Targeted Killings Using Drone Warfare in the USA: Issues of Self-Defence

Introduction

Targeted killings using drone warfare has been prevalent in military operations across the globe for over two decades. Drones ‘are also known as Unmanned Ariel Vehicles (UAVs) and Remotely Piloted Aircraft (RPA)’. Coyne describes drones are ‘aircraft controlled remotely or autonomously via computer without a human pilot’. Rhode explains the effects of drones as ‘a buzz of a distant propeller which acts as a constant reminder of imminent death’ . Furthermore, Goss defines targeted killing as consisting of ‘compiling lists of certain individuals who pose as a threat and subsequently killing them when the opportunity presents itself during armed conflict’.

This essay will evaluate the legality of targeted killing using drone warfare. The first section will analyse the U.S. legal framework, international law and international human rights law. The second section will entail looking into the advancement of technological warfare with reference to the administrations of George Bush and Barack Obama. Thirdly, this essay will cover the fictional mindset of drone warfare using Alston’s report on the PlayStation mentality. Fourthly, the main point of contention is the Aulaqi case and features an insight into the legality of his death under constitutional and international human rights law. Lastly, it will conclude with assessing the effectiveness and consequences of targeted killings with a primary focus on collateral damage.

Legal framework

The United States has been at the forefront of launching drone strikes around the world in a continuous effort to fight the war on terror. The U.S. legal framework concerning targeted killings and assassination changed after the attacks of September 11, 2001. The government invoked a ‘Authorization to Use Military Force’ joint resolution which grants the President authorisation to ‘use appropriate force against those nations or persons he determined planned or authorised the attacks on September 11, 2001’. Furthermore, the joint resolution mentions that ‘the United States exercise its rights to self-defence and to protect its citizens’.

Thus, the United States renders targeted killing using drone warfare as a means of self-defence and authorises the military to use force where necessary in protecting the nation from subsequent attacks.

However, Sterio uses the possibility of arguing that ‘al Qaeda’s campaign against the U.S. does not trigger the right of self-defensive force, because al Qaeda has not launched a full-scale military offensive’. Philip Alston states that ‘drones are being operated in a framework which may well violate international humanitarian law and international human rights law’. The International Bar Association’s Human Rights Institute (IBAHI) affirms that ‘targeted killings conducted by drones outside of an armed conflict will be contrary to the right of life’. Article 2(1) of the Human Rights Act 1998 covers the right to life whereby ‘everyone’s right to life shall be

protected by law'. Thus, the U.S.' self-defence argument is flawed and is primarily used to justify targeted killings which counter the international legal framework.

Targeted killing – Bush administration & Extrajudicial killings

The Bush administration has proved to be relevant to targeted killings using drone warfare.

The Bush administration commenced with the usage of drone warfare to target known terrorists in retaliation for the attacks on September 11, 2001. The Telegraph reported that 'Mohammed Atef was targeted and killed in Kabul and thought by American authorities to have been responsible for the attacks of September 11, and bombings of American embassies in 1998'. This strike occurred one month after the bombings of September 11, 2001 whereby the Bush administration declared a worldwide war on terror. Qureshi states that 'the first drone used for target killing in Afghanistan during military combat was targeted against Atef in November 2011'. US ambassador to Israel Martin Indyk rendered targeted killings as unjust to which he stated, "they are extrajudicial killings, and we do not support that". In a report published by Amnesty International, it was stated that 'extrajudicial executions are not only acts of extreme cruelty violating domestic laws, but also violate international standards on human rights'.

In 2002 the Bush administration ordered the targeted killing of American citizen Ahmed Hijazi in Yemen. Cohn states that this killing 'was the first publicly confirmed U.S. targeted killing outside a battlefield since President Gerald Ford signed a ban on political assassinations in 1976.' Sterio asserts that 'the U.S approach is that the battlefield follows those individuals who have been designated as enemies due to their affiliation with al-Qaeda'. Al-Qaeda are not formally recognised as a state, therefore it cannot constitute an international armed conflict. Gusterson mentions that 'for the use of military force to be defensible under international law, not only must an attack be in progress or imminent, but it must be undertaken by an organization recognizable as a military force'.

Obama administration – an advancement of technological warfare

The Obama administration fully made use of the advancement of technology in drone warfare. Barack Obama's speech in 2009 outlined that the U.S 'need to update [their] institutions to deal with this threat but must do so with an abiding confidence in the rule of law and due process'. Additionally, Harold Koh, the U.S. State Legal Advisor stated that 'U.S. targeting practices, including lethal operations conducted with the use of unmanned aerial vehicles, comply with all applicable law'. The Obama administration changed the Bush administration's approach from capturing and detaining, to launching targeted killings using advanced technological systems. In 2009, Zenko describes that 'President Obama authorised his first military action; two drone strikes in Waziristan, Pakistan that killed as many as twenty civilians'. This drone strike occurred only three days after Barack Obama was inaugurated as President.

Morality question – a fictional mindset

Article 35 of the Geneva Conventions 1949 (AP I) outlines the basic rule for methods and means of warfare to which it states; 'in any armed conflict, the right of the Parties to the conflict to choose methods or means of warfare is not unlimited'. One consequence of targeted killing using drone warfare is the fictional aspect of the drone attack. Cole refers to it as the

‘Playstation mentality’ whereby ‘the geographical and psychological distance between the drone operator and the target lowers the threshold in regard to an attack which makes it more likely that weapons will be launched’. Alston refers to this as ‘young military personnel raised on a diet of video games now kill real people remotely using joysticks’.

This indicates that not only will drone warfare result in more war, but the element of war is not apparent and differs drastically from sending troops. Cole affirms that ‘the frequency and unpredictable nature of drone attacks constitute a climate of fear for populations in targeted areas’. Alston poses the question ‘will killing be a more attractive option than capture?’ The former has given countries such as the U.S. a military advantage to infiltrate terror suspects around the world, whereas the latter poses the risk of casualties amongst their own forces.

Al-Aulaqi

The case of Al-Aulaqi is primary to understanding the legality of targeted killing using drone warfare whereby the U.S. used the joint resolution as a blanket cover to justify the killing of an American citizen. Anwar al-Aulaqi, a dual US-Yemeni citizen, described by Shane as ‘the leading English propagandist for al-Qaeda’ was killed by a drone strike authorised by Obama in September 2011. The terrorist group al-Qaeda in Yemen utilised Aulaqi’s intellectual ability and fluency in English to lure young people in the West through online platforms to travel and engage in fighting jihad. The Telegraph quoted General Holder who defends the U.S. government in saying ‘targeted killings of American citizens are legal if the targeted citizen is located abroad, actively engaged in planning to kill Americans, and poses an imminent threat against the United States’. However, Sterio mentions that Aulaqi’s assassination ‘marked the first time in history an American citizen had been targeted abroad without any judicial involvement or proceedings to determine guilt’.

The killing of an American citizen without trial or proof of guilt not only violates the HRA 1998 but is in violation of Aulaqi’s constitutional rights. A country which prides itself in its judicial history, violated its own Fifth Amendment which features a due process clause stating that no individual “should be deprived of life, liberty or property, without due process of law’. Although Aulaqi adopted an anti-US ideology, and proclaimed radical beliefs which fuelled hatred and extremism, his assassination was unjust. Attorney General Holder stated that ‘due process did not equal judicial process’ which Sterio mentioned that this ‘implies that judicial oversight and review was not necessary before the targeted killing of Aulaqi’. Barack Obama’s response to the Aulaqi controversy was that ‘his [Aulaqi] citizenship should no more serve as a shield than a sniper shooting down on an innocent crowd should be protected from a SWAT team’.

Al-Aulaqi v Obama et al.

The case of Aulaqi v Obama et al. was brought forward by Aulaqi’s father, Nasser Al-Aulaqi, who learned that the U.S. had placed his son on the CIA’s kill list for alleged involvement with al-Qaeda. With backing from the American Civil Liberties Union (ACLU) and the Centre for Constitutional Rights (CCR), Aulaqi’s father filed a suit ‘on behalf of his son against the President, CIA Director, and Secretary of Defence’. This case was an attempt by his father to save his son’s life arguing that he should be brought and tried in a U.S. court. However, the U.S. ‘moved to dismiss the case and invoked a “military and state secrets” privilege’. The courts found that Nasser Al-Aulaqi ‘did not have standing to assert his son’s constitutional

right’. and consequently dismissed the suit.

Aulaqi’s ideology took a radical shift after his incarceration in a Yemeni prison.

The local Yemeni government was pressured by the U.S. to ‘detain Aulaqi for charges of kidnapping and affiliation with al-Qaeda’. He was subsequently released eighteen months later. This is where Aulaqi’s views towards the U.S. hardened. Aulaqi released a video calling people in the West to carry out attacks on the U.S as retribution for the drone strikes carried out in the Arabian Peninsula. The NY Times stated that ‘he details just why, exactly it is every Muslim’s religious duty to kill Americans’. However, those with even a basic understanding of Islam will acknowledge the prohibition of killing innocent civilians outlined in the Qur’an.

Nevertheless, the U.S., a country which prides itself in its constitution and judicial history, failed to give Aulaqi his basic fifth amendment right, a right which ‘no person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment of a Grand Jury’. Aulaqi’s death symbolises more than just another targeted killing, it indicates that the U.S. is willing to go around their legal framework, and the framework of the Human Rights Act 1998, to cross another name off their target list. Had Aulaqi been captured and tried in a U.S. court for his alleged crimes, the public response would be to side with the U.S for adhering to their own domestic laws and not going outside the lines to commit targeted killings. Instead, the U.S. government underwent scrutiny from both domestic and international critics across the world.

Ideology

The question of whether these targeted killings justify the avengement of the September 11, 2001 is left unanswered. The U.S. are fighting more than just a militant group, they are fighting an extremist ideology which advocates suicide bombings and the killings of innocent civilians. The New York Times Magazine quoted al-Qaeda after Aulaqi’s death, they stated that “America killed Sheikh Anwar, but it could not kill his thoughts”. The killing of Aulaqi has served more harm than good, it has instilled further hatred and criticism towards the U.S. and its administration. The NY Times in a later article stated that ‘his videos, forecasting a West in which Muslims would increasingly be denigrated, have been viewed by hundreds of thousands’. Therefore, due to the U.S.’s violation of human rights and humanitarian law with the killing of Aulaqi, it has sparked the interest of many around the globe which inevitably led to more support for his cause.

The effectiveness of drone warfare

Despites its flaws, drone warfare is an effective technological method of warfare when adhering to domestic and international laws. Fairhurst mentions the benefits of drone warfare as ‘enabling states to engage in military operations without incurring casualties among their own forces’. However, from a moral standpoint, the U.S. gain an advantage of the prevention of casualties among their forces but fail to acknowledge the civilian casualties. and deaths in spite of their drone attacks. The question is then as follows: would the U.S. prefer to conserve their own forces whilst running the risk of civilian casualties? As Keene reports, ‘the overall use of armed drones by the United States is reported to have grown by 1,200 percent between 2005

and 2013'. Therefore, the statistics are self-evident whereby the U.S. would rather risk civilian casualties for the purpose of military advantage. Furthermore, Dr Keene mentions 'three further key desired effects of targeted drone attacks have been identified: accuracy, winning the fight and cost'.

The consequences of drone warfare

Targeted killings using drone warfare is disastrous for civilians caught in the vicinity of an attack. Collateral damage is a detrimental consequence of drone attacks. Dr Keene mentions that 'Collateral damage occurs when high value individuals (HVIs) are wrongly identified or located among non-combatants'. Fairhurst mentions that drone targeted killings entail 'precision with reduced risk of collateral damage'. However, how does a drone operator distinguish between a military combatant and a civilian? The basic rule of Article 48 (Protocol 1) explicitly states that 'parties to the conflict shall at all times distinguish between the civilian population and combatants […] shall direct their operations only against military operations'.

In a background paper released by the IBAHI, the statistics concerned with targeted killings show a high death rate for civilians which counters Dr. Keene's argument about drone precision. It is reported that strikes in Pakistan resulted in 2,410 – 3,902 deaths of whom 416-959 were civilian. Additionally, in Yemen the U.S. killed 371-541 of whom an estimated 64-83 were civilian. Moreover, in Afghanistan the U.S. carried out 2,920 drone strikes with 3,718 deaths of whom 142-200 were civilians. The percentage of civilian deaths is approximately twenty-percent of the total death rate which signifies the difficulty drone operators have in distinguishing between a combatant and a civilian. Keene mentions that the 'humanitarian argument is that victims on both sides of a conflict are equally worthy of protection.'

Collateral damage (I)

In 2013, The Guardian reported that 'fifteen people on their way to a wedding in Yemen were killed in an air strike after the party was mistaken for an al-Qaida convoy.' This links closely to the notion of failing to distinguish between civilian and combatant; the U.S. were targeting an al-Qaeda convoy but mistakenly attacked a wedding instead. With the advancement of technology and the U.S. investing '$6.97 billion for drone related procurement' yearly, it is unfortunate that collateral damage is still prevalent. Such a high expenditure on technology should at least enable the state to differentiate between a military convoy armed with artillery and weapons, and a civilian celebratory event.

Collateral damage (II) – Abdulrahman Al-Aulaqi

Secondly, the son of Anwar al-Aulaqi, sixteen-year-old Abdulrahman Anwar al-Aulaqi, was killed in a drone attack one month after the targeted killing of his father. The U.S.' rendered the death of the sixteen-year-old as 'accidental' as they claim to have been targeting an al-Qaeda leader, but instead Abdulrahman was allegedly caught in the cross-fire. Al-Aulaqi v Panetta is the case in point whereby it is stated, 'the government failed to take required measures which rises to a violation of the most elementary constitutional right afforded to all U.S. citizens – deprivation of life'. In a call for speculation, the death of Aulaqi's son occurred only one month after the death of his father to which the missile 'killed him, his teenager cousin and five other civilians while they had dinner at open air restaurant'. The U.S.' reasoning behind civilian deaths is

unsatisfactory; to deem an indiscriminate killing of a teenager as ‘accidental’ shows their lack of remorse and disregard for human life. Dewan asserts that, ‘it is a bitter irony indeed that drones are used to kill ‘the bad guys’ in these places as the preferred choice of modern US justice’.

It is difficult to believe that the U.S., who spend billions on drone technology yearly, fail to distinguish between a teenager and an al-Qaeda militant leader. It was no coincidence that Abdulrahman was the son of Anwar al-Aulaqi, and his killing was immoral and unethical regardless of whether it was intentional or accidental. In essence, collateral damage remains one of the main consequences of targeted killings. Accidental deaths occur as a result of incompetence in gathering intel and surveillance, and subsequently lead to the deaths of innocent civilians.

Conclusion

The legality of targeted killing using drone warfare remains controversial. The detrimental consequences of targeted warfare far outweigh the benefits of gaining military advantage. Collateral damage is in contrary to international human rights law whereby the right to life is disregarded by countries like the United States. The U.S.’ joint resolution is flawed upon the basis that self-defence is an unsatisfactory justification for the killings of innocent civilians. The statistics conclude a twenty percent collateral damage rate to drone strikes launched by the U.S. It has granted them the power to justify the killing of its own citizens without affording them their basic constitutional right. Extrajudicial killings result in both civilian casualties and violations of international laws which prohibit such actions. The targeted killing of Anwar al-Aulaqi was unlawful and unethical as the U.S. failed to adhere to their own constitution which features a due process clause. Nevertheless, targeted killings have proved to be more problematic than beneficial, and it is incumbent upon the ICJ to hold accountable those who kill indiscriminately using drone warfare.