

Canadian
Forces
College

Collège
des
Forces
Canadiennes



U.S. CROSS-BORDER DRONE STRIKES AND THE INTERPRETATIONS OF INTERNATIONAL LAW

Major Richard Harris

JCSP 46

Solo Flight

Disclaimer

Opinions expressed remain those of the author and do not represent Department of National Defence or Canadian Forces policy. This paper may not be used without written permission.

© Her Majesty the Queen in Right of Canada, as represented by the Minister of National Defence, 2020.

PCEMI 46

Solo Flight

Avertissement

Les opinions exprimées n'engagent que leurs auteurs et ne reflètent aucunement des politiques du Ministère de la Défense nationale ou des Forces canadiennes. Ce papier ne peut être reproduit sans autorisation écrite.

© Sa Majesté la Reine du Chef du Canada, représentée par le ministre de la Défense nationale, 2020.

CANADIAN FORCES COLLEGE – COLLÈGE DES FORCES CANADIENNES

JCSP 46 – PCEMI 46
2019 – 2020

SOLO FLIGHT

**U.S. CROSS-BORDER DRONE STRIKES AND
THE INTERPRETATIONS OF INTERNATIONAL LAW**

By Major Richard Harris

“This paper was written by a candidate attending the Canadian Forces College in fulfilment of one of the requirements of the Course of Studies. The paper is a scholastic document, and thus contains facts and opinions which the author alone considered appropriate and correct for the subject. It does not necessarily reflect the policy or the opinion of any agency, including the Government of Canada and the Canadian Department of National Defence. This paper may not be released, quoted or copied, except with the express permission of the Canadian Department of National Defence.”

Word Count: 5,181

“La présente étude a été rédigée par un stagiaire du Collège des Forces canadiennes pour satisfaire à l'une des exigences du cours. L'étude est un document qui se rapporte au cours et contient donc des faits et des opinions que seul l'auteur considère appropriés et convenables au sujet. Elle ne reflète pas nécessairement la politique ou l'opinion d'un organisme quelconque, y compris le gouvernement du Canada et le ministère de la Défense nationale du Canada. Il est défendu de diffuser, de citer ou de reproduire cette étude sans la permission expresse du ministère de la Défense nationale.”

Nombre de mots : 5.181

U.S. CROSS-BORDER DRONE STRIKES AND THE INTERPRETATIONS OF INTERNATIONAL LAW

“The truth is that, in trying to get at terrorists who are in countries that either are unwilling or unable to capture those terrorists or disable them themselves, there are a lot of situations where the use of a drone is going to result in much fewer civilian casualties and much less collateral damage than if I send in a battalion of marines.”

- President Barak Obama, during an interview with The Atlantic newspaper – Nov 2016.

INTRODUCTION

U.S. drone strikes have grown in notoriety as we have moved through the 21st century - based as much on the locations in which they are used, as for the obvious advances in technology that accompany them. This in, and of, itself is not something that requires overt concern; after all, the pace at which highly-specialized weapons are being developed, implies that industrialized nations will need to stay “ahead of the curve” in order to maintain adversarial advantages. According to Rosa Brooks, a law professor at Georgetown University, for political decision-makers, Remotely Piloted Aerial Systems (RPAS)¹ have obvious advantages: “...they are cheaper to produce than manned aircraft with comparable payloads; their use creates no short-term risk to American lives; and, relative to other weapons-delivery systems, their enhanced surveillance capabilities reduce the likelihood of killing anyone other than the intended target”.² It is perhaps not coincidental that the U.S. development of drones expanded tenfold after the events of 9/11 and the initial lack of success of finding and killing Osama Bin Laden in the Tora Bora mountains of Afghanistan. The requirement to utilize a platform that could provide persistent surveillance, over inhospitable terrain, for protracted periods and then utilize its

¹ For the purpose of the rest of this essay and to ensure continuity, RPAS will henceforth be referred to as “drones”

² Brooks, R. “Drones and the International Rule of Law.” Georgetown University Law Centre, 2013 <https://scholarship.law.georgetown.edu/facpub/1287/>

own arsenal of weapons to prosecute targets effectively and with minimal collateral damage, had the potential to be a game changer in the Global War on Terror (GWOT). Moreover, the fact that these platforms could greatly reduce the requirement for “boots-on-the-ground” highlighted to the American public that in certain circumstances, terrorist threats could be neutralized without putting troops into harm’s way.

In her 2013 journal article for the Georgetown University Law Faculty, Brooks offers a brief résumé of initial drone strike actions:

The first U.S. drone strike is believed to have occurred in 2002, when a Hellfire missile launched by a Predator drone killed four suspected al-Qaeda members in Yemen.³ Drone strikes remained a rarity until 2008, however, when the Bush administration launched thirty-six strikes in Pakistan.⁴ Beginning in 2008, the United States began to make more frequent use of strikes from unmanned aerial vehicles. Most controversially, the United States has greatly increased its reliance on drone strikes outside of traditional, territorially-bounded battlegrounds. In Pakistan, the number of suspected strikes rose from four in 2007 to a peak of 122 in 2010, before declining to forty-eight strikes in 2012.⁵ In Yemen, suspected drone strikes rose from three or four in 2010 to an unknown peak in 2012. (There appears to have been at least twenty-six strikes in Yemen in 2012, and possibly as many as eighty-seven.⁶) The United States has also carried out a smaller number of strikes in Somalia, and there are unconfirmed rumours of U.S. drone strikes in Mali and the Philippines as well.⁷ All told, U.S. drone strikes have killed an estimated 4,000 people in Pakistan, Yemen, and Somalia.⁸ The percentage of civilian deaths is unknown, and existing estimates are controversial.⁹

³ “CIA ‘Killed al-Qaeda Suspects’ in Yemen,” BBC News, (5 November 2002), <http://news.bbc.co.uk/2/hi/2402479.stm>

⁴ Amitai Etzioni, “*The Great Drone Debate*”, Military Review (March/April 2013), p. 10

⁵ Between January 1, 2013 and August 23, 2013, there have been an estimated 16 drone strikes in Pakistan (“*The Year of the Drone*”, New America Foundation).

⁶ Drones Team, “*Yemen strikes visualized*”, Bureau of Investigative Journalism, (2 July 2012)

⁷ Dylan Matthews, “*Everything You Need to Know About the Drone Debate, in One FAQ*”, Wonkblog, Washington Post, (8 March 2013), www.washingtonpost.com/blogs/wonkblog/wp/2013/03/08/everything-you-need-to-know-about-the-drone-debate-in-one-faq/.

⁸ Ryan J. Reilly, “*CIA Drone Strikes Case: Court Finds It Not ‘Plausible’ That Agency Has No Role*”, Huffington Post, (15 March 2013), www.huffingtonpost.com/2013/03/15/cia-drone-strikes_n_2883727.html.

⁹ Brooks, R. “*Drones and the International Rule of Law.*”

There seems to be a dichotomy between the interpretations of International Law. The U.S. believes it allows the CIA to use drones to target *terrorists* with impunity in countries like Pakistan, Yemen and Somalia, but many [non-U.S.] legal interpreters believe there is not only a flagrant disregard for the sovereignty of the nation being *attacked*, but also a justifiable breach of International Human Rights Law (IHRL). Although this paper will not delve into the depths of IHRL, it will analyze where discrepancies of International Law and the Law of Armed Conflict (LOAC) open up sufficient debate as to enable the U.S. to justify its actions with respect to the GWOT, and will focus predominantly on those drone strikes in the Federally Administered Tribal Areas (FATA) along the border between Afghanistan and Pakistan.¹⁰ Ultimately, the paper will conclude that the number of civilian deaths is disproportionate in the eyes of LOAC¹¹ (especially those that are attributable to the CIA's controversial *Signature Strike* target selection criteria), and the Pakistani government will have to decide whether to continue allowing U.S. agencies to act in this manner, or to look at international legal options in order to protect its innocent civilians as well as its perceived sovereignty violations.

In order to shape the argument, the paper will start at the strategic level by looking at the reasons why the U.S. has decided it can conduct these operations in countries like Pakistan, Somalia and Yemen, using *The Caroline Case* as a basis for legally justified reasoning, along with pre-emptive strikes based on the concept of

¹⁰ Although the paper will make reference to similar circumstances in both Somalia and Yemen

¹¹ Proportionality as defined by the U.S. Army Field Manual FM27-10: Law of Land Warfare such that "Loss of life and damage to property incidental to attacks must not be excessive in relation to the concrete and direct military advantage expected to be gained."

consent. It will then provide an operational level lens that will look specifically at three things: First, the Pakistani perspective, detailing its international relationship with the U.S.; second, the national issues via the wave of popular support against sovereignty violations that have been stirred up by the current Prime Minister Imran Khan (in one of his previous roles as the chairman of the Pakistan Movement for Justice); and third, the Pakistani military perspective and its regional struggle to effectively ‘police’ the FATA. Finally, the paper will also scrutinize the tactical level by looking in detail at the targeting criteria adopted by the CIA, focusing on the legal aspects of its *Signature Strike* Policy and how this has affected both the terrorists harbouring in the FATA, as well as the indigenous peoples of that region.

U.S. INTERPRETATIONS OF INTERNATIONAL LAW

There is no doubt that U.S. drone strikes highlight the requirement for a step change in the interpretation of the international rule of law. As Brooks posits, this is not because U.S. drone strikes “violate” international law. Ironically, they might be less destabilizing, from a rule-of-law perspective, if they could be easily categorized as blatant instances of rule-breaking.¹² It is more the fact drone strikes do not conform to any *specific* legal categorization. They do, however, bring into question some of the fundamental principles of LOAC such as: self-defence; imminence; necessity; distinction; and proportionality. Many of these LOAC principles are borne from the

¹² Brooks, R. “*Drones and the International Rule of Law.*”

*Caroline Case*¹³ which stemmed from American popular support for an insurgency in Canada in the early part of the 19th century.¹⁴

At the culmination of the War of 1812, negotiations between Great Britain and the U.S. brought about many resolutions to the dispute. However, there were those in the U.S. who thought that more Canadian soil could have been brokered. There were also those in Canada who wished for complete independence from Britain and as a consequence, a rebellion took place in 1837.

Many of the leaders of the rebellion were American immigrants to Canada and their leader was Scottish born, William Lyon Mackenzie. The British forces quickly quashed the revolt and the rebel leader fled to Buffalo, where he convinced a number of Americans to join his cause. This led to the occupation of an island on the Canadian side of the border close to Niagara. On December 29, 1837 an American Steamboat, the *Caroline*, carried a group of reinforcements to the island. Fifty Canadian militia men crossed the river to the American side and attacked the *Caroline*, driving off the American crew and destroying the ship.¹⁵

The incident caused a period of tension between the United States and Great Britain, the aftermath of which led to the legal principle of the "Caroline Test". "The principle states that the necessity for self-defence must be "instant, overwhelming, and leaving no choice of means, and no moment for deliberation", as formulated by the then American Secretary of State, Daniel Webster in his response to British claims that they attacked the *Caroline* in self-defence. Webster's words defined what have since been recognized in international law as the principles of necessity and proportionality.

¹³ Also referred to in the text as the Caroline Test

¹⁴ Davies, N.J.S "The *Caroline Case and American Drone Strikes in Pakistan*", Peace Review, A journal of social justice, (November 2009)
<https://www.tandfonline.com/doi/full/10.1080/10402650903323397>

¹⁵ "1837 – *Caroline Affair*" History Central, <https://www.historycentral.com/Ant/caroline.html>

According to scholars, the "Caroline Test" remains an accepted part of international law today.¹⁶

In her journal article, Davies says that like the U.S. drone attacks in Pakistan, the Caroline Case raises the fundamental question of how a government can legitimately respond to cross-border fire or attacks by irregular forces that the government of the neighbouring territory is unwilling or unable to prevent:

The British claimed the right to cross into American territory to conduct a "pre-emptive" military operation in order to prevent further men and arms from reaching the rebels of Navy Island, while Americans universally viewed this as an act of war and a violation of American sovereignty.¹⁷

Thus, as with the case with Pakistan, the U.S. is effectively stating that their justification for drone strikes in the FATA is through the notion of necessity because the state is unwilling or unable to curb terrorist attacks, and there is an "immediate and overwhelming" requirement to conduct these strikes. In March 2010, State Department Legal Adviser Harold Koh stated, regarding targeted killing:

[A]s a matter of international law, the United States is in an armed conflict with al-Qaeda, as well as the Taliban and associated forces, in response to the horrific 9/11 attacks, and may use force consistent with its inherent right to self defence under international law.¹⁸

It is worth noting an additional legal concept that has also been brought into question in the aftermath of 9/11. This is the concept of sovereignty, a core product from the 1648 Treaty of Westphalia. In the current globalized world, it has been argued by many that the notion of sovereignty along with delineated state borders has become

¹⁶ https://en.wikipedia.org/wiki/Caroline_affair

¹⁷ Davies, N.J.S "The Caroline Case and American Drone Strikes in Pakistan", p 431

¹⁸ Harold Hongju Koh, "The Obama Administration and International Law," speech at the Annual Meeting of the American Society of International Law, Washington, DC, (25 March 2010), <http://www.state.gov/s/l/releases/remarks/139119.htm>

somewhat of a fallacy (even as the emergence of human rights law has eroded the state's normative standing).¹⁹ Notwithstanding, the concept of sovereignty remains a barrier against unpredictable international conflict. However, as mentioned previously, U.S. officials have repeatedly stated that America will only use force on the territory of other sovereign states if that state either consents or is “unwilling or unable to suppress the threat posed by the individual being targeted.” Although this sounds accommodating to the international community, the reality is that the U.S. is the singular judge of whether a state is classified as “unwilling or unable.” Thus, if the U.S. decides that an individual in Pakistan's FATA poses an “imminent” threat to the state and/or its people, then sovereignty is ignored and the proponent will be terminated. As Brooks further argues:

...[e]ither Pakistan will consent to a U.S. strike inside its territory or it will not consent. And if Pakistan does not consent—on the grounds, perhaps, that it does not agree with the U.S. threat assessment—then Pakistan is, ipso facto, “unwilling or unable to suppress the threat posed by the individual being targeted.”²⁰ This is a legal theory that more or less denounces traditional notions of sovereignty, and has the potential to significantly destabilize the already shaky collective security regime created by the UN Charter.²¹ After all, if the United States is the sole judge of whether and when it can use force inside the borders of another state, any other state strong enough to get away with it is likely to claim similar prerogatives.²²

To culminate this section, we will take a look at the concept of *consent* and how the U.S. government's cross-border drone strikes against Non-State Actors (NSA) i.e.,

¹⁹ JCSP 46 DSS presentation: DS567_SCO_LD_5-JCSP_2020_International_Law_Falk

²⁰ A Pakistani court has rejected this argument and held that U.S. drone strikes within Pakistan's borders violate international law. See Jonathan Horowitz and Christopher Rogers, “*Case Watch: A Court in Pakistan Addresses U.S. Drone Attacks*,” Open Society Foundations, (28 May 2013), www.opensocietyfoundations.org/voices/case-watch-court-pakistan-addresses-us-drone-attacks

²¹ Brooks, R. “*Be Careful What You Wish for: Changing Doctrines, Changing Technologies, and the Lower Cost of War*,” American Society of International Law Proceedings edn106, (2012)

²² Brooks, R. “*Drones and the International Rule of Law*.”

terrorists have been carried out with the consent²³ of the host nation within which the NSAs are residing (or being harboured). As Byrne indicates, the U.S. has utilized consent to attest to the lawfulness of its drone programme together with the *jus ad bellum* doctrine of self defence.²⁴ In fact, in a 2012 speech, U.S. Attorney General Eric Holder stressed that extraterritorial uses of force were “consistent with international legal principles if conducted...with the consent of the government of the nation involved”.²⁵ The implication here is that the government of said state is both “recognized” and “legitimate”; and as Doswald-Beck demonstrates in her seminal work on consent, the ability to identify the legitimacy of a government is whether it can exert *de facto* or *de jure*²⁶ control over its host.²⁷ Byrne posits that there is an element of ambiguity in this statement, “...[b]ut it appears that the predominant interpretation is that the government can be legitimate, and may therefore consent to intervention, either by exercising effective control or, in the absence of such control, if it is recognized by the international community and has not yet been replaced by another entity.”²⁸ In order to provide a segue to the next section, it is necessary to look at this concept when applied to drone strikes in three separate countries: Somalia; Yemen; and Pakistan.

²³ In this section the term consent can also be defined as an “invitation to intervene” in the eyes of the U.S. government

²⁴ Byrne, M. “*Consent and the use of force: an examination of ‘intervention by invitation’ as a basis for U.S. drone strikes in Pakistan, Somalia and Yemen.*” *Journal on the use of force and international law* (Routledge, Taylor & Francis Group), (Feb 2016), <https://doi.org/10.1080/20531702.2015.1135658>

²⁵ Holder, E. “*Attorney General Eric Holder Speaks at Northwestern University School of Law*” (2012), United States Department of Justice, www.justice.gov/opa/speech/attorney-general-eric-holder-speaks-northwestern-university-school-law

²⁶ *De facto* defined as legally existing; *De jure* defined as legally recognized (but not necessarily existing)

²⁷ Doswald-Beck, L. *The Legal Validity of Military Intervention by Invitation of the Government*, (1986) 56(1), *British Yearbook of International Law*, p191

²⁸ Byrne, M. “*Consent and the use of force: an examination of ‘intervention by invitation’ as a basis for U.S. drone strikes in Pakistan, Somalia and Yemen*” p.109

Somalia. The question of governmental legitimacy in the face of tenuous territorial control is highly pertinent in the case of Somalia. General Barre's military junta collapsed in 1991, and the country existed under the control of the UN until 2004, when a Transitional Federal Government (TFG) was formed under the tutelage of President Abdullahi Yusuf Ahmed. The TFG struggled to maintain law and order for the following eight years in the face of direct threats from warring clans as well as the more sinister menace of al-Shabab. However, in 2012 the new Somali Federal Government (SFG) was inaugurated and a provisional constitution adopted which not only re-affirmed the state's existing borders, but also garnered international recognition and *de jure* control / legitimacy (albeit with substantial support from African Union troops).²⁹

Drone strikes have been carried out by the U.S. in Somalia since 2011³⁰, although consent was previously given by the TFG President which allowed those terrorists who were involved in the bombing of the U.S. Embassies in Tanzania and Kenya to be targeted.³¹ The TFG Defence Minister also stated that drone strikes were "welcomed against al-Shabab."³² Thus, the question of legitimacy of the TFG in relation to its ability to give consent in this case is not as a result of it [not] effectively controlling the state, nor is it down to the fact that the TFG was internationally recognized; it was more related to the fact that there was no viable entity to replace it, thereby effecting (in the smallest sense) *de jure* control. In 2013, President Mohamud reaffirmed his consent to the U.S.

²⁹ Bryden, M. "Somalia Redux? Assessing the New Somali Federal Government" (2013), Report of the CSIS Africa Programme, p23

³⁰ Jaffe, G. & DeYoung, K. "U.S. Drone Targets Two Leaders of Somali Group Allied with Al-Qaeda" Wall Street Journal (29 June 2011)

³¹ "U.S. Somali Air Strikes Kill Many" BBC News (9 January 2007), <http://news.bbc.co.uk/1/hi/world/africa/6243459.stm>

³² Young Pelton, R. "Enter the Drones", Somalia Report (7 June 2011) www.somaliareport.com/index.php/post/1096

strikes against “foreign fighters” but stopped short of suggesting that strikes against Somalis rather than foreign fighters would cause the decision to be reconsidered.³³

Yemen. Similar to Somalia, Byrne states that the legitimacy of the government of Yemen is also questionable due to the state’s continued instability. Consent to U.S. drone strikes has been given freely and clearly, initially by President Saleh, and subsequently by his successor, President Hadi.³⁴ Both presidents came to power by constitutional elections and as such, their *de jure* legitimacy is difficult to question. However, it is far more difficult to justify that they have effected *de facto* control over the state based on the “civil war” that has been raging in the country throughout. The Houthi rebels have persistently been fighting the regime[s] since 2004 and in 2011, a new element of Al Qaeda in the Arabian Peninsula (AQAP) took control of parts of the south of the country. The situation continued to deteriorate and in 2015, the Yemeni capital was captured by rebels, forcing the government to resign and Hadi to flee³⁵; this led to an intervention by a coalition of Arab States, led by Saudi Arabia. Thus, with the U.S. drone strikes continuing, the question of consent is raised by the fact that Hadi’s government has arguably never had any more than a tenuous grasp of state control and as such, his lawful right to ask for foreign intervention is dubious. Doswald-Beck argues that consent becomes unavailable when “the rebellion is widespread and seriously aimed at the overthrow of the incumbent regime”³⁶, however, there are sufficient arguments against

³³ Rogin, J. “*Somali President Asks for More American Help*” Foreign Policy (18 January 2013) <http://foreignpolicy.com/2013/01/18/somali-president-asks-for-more-american-help/>

³⁴ Byrne, M. “*Consent and the use of force: an examination of ‘intervention by invitation’ as a basis for U.S. drone strikes in Pakistan, Somalia and Yemen*” p.112

³⁵ Almasari, H. & Chulov, M. “*Yemeni Government Quits in Protest at Houthi Rebellion*” The Guardian, (22 Jan 2015), www.theguardian.com/world/2015/jan/22/yemeni-government-quits-houthi-rebellion

³⁶ Doswald-Beck, L. “*The Legal Validity of Military Intervention by Invitation of the Government*”, p.251

this³⁷ to suggest that invitations by consent will be lawful if their objective is not “to settle exclusively internal political strife in favour of the established government”³⁸ This is certainly the case with U.S. drone strikes, whereby the stated intent of these has always been to target counter-terrorist activities, against members of al-Qaeda and its associates. They have not been against the Houthi rebels and consequently, have not interfered with any internal conflict, justifying [in the eyes of international law] the Yemeni government’s legitimacy to ask for consent to intervene.

Pakistan. Byrne argues that “...[t]he need to determine the relative influence of *de jure* or *de facto* control is not immediately clear in the case of drone strikes in Pakistan. The elected government of Prime Minister Sharif has effective control over the vast majority of the country and *de jure* legitimacy through the Pakistani Constitution.”³⁹ However, there is a question relating to the amount of control exerted over the FATA which are purported to exist in a state of semi-autonomy. Constitutionally, the FATA is part of Pakistan, and there are a number of members from this region in the National Assembly and the Senate. However, there is a stipulation in the Constitution that states that acts from therein do not automatically apply to FATA and require specific permission from the President in order to be approved. Thus, the FATA could potentially fall outside of the ability for the government to offer consent to foreign intervention because of this autonomous loophole. Nonetheless, Article 247(5) empowers the

³⁷ France’s invitation to intervene in Mali in 2013, when the government had “lost control” of the north of the country, and international use of force in Iraq against ISIL when the government had lost effective control of its territories.

³⁸ Christakis, T. & Bannelier, K. “*French Military Intervention in Mali: It’s legal But...Why?*” Part II: *Consent and the UNSC Authorization*” EJIL: Talk! (25 January 2013) www.ejiltalk.org/french-military-intervention-in-mali-its-legal-but-why-part-2-consent-and-unscc-authorisation

³⁹ Byrne, M. “*Consent and the use of force: an examination of ‘intervention by invitation’ as a basis for U.S. drone strikes in Pakistan, Somalia and Yemen*” p.110

President to “make regulations for the peace and good governance of the FATA or any part thereof”⁴⁰, and this coupled with the twelve seats in the Pakistani Parliament that are held by FATA elders and the international recognition that the FATA is part of the sovereign territory of Pakistan, is sufficient to confirm the government’s *de jure* control, regardless of the “autonomy” issue.

Conversely, the question of *de facto* control is a lot more tenuous. In 1893, the region (inhabited by indigenous Pakhtun tribes) was included in British India though it remained isolated “being severely left alone” by the British authorities.⁴¹ Thus, there was a perception of legal control over the areas, without the concomitant practical control; this state of affairs continued after the India/Pakistan partition in 1947 and has arguably persisted ever since. With the demise of the Afghan Taliban in 2001, there was a noted rise in militancy within the FATA, with many fighters crossing the border with impunity and local tribes rising up against any potential attempts of the central government to attain some form of control within the FATA concluding the existence of a potential insurgency within the region. This is where the U.S. believes that these militant groups are coalescing under the singular title of “Tehrik-e-Taliban (a terrorist organization sympathetic to al-Qaeda) intent on destabilizing both the region and the government of Pakistan.”⁴² Murphy posits that “...[t]he “Talibanization” of the FATA has the capacity to restrict the ability of the central government to control the region, thus questioning its legitimacy and rendering its ability to give valid consent to the use of force.”⁴³ However,

⁴⁰ The Constitution of the Islamic Republic of Pakistan (2010)

⁴¹ Pennel, T.L. “*Among the Wild Tribes of the Afghan Frontier*”, Cambridge University Press, rev edn, (2004) p.29

⁴² U.S. Department of State, “*Country Reports on Terrorism*” (2010), www.state.gov/documents/organization/170479.pdf p.162

⁴³ Murphy, S.D. “*The International Legality of U.S. Military Cross-Border Operations from Afghanistan into Pakistan*” *International Legal Studies* 109 (2009), p.119

Pakhtun academic Farhat Taj, counters this by suggesting that not only have many local tribes been “overpowered” by the Taliban, but also the overarching situation in the FATA (from a security point of view) has not ostensibly changed since colonial rule more than 100 years ago and therefore, the central government is perceived to exert the same level of control over the region.⁴⁴ Byrne sums up by suggesting this level of control coupled with a recognizable constitutional framework governing the relationship between FATA and Islamabad is sufficient to provide *de jure* legitimacy and ergo, the ability to give consent to U.S. drone strikes. It is also logical to assume the government has the ability to revoke this consent, which it has done,⁴⁵ and this will be discussed in more detail in the next section.

THE PAKISTANI PERSPECTIVE

In his overly nationalistic article on the U.S. targeting of terrorists abroad, Groves argues:

...[i]n September 2012, The Wall Street Journal reported that the U.S. and Pakistani governments have an arrangement that permits the U.S. to target al-Qaeda and Taliban militants operating from the FATA while allowing Pakistani officials to maintain a level of consensual ambiguity.⁴⁶ According to the press report, for many years the CIA has faxed the Inter-Services Intelligence (ISI), Pakistan’s intelligence service, on a regular basis to outline “broad areas” of airspace within Pakistan where the United States intends to conduct drone strikes. Without formally endorsing a drone strike, the ISI would acknowledge receipt of the fax and clear the

⁴⁴ Taj, F. *Taliban and Anti-Taliban*, Cambridge Scholars Publishing (2011), p.3

⁴⁵ Byrne, M. *Consent and the use of force: an examination of ‘intervention by invitation’ as a basis for U.S. drone strikes in Pakistan, Somalia and Yemen*” p.112

⁴⁶ Entous, A., Gorman, S. & Perez, E. *“U.S. Unease over Drone Strikes,”* The Wall Street Journal, (26 September 2012), <http://online.wsj.com/article/SB10000872396390444100404577641520858011452.html>

airspace identified by the CIA, thereby giving implied if not express consent to the United States to conduct drone operations.^{47 48}

These initial agreements were formulated as Pakistan joined the U.S. in the GWOT, during the era of President General Musharraf (and his military government), so there was skepticism regarding the legitimacy of these strikes from both the political opposition parties as well as the general public from the outset. Notwithstanding, Dumas posits that whatever the status of the arrangements was in the first several years of the CIA's drone programme, it has now evolved into cooperation between the two countries:

In an attempt to gain support for the UAV strikes, the Obama Administration has granted more control to the Pakistani government over whom to target. Today, many of the targets are directly nominated by the Pakistanis according to Bruce Reidel, a former CIA Officer.⁴⁹

At this juncture, it is worth bringing in a legal discussion regarding *Distinction*. Under LOAC, whether engaging in hostilities pursuant to a Non-International Armed Conflict (NIAC) or exercising the inherent right to self-defence, an armed attack must adhere to the principles of necessity and distinction. Vogel highlights the definitions:

...[a] combatant must target only other combatants - the principle of "distinction"; and targeting such combatants must be considered militarily necessary to bring about the submission of the enemy - the principle of "necessity" (previously discussed with respect to the Caroline Case). The principle of distinction requires that only combatants and military objectives be targeted. While civilian casualties may occur during

⁴⁷ According to the same press report, the ISI ceased acknowledging receipt of the CIA faxes after the United States conducted the raid on the compound of Osama bin Laden, but has continued to clear the airspace as before and has not interfered with the drone missions.

⁴⁸ Groves, S. "*Drone Strikes: The Legality of U.S. Targeting Terrorists Abroad.*" The Heritage Foundation: Leadership for America, (9 April 2013) http://s3.amazonaws.com/thf_media/2013/pdf/bg2788.pdf

⁴⁹ Dumas, J (Capt., USAF) "*U.S. Drone strikes in Pakistan – evil or necessary?*", The Canadian Air Force Journal, Vol 4 No. 2, (Spring 2011), http://airforceapp.forces.gc.ca/CFAWC/eLibrary/Journal/Vol4-2011/Iss2-Spring/Sections/07-US_Drone_Strikes_in_Pakistan-Evil_or_Necessary_e.pdf

hostilities, intentionally targeting civilians is forbidden unless they “directly participate in hostilities,”⁵⁰

This is where the Pakistani government is swayed by populist movements, making it seem confused as to what it should and should not be condoning. Although U.S. sources have claimed civilian casualties from these attacks are minimal, leaked documents reveal the vast majority of people killed (87%) have not been the *intended* targets (81% being other militants, and 6% being civilians).⁵¹ Moreover, Byman claims drone strikes in the FATA have killed “10 or so civilians for every militant killed.”⁵² Although these statistics are difficult to confirm (primarily due to the dangers posed to journalists operating in the FATA) there is definitely a major discrepancy between what the official figures suggest, vice what the various Human Rights organizations are postulating, and this is where the populist movements have identified a chink in the Pakistani government’s armour.

There have been mass protests against drone strikes in Pakistan—mostly led by Imran Khan, the former international cricket star turned leader of the immensely popular political opposition party Pakistan Tehreek-e-Insaf (PTI) – The Pakistan Movement for Justice. Khan’s party came to power in Khyber Pakhtunkhwa in November 2013, bolstered by an agenda of stopping US drone strikes. He organized huge rallies in Peshawar and Karachi; large scale sit-down protests on the main highway between Pakistan and Afghanistan to physically block the NATO supply route; promoted general

⁵⁰ Vogel, R.J. “*Drone Warfare and the Law of Armed Conflict*,” *Denver Journal of International Law and Policy*, Vol. 39, No. 1 (Winter 2011), p.115

⁵¹ “*Strikes Often Kill More Than the Intended Target*” *The Intercept* (15 October 2015) <https://theintercept.com/drone-papers/manhunting-in-the-hindu-kush> Source extracted from Wikipedia: “*drone Strikes in Pakistan*” https://en.wikipedia.org/wiki/Drone_strikes_in_Pakistan

⁵² Byman, D. “*Do Targeted Killings Work?*” *Brookings Institution* (21 May 2016) http://www.brookings.edu/opinions/2009/0714_targeted_killings_byman.aspx

strikes in North Waziristan; and protests outside the Parliament building in Islamabad. Khan insists there is no military solution and calls for commencement of dialogue with the Taliban. He also laments the lack of response from civil society in the West, particularly the U.S., where, he says, ‘people don’t even know what their government is doing’!⁵³ At one of the mass rallies in Karachi, he was famously quoted as saying: ‘There can be no peace unless drones are stopped.’⁵⁴

Unsurprisingly, these populist protests have had an effect on the standing government to the extent that they have been compelled to publicly decry the U.S. drone strike programme, citing violations of sovereignty based on the lack of overt consent. Consequently, and as a result of the U.S. drawdown of forces in Afghanistan, there was a desire within Pakistan to broker peace with the Taliban. This led to the Quadruplicate Coordinated Group consisting of Afghan, Pakistani, Chinese and U.S. negotiators whose focus was to bring the Taliban to the table in order to agree a solution for peace throughout the region including the FATA. However, the U.S. drone strike on the then leader of the Taliban, Hakimullah Mehsud, threw the talks into disarray and forced the Pakistani Foreign Secretary to say: “[T]hese [drone] strikes have a negative impact on the mutual desire of both the U.S. and Pakistan to forge a cordial and cooperative relationship and to ensure peace and stability in the [FATA] region”.⁵⁵

Ahmed et al also argue the Pakistani Military have shown serious concern over drone attacks. In fact, during a meeting with the U.S Ambassador former Chief General

⁵³ Benjamin, M. *Drone Warfare: Killing by Remote Control.* OR Books, (2012), p.123

⁵⁴ Ahmed, Z.S., Jenkins, B. & Iftikhar, W. *Perception of Foreign Drone Strikes by Citizens: The Context of U.S. Drone Strikes in Pakistan*, South Asian Survey 24 (2), (2018) p.146
<https://journals.sagepub.com/doi/abs/10.1177/0971523118822442>

⁵⁵ Sherazi, Z.S. *Pakistani Taliban Chief Hakimullah Mehsud Killed in Drone Attack* Dawn (1 November 2013) <https://www.dawn.com/news/1053410>

Raheel Sharif expressed his deep resentment over the continual drone attacks infringing upon the sovereignty of the country, And the discussion culminated with a veiled threat that Pakistani jets would shoot down any [U.S.] drones infringing sovereign airspace.⁵⁶ Thus, the only real way to highlight to the U.S. that the Pakistani military could look after its own internal problems, was to deploy troops into the FATA, and this it did en masse in 2014, when the army commenced operations in North Waziristan and Khyber Agency.⁵⁷ These deployments have continued to the present day, but many of the top brass of the Pakistan armed forces are deeply religious and sympathetic to the plight of Islamic fundamentalists.⁵⁸ Moreover, reports in the Thaindian News suggest a large segment of the Pakistani military and intelligence establishment distrusts the real motives of the U.S. and feels its own involvement in cracking down on radicals will greatly undermine the Kashmir cause. Many still feel a Taliban-run Afghanistan would provide the necessary strategic depth to counter India and view *it*, rather than the Taliban, as the greatest national security threat to Pakistan.⁵⁹

CENTRAL INTELLIGENCE AGENCY (CIA) TARGETING ISSUES

In his book “Drone Warfare and LOAC” Vogel suggests that:

...[i]n a traditional armed conflict, decisions regarding whether a target satisfies the tests of distinction and necessity are straightforward: Enemy tanks, artillery, aircraft, warships, and infantry are obviously non-civilian in nature and almost always qualify as necessary to destroy in order to bring about the enemy’s submission. The conflict against al-

⁵⁶ “Gen Raheel ‘Seriously Concerned’ Over Violation of Sovereignty by U.S.” Dawn (25 May 2016) <https://www.dawn.com/news/1260563>

⁵⁷ This deployment was spurred on to an extent by the terrorist attack on Pakistan’s Army School in December 2014, in which 132 school children were murdered.

⁵⁸ Thomas, G. “US Pressure Deepens Divide between Pakistan’s Military and Civilian Leadership,” VOA News, (1 October 2008). www.voanews.com/content/a-13-2008-10-01-voa52/404591.html

⁵⁹ “Taliban is Pakistan’s Best Bet to Counter India’s Increasing Regional Influence: US Experts,” Thaindian News, (9 April 2009). www.thaindian.com/newsportal/south-asia/taliban-is-pakistans-best-bet-to-counter-indiasincreasing-regional-influence-us-experts_100177386.html

Qaeda is less traditional because U.S. targeting analysis in the context of drone strikes focuses almost exclusively on individual enemy combatants—the commanders, lieutenants, facilitators, and other al-Qaeda operatives—rather than airfields, munitions plants, and the like. Moreover, al-Qaeda combatants regularly dress as civilians, pose as non-combatants, operate from civilian areas, and even use civilians and other protected persons and objects as shields.⁶⁰

Responding to allegations that targeting individual commanders is tantamount to assassination and therefore unlawful under international law, State Department Legal Adviser Harold Koh stated:

[S]ome have suggested that the very act of targeting a particular leader of an enemy force in an armed conflict must violate the laws of war. But individuals who are part of such an armed group are belligerents and, therefore, lawful targets under international law. During World War II, for example, American aviators tracked and shot down the airplane carrying the architect of the Japanese attack on Pearl Harbour, who was also the leader of enemy forces in the Battle of Midway. This was a lawful operation then, and would be if conducted today. Indeed, targeting particular individuals serves to narrow the focus when force is employed and to avoid broader harm to civilians and civilian objects.⁶¹

Groves noted that reports in *The New York Times* and *The Washington Post* indicate that:

...[m]ilitary, intelligence, and Administration officials oversee a rigorous process to determine whether a particular individual is necessary to target.⁶² Groves notes that according to these reports, a large group of national security officials convenes regularly to discuss and debate various individuals for inclusion on a list of approved targets. The “biographies” of the potential targets are discussed, and factors such as the imminence of the threat posed by the individual and the feasibility of his capture are taken into account.⁶³

⁶⁰ Vogel, R.J. “*Drone Warfare and the Law of Armed Conflict*,” p. 118 (note 89)

⁶¹ Koh, H. “*The Obama Administration and International Law*.”

⁶² Becker, J. & Shane, S. “*Secret ‘Kill List’ Proves a Test of Obama’s Principles and Will*,” *The New York Times*, (29 May 2012), <http://www.nytimes.com/2012/05/29/world/obamas-leadership-in-war-on-al-Qaeda.html>

⁶³ Groves, S. “*Drone Strikes: The Legality of U.S. Targeting Terrorists Abroad*.”

A parallel process, described in a speech by CIA General Counsel Stephen Preston, is conducted by the CIA for targeted strikes.⁶⁴ The targets nominated were ultimately sent to President Obama for approval, who “signed off on every strike in Yemen and Somalia and also on the more complex and risky strikes in Pakistan—about a third of the total.”⁶⁵

As the propensity of drone strikes mounted, the targeting list evolved into what became known as the “disposition matrix.” As Miller alludes, the National Counter Terrorism Centre (NCTC) developed the matrix to “augment” the separate, but overlapping lists developed by the Pentagon and the CIA, resulting in “a single, continually evolving database in which biographies, locations, known associates and affiliated organizations are all catalogued.”⁶⁶ These criteria are concentrated on senior leadership elements of al-Qaeda, the names of which are scrutinized by the NSC as well as NCTC in order to be pushed forward for approval at the appropriate level.

Even if the targeting criteria are met and the terrorist is placed in the “disposition matrix”, the LOAC principle of *Proportionality* must also be satisfied for a strike on that individual to be considered lawful. The principle of proportionality was defined earlier in footnote eleven.⁶⁷ Moreover, there is a Human Rights element to this and consequently,

⁶⁴ Preston, S.W. “*CIA and the Rule of Law*,” speech at Harvard Law School, (10 April 2012), <http://www.cfr.org/rule-of-law/cia-generalcounsel-stephen-prestons-remarks-rule-law-april-2012/p27912>

⁶⁵ Becker, J. & Shane, S. “*Secret ‘Kill List’ Proves a Test of Obama’s Principles and Will.*”

⁶⁶ Miller, G. “*Plan for Hunting Terrorists Signals U.S. Intends to Keep Adding Names to Kill Lists.*” The Washington Post, (23 Oct 2012), https://www.washingtonpost.com/world/national-security/plan-for-hunting-terrorists-signals-us-intends-to-keep-adding-names-to-kill-lists/2012/10/23/4789b2ae-18b3-11e2-a55c-39408f6e6a4b_story.html

⁶⁷ Attacks are prohibited when they “may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.” See Geneva Convention Additional Protocol I, Art. 51(5)(b).

Luis Moreno-Ocampo, the former Chief Prosecutor of the International Criminal Court, described the principle as follows:

Under international humanitarian law and the Rome Statute [of the International Criminal Court], the death of civilians during an armed conflict, no matter how grave and regrettable, does not in itself constitute a war crime. International humanitarian law and the Rome Statute permit belligerents to carry out proportionate attacks against military objectives, even when it is known that some civilian deaths or injuries will occur. A crime occurs if... an attack is launched on a military objective in the knowledge that the incidental civilian injuries would be clearly excessive in relation to the anticipated military advantage.⁶⁸

However, this is the area where U.S. interpretation diverges significantly with that of the international legal community. Since 2008, the CIA has relied less on its list of individuals and has increasingly conducted strikes on *Signature Targets*. According to Benjamin, the definition of this type of target is based not on the presence of a known terrorist suspect, but on whether the targeted person's "pattern of life" fits that of a militant in the eyes of a drone operator thousands of miles away.⁶⁹ As mentioned in the introduction, the U.S. has been extremely vague in how it defines a "militant" and Miller suggests that signature targeting has thus been the source of controversy, with drone critics arguing regular citizens' behaviour can easily be mistaken for militant signatures leading to a much higher death rate of innocent bystanders. Williams suggests that this change in tactics is purported to have resulted in:

...[f]ewer deaths of high-value targets and in more deaths of lower-level fighters, or "mere foot soldiers" as one senior Pakistani official told The

⁶⁸ Luis Moreno-Ocampo, "Letter concerning the situation in Iraq", Office of the Prosecutor, International Criminal Court, (9 February 2006), p. 5

http://www.iccnw.org/documents/OTP_letter_to_senders_re_Iraq_9_February_2006.pdf

⁶⁹ Benjamin, M. "Drone Warfare: Killing by remote control." OR Books, 2012, p87

Washington Post.⁷⁰ Signature strikes must be supported by two sources of corroborating intelligence, including: information from a communication intercept; a sighting of a militant training camps; or intelligence from CIA assets on the ground.⁷¹

Additionally, it is extremely difficult to confirm whether the CIA asset (who gets paid for the provision of information on a case-by-case basis) is actually providing up-to-date and relevant intelligence, rather than simply handing over names of “militants” so he can get paid. Finally, there is no way of confirming whether the asset is providing random names after being paid off by local tribal elders vying for greater degrees of control within their canton. Accordingly, it is extremely difficult for the U.S. government, and the CIA in particular, to quantify the legality of their Signature Strike policy within the bounds of International Law.

One final anomaly that adds to the poor showing of the CIA in the eyes of LOAC, is the follow-up strike. The Agency seems to believe that by conducting a secondary strike onto the first target, there is a greater chance of confirming it is neutralized. In reality, this second missile has a far greater chance of killing innocent civilians who will have rushed to the assistance of those injured in the first; not necessarily the intended terrorist target, but just as feasibly the original civilians classed as “collateral damage”.

“Assessing civilian harm is an important marker of operational effectiveness, as no party using force can know if it was accurate, precise, or proportionate unless it has data about the impact of that force” and the

⁷⁰ Miller, G. *“Increased U.S. Drone Strikes in Pakistan Killing Few High Value Militants”* Washington Post (29 June 2011) <https://www.washingtonpost.com/wp-dyn/content/article/2011/02/20/AR2011022002975.html?sid=ST2011022104355>

⁷¹ Williams, B.G. *“Inside the Murky World of 'Signature Strikes' and the Killing of Americans With Drones”* The Huffington Post (22 March 2014) https://www.huffpost.com/entry/inside-the-murky-world-of-_b_3367780

U.S. authorities' opacity regarding its drone programme does little to quiet concern of excesses.⁷²

That said, however, some data does exist pertaining to the after-effects of drone strikes; the numbers are, however, markedly different from the glowing, optimistic reports infrequently generated by the U.S. government that would otherwise indicate unrealistic levels of success.⁷³ Instead, the data indicates tremendous civilian casualties, with drones blamed for targeting funerals, weddings, schools – and other instances of locals congregating. In response, the locals now live in a state of constant terror,⁷⁴ unable to engage in their day-to-day interpersonal social interactions for fear of being mis-identified as militants and targeted accordingly. But what of the actual terrorists harbouring within the FATA? Using empirical data compiled in their scientific study of the impact of drone strikes on terrorism in Pakistan, Johnston and Sarbahi conclude the presence of drones in the overhead of the many villages within the FATA *does* have a disruptive and degrading effect on militant organizations. In doing so, such technologies limit both the frequency and lethality of militant attacks, compensating for the lack of physical presence of government forces in the region.⁷⁵ Unfortunately, this disruption has been manifested by the exodus of many terrorists from the FATA to the more settled / populated areas of central Pakistan. Consequently, there are concerns among the populace that these drone strikes will migrate inland, causing still further collateral

⁷² “*The Civilian Impact of Drones: Unexamined Costs, Unanswered Questions*,” Columbia Law School: Human Rights Clinic (2012). <https://civiliansinconflict.org/publications/research/civilian-impact-drones-unexamined-costs-unanswered-questions/>

⁷³ “Victim Stories - Living Under Drones” www.livingunderdrones.org/victim-stories

⁷⁴ “*US: End CIA Drone Attacks*,” Human Rights Watch (19 December 2011), www.hrw.org/news/2011/12/19/us-end-cia-drone-attacks

⁷⁵ Johnston, P.B. & Sarbahi, A.K. “*The Impact of U.S. Drone Strikes on Terrorism in Pakistan*”, *International Studies Quarterly* (Oxford University Press), edition 60, p 203-219 (2016), <https://doi.org/10.1093/isq/sqv004>

damage and innocent deaths, adding to the further decline in popularity of the central government.

CONCLUSION

As has been proven in the first section of this paper, the legal challenges posed by U.S. drone strikes bring, what can be only be described as, a set of draconian regulations, to the forefront of the international system in the modern age. Concomitant to this is the feeling by many in the legal and human rights communities that these drone strikes do in fact, violate international law. Yet it has been equally suggested such a conclusion is as biased as U.S. claims of legality. Brooks concludes that in the international domain, where there is no authoritative judiciary or legislature capable of rapidly clarifying the law, legality (or illegality) must still be inferred from the responses of other states.⁷⁶ In other words, depending upon whether one has a legal opinion on the matter, vice whether one is prepared to turn a blind eye to the continuation of cross-border drone strikes, is generically dependent on what sort of an individual state's relationship exists with the U.S.

It is easy to insist the U.S. should not use force without explicit Security Council authorization, but this has not stopped them in the past and as a consequence, it probably won't stop them in the future, regardless of the resolutions which may be ignored. It is equally a misconception to highlight the U.S. definition of "imminent threat" as one which is vastly outside of the bounds of LOAC, but it has been argued the U.S. is not wholly wrong to claim that traditional definitions of imminence are inadequate in the context of today's threats. Moreover, U.S. arguments about sovereignty versus consent

⁷⁶ Brooks, R. "*Drones and the International Rule of Law.*"

are to an extent justifiable when it comes down to the fact their prime targets are still terrorist organizations and they in no way wish to be dragged into internal state strife; “...when many lives may be at stake, sovereignty surely cannot be an absolute bar to intervention.”⁷⁷

From a Pakistani point of view, their constitution gives them sufficient direction for the government and the President to be able to maintain an element of control over the FATA both legislatively and militarily, if required. However, the state is involved with geopolitical issues from all sides: whether it be from the persistent threat of conflict with India, to the porous border with Afghanistan through the FATA, to the rise of internal terrorism due to the exodus of the Pakistani Taliban from the safe havens of North Waziristan and Khyber Agency. Coupled with this, is the view of the country from the external eyes of the international community; seen by many as a puppet of the U.S. for its laissez-faire approach to the drone strike programme - and by others as a dangerous nuclear power with an ineffective government unable to exert control of its people within its sovereign borders. The FATA is now mainstreamed and a part of Khyber Pakhtunkhwa province. Thus, Pakistan is even more skeptical of strikes in this region as it creates many additional internal challenges.

Finally, there are the god-fearing inhabitants of the FATA, themselves struggling with the internal strife that has besieged their tribal ways for centuries. There is no doubt these indigenous people have been manipulated by both host nation and outsiders, but it has been argued their insulation is as much of a curse for them, as it is a blessing. They have been corralled into a nexus of belligerents all of whom are potential targets

⁷⁷ Brooks, C.F. “*Lessons for International Law From the Arab Spring.*” *American University International Law Review* 28 (2013), p.107-112

according to U.S. drone operators utilizing their own very unique “Rules of Engagement”. Notwithstanding the U.S. assertions that the surgical strikes conducted inside their homeland have been vetted to the very highest degree, there continue to be mistakes that have led to whole families killed at a wedding, or regional tribal leadership elements wiped out due to an error mis-identifying a gathering of elders as a militant training camp.

At the end of the day, drones can be extremely useful for the persistent surveillance of a particular area / house / vehicle / person etc., and in specific circumstances (when the prospect of collateral damage is zero) they can be a significant conflict enabler. However, there is such a huge discrepancy in the civilian casualty numbers advertised by the U.S. government and Non-Governmental Organizations (such as Human Rights Watch et al), that one has to believe even the middle ground between the two would constitute too many innocent deaths. And, as a result, either the U.S. needs to greatly reduce the number of drone strikes it carries out within the FATA (even more so now U.S. troop numbers in neighbouring Afghanistan have drawn down significantly), or that the job of conducting COIN ops within the region be given wholeheartedly to the Pakistani Armed Forces. After all, there is no substitute for “boots on the ground”.

BIBLIOGRAPHY

- Agwu, F.A. “Armed Drones and Globalization in the Asymmetric War on Terror”, *Routledge Research on the Law of Armed Conflict*, 2018
- Ahmed, Z.S., Jenkins, B. & Iftikhar, W. “Perception of Foreign Drone Strikes by Citizens: The Context of U.S. Drone Strikes in Pakistan”, *South Asian Survey* 24 (2), p135-157, 2018
<https://journals.sagepub.com/doi/abs/10.1177/0971523118822442>
- Aslam, W. “Great-Power responsibility, Side-Effect Harms and American Drone Strikes in Pakistan” *Journal of Military Ethics* 15:2, p143-162, Aug 2016
<https://www.tandfonline.com/doi/abs/10.1080/15027570.2016.1211867>
- Benjamin, M. “Drone Warfare: Killing by remote control.” *OR Books*, 2012
- Brooks, R. “Drones and the International Rule of Law.” *Georgetown University Law Centre*, 2013
<https://scholarship.law.georgetown.edu/facpub/1287/>
- Byrne, M. “Consent and the use of force: an examination of ‘intervention by invitation’ as a basis for U.S. drone strikes in Pakistan, Somalia and Yemen.” *Journal on the use of force and international law* (Routledge, Taylor & Francis Group), Feb 2016
<https://doi.org/10.1080/20531702.2015.1135658>
- Cohn, M. “Drones and Targeted Killing (Legal, Moral and Geopolitical Issues)” *Olive Branch Press*, 2015
- Collins, A. “Contemporary Security Studies” *Oxford University Press, Fifth Edition*, 2019
- Crocker, C.A, Hampson, F.O & Aall, P. “Leashing the Dogs of War: Conflict Management in a Divided World” *United States Institute of Peace Press*, Edition 4, 2013
- Davies, N.J.S “The Caroline Case and American Drone Strikes in Pakistan”, *Peace Review, A journal of social justice*, Nov 2009
<https://www.tandfonline.com/doi/full/10.1080/10402650903323397>
- Dumas, J (Capt., USAF) “U.S. Drone strikes in Pakistan – evil or necessary?”, *The Canadian Air Force Journal, Vol 4 No. 2*, Spring 2011
http://airforceapp.forces.gc.ca/CFAWC/eLibrary/Journal/Vol4-2011/Iss2-Spring/Sections/07-US_Drone_Strikes_in_Pakistan-Evil_or_Necessary_e.pdf
- Groves, S. “Drone Strikes: The Legality of U.S. Targeting Terrorists Abroad.” *The Heritage Foundation: Leadership for America*, 9 April 2013
https://s3.amazonaws.com/thf_media/2013/pdf/bg2788.pdf

Johnston, P.B. & Sarbahi, A.K. "The Impact of U.S. Drone Strikes on Terrorism in Pakistan", *International Studies Quarterly* (Oxford University Press), edition 60, p 203-219, 2016
<https://doi.org/10.1093/isq/sqv004>

Shah, S.A. International Law and Drone Strikes in Pakistan" *Routledge Research on the Law of Armed Conflict*, 2015

Swift, C. "The Boundaries of War? Assessing the Impact of Drone Strikes in Yemen." *Cambridge Core*, 2013
<https://doi.org/10.1017/CBO9781139198325.006>

Vogel, R.J. "Drone Warfare and the Law of Armed Conflict" *Denver Journal of International Law and Policy*, Vol. 39, No.1 (Winter 2011)