



BULLETIN

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American Unmanned Aircrafts in Pakistan

by Rafał Kownacki and Patryk Kugiel

Since 2008 U.S. unmanned planes' secret attacks on extremists' hideouts in Pakistan have become an essential element of the American war on terror. Though temporarily efficient, this method of waging war increases anti-American sentiments in Pakistan and mars U.S. international image. Factors such as disproportionate use of force, arbitrary executions, civilian casualties and disregard for states' territorial integrity as a result of unmanned aircraft operations all stand in contradiction to international law. However, as the strikes deliver results, they will be continued.

As a result of the U.S. 2001 armed intervention in Afghanistan, some members of Al-Qaeda as well as the Taliban fled to Pakistan. The barely accessible Federally Administered Tribal Areas (FATA) in Pakistan and Afghanistan's borderland soon became a safe haven and a new base not only for members of Al-Qaeda, but also for some of Pakistan's extremist organizations. In December 2007 local fundamentalist groups formed Tehrik Taliban Pakistan—TTP (Student Movement of Pakistan), a militant umbrella group predominantly engaging in terrorist activity in Pakistan itself. The country's armed forces made several attempts to suppress it, but all of them failed, leaving the authorities with no real power over those regions. The Federally Administered Tribal Areas became a refuge and base for terrorist organizations and militant groups fighting counter-terrorist coalition forces in Afghanistan.

As Al-Qaeda was regaining its operation capacity, Afghanistan security levels were declining and Pakistan's stability was breaking up, the American authorities felt compelled to take single-handed measures against extremists seeking shelter in the FATA. In September 2008 U.S. special forces carried out an operation on the Pakistani side of the border, but abandoned further operations after a storm of protests in Pakistani forces. Since then, the CIA-launched programme of secret attacks by unmanned aerial vehicles (drones) on terrorists' hideouts in Pakistan has become America's main tool for fighting extremists in Pakistan.

Drone attacks. The first such attacks were carried out in Pakistan in June 2004. By the end of 2007, U.S. aircraft raided Pakistan ten times in all. On a large scale drones were used in 2008 (36 raids). The Obama administration stepped up the air raids, with 53 recorded in 2009 and 37 carried out by 21 May 2010. The U.S. have run a total of 136 drone air raids since 2004, most of them in the two FATA agencies remaining out of Pakistan's control—the North Waziristan (61% of all attacks) and the South Waziristan (32%). In recent months the air raids have concentrated on the Haqqani network, one of the three major forces operating in Afghanistan. The Pakistani army has ruled out launching an offensive against that group in the near future.

Since 2004 drone air raids in Pakistan have killed approximately 1,200 people, mostly extremists, including over a dozen high and middle-ranking Al-Qaeda leaders (e.g. Osama al-Kini responsible for Al-Qaeda's operations in Pakistan and Said al-Masri responsible for its finances), as well as Pakistani extremist leaders (including TTP head Baitullah Mehsud). Different reports say that the air raids took the lives of 100–400 civilians (10–30% of the total killed).

Legal Status. American drone operations on the territory of a state maintaining relations of peace with the U.S. constitute a breach of international law, in particular in the case of civilian casualties. Even if we acknowledge the operations as part of the American war on terror (as the U.S. government tends to present it), it is illegal under the 1949 Geneva Conventions to attack civilian populations. International law guarantees protection from arbitrary executions. In time of war such protection is stipulated by Article 33 of the Fourth Geneva Convention. Additionally, general protective clauses

are guaranteed under the 1966 International Covenant on Civil and Political Rights (Articles 6, 14 and 15). For that reason, in October 2009 the special rapporteur of the Council of Human Rights, Phillip Alston, submitted to the UN General Assembly investigation results that were critical of U.S. drone operations.

In line with international law, air raids carried out with the use of unmanned planes on the territory of a foreign state constitute a breach of this state's territorial integrity. Article 2.4 of the Charter of the United Nations requires a state to refrain in its international relations from the threat or use of force against the territorial integrity or political independence of any state. However, under Article 20 of the draft articles (2001) of the International Law Commission concerning states' international liability, one of the circumstances excluding lawlessness is the consent to act granted by another state. Even though the authorities in Islamabad officially manifest their indignation at the drone attacks, it is hard to imagine that they have not approved the air raids, as it is in their interest to physically get rid of terrorists. Hence the protests are meant for the domestic audience, and their superficial nature is best confirmed by the fact that Pakistan's authorities have taken no retaliatory action under international law in the form of reprisals (e.g. recalling the ambassador, classifying a diplomatic post as *persona non grata* or imposing protective tariffs).

The attacks of unmanned planes in Pakistan are depicted by the U.S. Department of State as part of an armed conflict with Al-Qaeda and as a self-defense measure following 9/11. The American authorities argue that the air raids are proportionate, carried out according to the laws of war and intended solely to eliminate the opponent (i.e. Al-Qaeda's alleged members), but self-defense relying on arbitrary executions of citizens of another state the U.S. is not in conflict with (and carried out outside U.S. territory) constitutes a violation of law. Under accepted interpretations of Article 51 of the Charter of the United Nations, a country's preventive self-defense outside its own borders is only possible when the country provides evidence that an attack is inevitable and no other preventive measures can be applied.

Conclusions. Since Pakistan's antiterrorist efforts deliver no results, U.S. drone attacks are regarded by the Obama administration as an indispensable and effective tool to fight extremists in Pakistan. The drone attacks killed many important members of Al-Qaeda, the Taliban and other extremist organizations, weakening Al-Qaeda's chain of command and operational capability. Moreover, the attacks are also a means of exerting pressure on the Pakistani authorities to intensify their own counter-terrorist efforts. It seems that the air raid programme to fight extremists will be further developed and might be used on a larger scale also in other unstable parts of the world.

Although U.S. drone attacks are effective in fighting extremists, in the long run they may mean serious political and legal consequences for the U.S. Continuing the air raid campaign in its current form increases anti-American sentiments among Pakistan's general public. It also helps terrorist groups recruit new members and inspires distrust between the American and Pakistani authorities. It could undermine once again the international image of the United States, becoming for Obama what Guantanamo and the CIA secret prison system were for George W. Bush.

The relative military effectiveness of drone attacks (as compared to alternative measures, e.g. attacks by special forces) makes the U.S. tactic likely to be continued. Under the circumstances, European Union countries should urge the U.S. at least to ensure greater transparency of their unmanned planes operations. The risk of violating international law should be minimized, particularly through ensuring that the attacks are more precise and that humanitarian commitments are respected. While operating outside its borders, the U.S. should obtain the consent of local authorities, cooperate with them and provide information about its operations. The American administration should also guarantee the attacks' victims or their legal successors to file for compensation for personal and material losses.