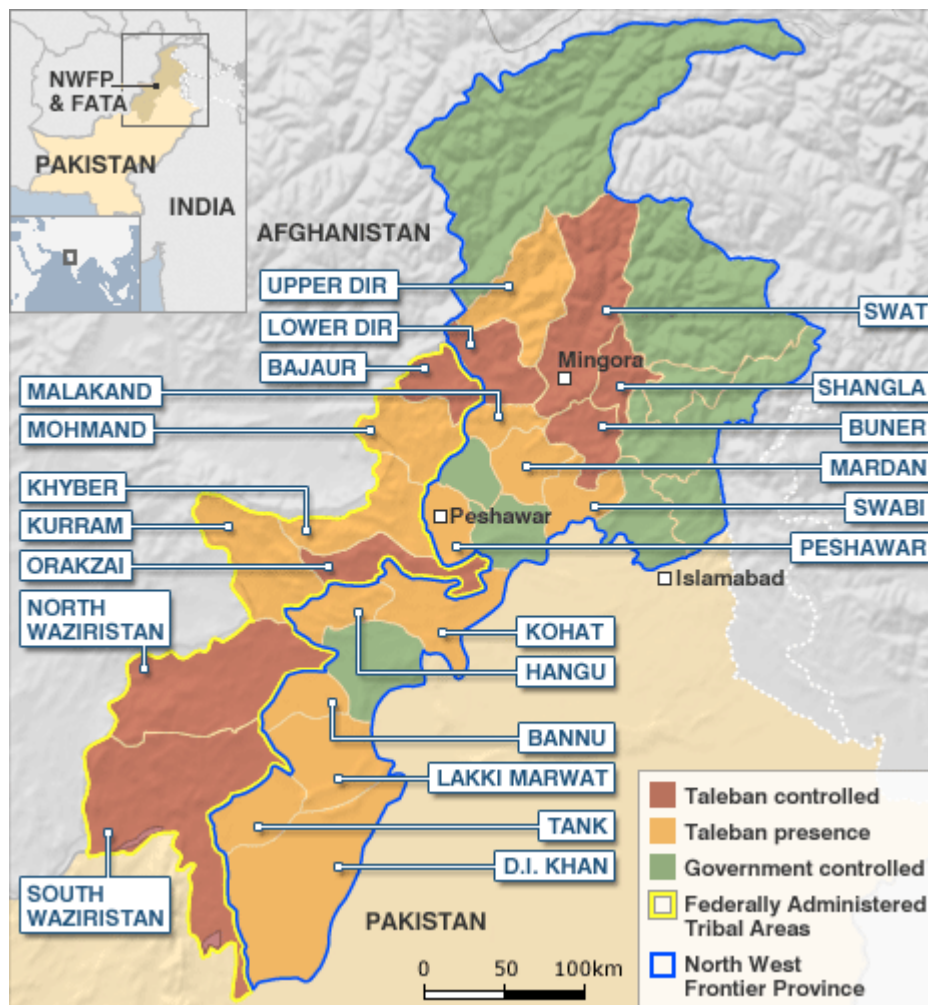
So as per the international law, providing sanctuary to militants is not by itself an excuse to contravene state sovereignty by use of force until and unless it amounts to an implicit support of terrorists attacks by the harboring state. The only exemption to this rule is when the state providing shelter or safe haven to the militants has lost effective writ and has failed to do away with the threat of terrorism from its terrain.³

Hence, in this context, the continuous unmanned Predator drone attacks on the Pakistan territory by the US could have either of the two legal justifications; (a) either Pakistan is suspected of supporting the acts of terrorists inside Afghanistan against the US and the NATO forces, (b) Pakistan has lost writ on its territory and cannot eliminate the threat of terrorism.

These are the two justifications on the basis of which the US is justifying its missile strikes inside the Pakistan. The US and the west have long claimed that Pakistan is supporting the militants in carrying out attacks against the US and the coalition's forces inside Afghanistan. On November 21, 2008, US Congressional Research Report entitled "Islamist Militancy in the Pakistan-Afghanistan Border Region and US Policy" stated that 'Pakistan is identified as a base for terrorists groups and their supporters are operating in Kashmir, India, and in Afghanistan.'

Moreover, the US and the west claimed that Pakistan has failed to contain militants inside its area and quickly losing its territory to them in FATA and the NWFP region. The previous Bush administration and the present Obama administration have been frustrated by the inability of the Pakistani government to contain al-Qaida and Taliban militants hiding in the Federally Administrated areas (FATA) in the Waiziristan region. In addition, the US officials believed that the militants supported by Pakistan have used these safe havens to launch cross border attacks on the US and NATO troops. Time and again the US and the Western media published reports that Pakistan government has

lost its control over some of its area in Fata and NWFP region. For example, the BBC published a map in which showed that only 38 per cent of the area in the NWFP region remained under full government control. Following is a copy of the controversial map:



Source: BBC News, South Asia; Pakistan conflict map, May 13, 2009, http://news.bbc.co.uk/2/hi/south_asia/8046577.stm.

Therefore, it is safe to say that the US is justifying its drone strikes inside Pakistan based on the contention that Pakistan remained unable to control militants and Al-Qaeda elements on its side of border and the Pakistani government has lost effective writ on its territory.

Consequently, this US reliance on an unequivocal claim of anticipatory self defense is a direct attack on the supremacy of the United Nations Charter. Also, the US is setting a wrong precedent for the other world governments which stipulates that rules of aggression have changed for them too. This could increase the risk of conflict between countries. More importantly, the consequence of the current American foreign policy would lead to the significant wearing down of the prohibition against the use of force in article 2 (4) of the UN Charter.

References

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