

# Conflict & Security

## Drone Attacks Inside Pakistan

*Wayang or Willing Suspension of Disbelief?*<sup>1</sup>

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The United States' unannounced and unacknowledged war against Pakistan in the form of drone attacks launched from sites in Afghanistan and Pakistan continues to be a source of political unrest in the region. It has fortified opposition to the United States among the people of Pakistan, especially in the hinterland, where it has become a symbol of what many consider an unequal partnership between the United States and the government of Pakistan. Compounding the confusion about the legality of such attacks and the anger directed against them is the behavior of the Pakistani authorities, who publicly condemn these attacks and privately condone them. It is widely believed, though hard to corroborate with concrete evidence, that the Pakistani military and civil authorities abet these attacks or have abetted them in the past.

This situation can be compared to the Indonesian shadow puppet shows, or *Wayang*, with the United States playing the role of puppet master and Pakistani officials willing to suspend disbelief in private exchanges with the United States while protesting against drone attacks in public.

U.S. authorities do not acknowledge drone attacks, nor do they share publicly the results of these attacks. Privately, they trumpet the success of these attacks in eliminating key

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Al Qaeda and Taliban figures. Yet the attacks continue and have risen dramatically in the years since President Barack Obama took office, even as the number of civilians killed appears to have dropped. But at the heart of the problem are not just the drones and their legality, but the chronic mistrust that pervades the U.S.-Pakistan relationship, which has deeper historical origins. The drones are simply a reflection of that clash.

According to analysis completed by the New American Foundation for the period 2004 to 2011, some two hundred twenty-two strikes have taken place inside Pakistan, specifically in the Federally Administered Tribal Areas,

and the fatality rate is suspect, as the United States anonymously claims a far higher number of militant, rather than civilian, deaths. Civilian deaths have reportedly been on the decline in recent years, as better intelligence and more precise weaponry allow the United States to target militants inside FATA more effectively.

Pakistan's official position indicates opposition to the attacks, which are seen as an infringement on Pakistan's sovereignty. There have been cases, however, such as the 2009 attack that killed TTP leader Baitullah Mehsud, in which the Pakistani government has openly praised such operations. Both the Foreign Minister of Pakistan and

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or FATA, that form a buffer zone between Afghanistan and Pakistan.<sup>1</sup> Most of the strikes have occurred in the area of North or South Waziristan, where Afghan Taliban, Al Qaeda, other foreign militants, and the Tehreek-e-Taliban, Pakistan (TTP) have had their main bases. The flights originate from bases inside Afghanistan or the Shamsi air base in Pakistan, and are controlled by CIA personnel in the United States. The Obama administration has ratcheted up the numbers of attacks, with over one hundred thirteen attacks in 2010 alone, nearly twice the reported attacks in 2009.

Both the numbers of attacks and their effects are hard to pinpoint,

its Prime Minister celebrated the attack against Mehsud without any criticism of U.S. actions—proclamations that were in stark contrast with earlier official denunciations of drone activity inside FATA.<sup>2</sup>

The Pakistani government has often taken more pointed positions toward drone attacks that have created difficulties in the U.S.-Pakistan relationship, and have fueled public anger against the United States, especially in Pakistan's hinterland. Following an attack outside FATA in the Bannu district, for example, Pakistani Prime Minister Yousaf Raza Gilani issued a statement to parliament strongly condemning the attacks as "intolerable."<sup>3</sup>

Against this background of uncertainty and mixed messages, key factors affecting drone attacks and their future begin to emerge. These include the historical relationship between FATA and Pakistan, the nature and state of U.S.-Pakistan relations, the legal basis for drone attacks, and what is likely to emerge in the period between 2011 and 2014, as the United States and coalition forces prepare to draw fighting forces out of Afghanistan.

**FATA and Pakistan.** *Ilaqa Ghair*, or the “foreign land,” is what most Pakistanis call the strip of land between Pakistan proper and Afghanistan, a territory inherited from the British and protected on its western border by the Durand Line. This line was drawn by the British to demarcate the border between Afghanistan and British India and to fix the limits of their “respective spheres of influence” in the region. After Pakistan gained independence in 1947, the area was left to the management of local tribes, with scant federal government presence in the form of Political Agents.

Pakistan adopted the system of British laws in the region, which held tribes collectively responsible for any crimes committed in their territory. The government maintained relative control by paying tribal elders (Maliks) fixed amounts relative to their status in tribal society. This allowed the government to play favorites and to keep the tribes divided, competing with each other for largesse from the state.

Beyond this engagement, the Pakistani state, like the British, seems to have forgotten about FATA. It remains a backward and poor part of the country

that, even sixty-three years after independence, has standards of living that are lower than the rest of Pakistan. Significant increases in its youth population produced recruits for migration to the bigger cities or for the insurgency. Karachi, in the south, drew upwards of 4 million Pakhtun, and a lucky few managed to enter the workforce of the Persian Gulf states. The rest were left to forage for themselves in an inhospitable land with little investment in infrastructure, health, and education. Confiscating duty-free items destined for Afghanistan, and smuggling drugs and weapons became business pastimes for the tribes. A few joined the Pakistan military and others joined the Taliban, but FATA remained the foreign land for most Pakistanis.

During the war against the Soviet Union (1979-1989), FATA became the beachhead against Soviet occupation of Afghanistan, especially as money from the CIA and the Pakistani Inter-Services Intelligence (ISI) poured into the hands of the Mujahedeen. In the aftermath of this war, FATA welcomed the former Jihadist fighters. Many Arab fighters who had been attracted to the battle in the name of Islam stayed behind, since their home countries saw them as a threat to local order and would not have welcomed them back. These fighters became the core of Al Qaeda under Osama bin Laden, and constituted a new and major disruptive force in the entire region following the U.S. invasion of Afghanistan in 2001.

FATA became a new battleground for Pakistan as Pakhtun youths saw the Pakistani army and state as an enemy. It also became a magnet for Afghan Taliban who used tribal affiliations to

seek sanctuary on the eastern side of the Durand Line. A number of ill-advised military forays into the territory, followed by inept efforts to strike deals with local tribes, compounded the difficulties for the Pakistani army.<sup>4</sup> In effect, the invasion of Afghanistan bred two insurgencies—one inside Afghanistan and the other inside Pakistan.

The Pakistani government was unwilling and unable to battle the Afghans seeking sanctuary inside FATA, as it was fully occupied fighting the local insurgency. Furthermore, its longtime strategy to see Afghan politics through a Pakhtun prism made it difficult for leaders to battle Afghan Taliban who may one day be part of the government in Kabul. Pakistan's strategic objectives in Afghanistan did not coincide with those of the United States. This ambivalence, or as the United States described it, "double game," became a source of constant tension in the tenuous strategic alliance between the two countries. In effect, Pakistan was saying, "We'll fight our battle against our enemies, you fight yours." Frustration with this Pakistani approach likely contributed to U.S. willingness to take the battle into Pakistan using drones.

The drone technology was ideal for U.S. purposes. It involved no human beings crossing any lines, and therefore no one could be killed or captured on the wrong side of the border. Even Congress, which had authorized the war in Afghanistan under the aegis of a U.S.-led coalition, looked the other way when the military expanded its theater of war into Pakistani territory. When the Pakistani government played along, the *de facto* became more or less *de jure*.

The Predator drones were unmanned aerial vehicles that flew silently and far, and for long periods of time. They could hover over territory, using their cameras to identify and track people as needed, and could rain down Hellfire missiles onto targets. When combined with good intelligence, they provided plausible deniability against U.S. laws that forbade assassinations in foreign countries. The newer version of these drones, the Reaper, was even more effective and lethal. After some years of messy operations, when reports of collateral civilian deaths angered the local populations inside both FATA and Pakistan, the improvement in technology gave greater confidence to its users. The Obama administration was thus able to gear up drone operations, even as questions regarding their legality mounted.

**Are drones operating legally?** There has been much scholarly debate about the legality of drone operations inside FATA. First and foremost is the issue of crossing the international boundary that was inherited from the British and agreed upon by Pakistan and Afghanistan. Despite Afghanistan's objections to the permanence of the Durand Line, its actions since 1947 as well as its lack of recourse to any international court to settle the issue of the line, make FATA a foreign territory for both Afghans and for foreign forces using Afghanistan as a base. If this were not the case, there would be no need for formalities for residents of FATA to cross into Afghanistan at will.

A common argument is that FATA is an "ungoverned territory," and therefore was open to intrusion from neigh-

boring territories. A cottage industry of studies has sprung up around this argument asserting that the United States' security interests trumped legal boundaries if those boundaries encompassed "ungoverned territories."<sup>5</sup> These authors describe FATA as a "prototypical ungoverned territory," since it lacks state penetration and has external interferences, and a substantial presence of weapons in the hands of the local population make the state's control negligible, if not non-existent.<sup>6</sup> A number of commentators capitalized on the concept of ungoverned territory to support invasion of FATA from the air.<sup>7</sup>

In March 2010, Harold Koh, the State Department's legal adviser,

sons who intend to harm Americans or are involved in armed conflict against the United States. According to these scholars, if the fighting in Afghanistan led to the attacks against U.S. forces by militants hiding in Pakistan, then pre-emptive attacks on the militants are justified.<sup>10</sup>

The critique of this policy was also trenchant, however, highlighting issues of collateral damage, the weapons' lack of precision, and the uncertain intelligence on which the attacks are based. The use of drones against targets that may or may not be genuine enemies of the United States is always a possibility. The unreliability of on-the-ground informants leads to a large proportion of non-combatant civilians being killed

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defended the use of drones for targeted attacks against the country's enemies under the argument that it "may use force" under its "inherent right to self-defense under international law."<sup>8</sup> Koh went on to state that the administration had been conducting its operations in line with law of war principles, such as distinguishing between "military and civilian objects" and limiting attacks only to those which do not cause excessive loss of life.<sup>9</sup>

Some legal scholars and supporters of human rights opposed Koh's legal interpretation. Others supported his view that the government has the right to defend itself by acting against per-

in drone strikes.<sup>11</sup> Moreover, civilian deaths caused by the drones have helped the local Taliban's recruitment efforts inside FATA. Baitullah Mehsud was reported to have relied on collateral damage to recruit for the TTP, gathering one hundred fifty volunteers for the organization after a U.S. drone attack.<sup>12</sup>

Article 51 of the United Nations Charter provides countries the right of self-defense against other countries, not against militants or non-state actors. Opponents of drone warfare have advanced this point, asserting that the use of drones is in contravention of international laws that govern the conduct of armed force. They claim

that the United States has not limited its attacks to situations of armed conflict, and note that the UN Security Council has not given authorization for the attacks.<sup>13</sup>

Enough doubts have been raised about the legality of cross-border incursions by drones into another country's sovereign territory to question it. This is perhaps one reason why the United States government has never officially admitted its role in the strikes and why the attacks are often referred to as "covert" actions of the CIA.

A legal stalemate appears to have emerged, shrouded in a fog of conflicting statements from the authorities of the United States and Pakistan. The former does not admit to conducting warfare via drones, even as it celebrates the success of this weapon of war. The latter is unwilling to take responsibility for the strikes, but at times clamors for co-ownership of the drone attacks and technology. This is the complicated paradox that these two reluctant allies face as the Afghan war enters its tenth year.

### **What do the people of FATA think?**

Meanwhile, most people in Pakistan continue to oppose the drone attacks inside their territory and see them as an infringement on Pakistan's sovereignty. Their government's acquiescence to these attacks may well be one of the reasons why President Asif Ali Zardari's ratings in opinion polls remain in the teens. Between 2004 and 2010, a total of two hundred twenty-eight drone attacks were counted by the Conflict Monitoring Center in Islamabad—four more than the New American Foundation registered in the same year—lead-

ing to some 2,052 deaths. 2010 was the deadliest year, with one hundred thirty-two attacks killing nine hundred thirty-eight people.

All leading political parties in Pakistan declared their opposition to these attacks in a statement on 28 December 2010, finding them "tantamount to compromising the sovereignty of Pakistan."<sup>14</sup> They urged the government and the army to take immediate steps to stop them. The next day, Prime Minister Yousaf Raza Gilani supported their view in parliament, further stating that these attacks were bringing the tribes of FATA closer to the terrorists. Moreover, a case filed by a relative of persons killed in a drone attack in North Waziristan named U.S. Defense Secretary Robert Gates, CIA Director Leon Panetta, and CIA's station chief in Islamabad, Jonathan Banks, as complicit in the drone attack, effectively bringing U.S.-Pakistan relations to a boil.<sup>15</sup>

While the discord and debate continue at the governmental level, there is broad opposition to drone attacks inside FATA among the Pakistani population. Some 58.8 percent of respondents in a poll conducted in FATA in 2010 thought that U.S. drone attacks were "never justified."<sup>18</sup> Some 24.5 percent felt that drone attacks were "sometimes justified, if properly targeted and civilian casualties are avoided," and 4.4 percent thought that drone attacks were "always justified." In North Waziristan, which has witnessed the most drone attacks in recent years, 99.3 percent of respondents felt that the attacks were "never justified." At the other end of the scale, in Kurram Agency, where elements of the Haqqani group are

reported to have fled to seek a new sanctuary, 63.2 percent of respondents felt that drone attacks were “sometimes justified,” and 16.9 percent felt they were “always justified.”<sup>19</sup>

This survey may not be the final word on opinions, given that it could not reach people in inaccessible areas where fighting rages, or where the government’s presence is limited. BBC reported on another survey conducted in FATA by the Ariana Institute in Islamabad, which found tribe members to support drone attacks since they tend to affect foreigners in particular.<sup>20</sup>

**Looking ahead.** Drone warfare is a sign of the times. Unmanned weapons systems and aircraft, whether operating on land or at sea, appear to be ascendant in terms of preference and costs. They do not need to be fed, clothed, or tended to beyond their technical maintenance. In many cases, they are much more efficient and reliable than human beings, and can perform both offensive and defensive roles. It is only a matter of time before drones are programmed to function fairly autonomously. Debates over the legal and moral use of drones will continue, however, as long as the role of human beings in attacks is not clearly defined, ground verification of targets is unclear, and the complete effects of attacks are unknown.

Drone attacks are increasing in the FATA region, even as the United States and its allies prepare to draw their forces out of Afghanistan and to hand over larger territory to their Afghan counterparts. The attacks are part of an effort to change the momentum of the conflict in favor of the United States and coalition forces, and are driven

by budgetary pressures and war weariness among populations in Europe and North America.

Pakistan is watching these developments with a wary eye. It has seen a similar scenario unfold after the Soviet Union withdrew from Afghanistan in 1989, when the United States and others left the area suddenly, leaving Pakistan with many refugees and the attendant problems of drugs, gun running, and political unrest. The presence of foreign forces in Afghanistan fuels the insurgency, but a precipitate withdrawal will create its own problems, as chaos may ensue in Afghanistan and the border region. The presence of both Al Qaeda and homegrown insurgency in FATA and Balochistan—creeping into the hinterland—worries the Pakistani leadership and the population at large.

The Pakistani government’s own equivocation on the drone issue and lack of transparency in addressing it has added to the problem. So long as the government’s public statements and private actions are not consonant, the Pakistani people will remain confused about the role of their government in abetting drone attacks, and about the intent of the United States to use them. This will, in turn, continue to fuel anger against the United States as an invader of Pakistani space.

The United States has not been particularly forthcoming with Pakistan about the drone attacks and has not sought to reach an agreement amenable to both sides. Mutual distrust persists between these the two countries. Reports in western media that the Pakistanis have been dragging their feet on the creation and operation of fusion cells on both sides of the border add to

this distrust. Despite public statements to the contrary, the CIA and the ISI are unable to resolve their communication problems and create confidence in each other's ultimate aims in the area.

As long as the war in Afghanistan rages on, and until Afghanistan and Pakistan return to a better understanding of each other's concerns and needs, the drone war will likely continue and add to the instability in the region.



## NOTES

1 New America Foundation, "The Year of the Drone," Internet, <http://counterterrorism.newamerica.net/drones> (date accessed: 8 May 2011).

2 In October 2010, for example, Pakistan Foreign Ministry spokesman Abdul Basit said that such attacks were counter-productive and a violation of his country's sovereignty, and that U.S. drone strikes in the northwest had "neither justification nor understanding." See "Pakistan criticizes 'unjustified' US drone strikes," Internet, <http://www.bbc.co.uk/news/world-south-asia-11490722> (date accessed: 8 May 2011).

3 Shahid Hussain, "Strong protest over latest drone attack," Internet, <http://gulfnews.com/news/world/pakistan/strong-protest-over-latest-drone-attack-1.144315> (date accessed 8 May 2011).

4 Shuja Nawaz, *FATA: A Most Dangerous Place: Meeting the Challenge of Militancy and Terror in Federally Administered Tribal Areas of Pakistan* (Washington, DC: CSIS, 2009); Shuja Nawaz, *Learning by Doing: The Pakistan Army's Experience with Counterinsurgency* (Washington, DC: Atlantic Council, 2011).

5 One such study was produced by RAND for the United States Air Force in 2007. It examined eight case studies that included the Pakistan-Afghan border region. A key attribute of such spaces was that the "the state is unable or unwilling to perform its functions. This is not to say that these territories are devoid of governance. Rather, the structures of authority that do exist are not related to the formal institutions of the state." See Angel Rabasa, *Ungoverned Territories: Understanding and Reducing Terrorism Risks*, (Washington, DC: RAND 2007): xv-xvi.

6 *Ibid.*

7 Jackie Northam, "Drone attacks in Pakistan under review," Internet, <http://www.npr.org/templates/story/story.php?storyId=100131283> (date accessed: 8 May 2011).

8 Harold Hongju Koh, "The Obama Administration and International Law," (Washington, DC, 25 March 2010) <http://www.state.gov/s/l/releases/>

remarks/139119.htm (date accessed: 20 February 2011).

9 *Ibid.*

10 See Thomas Billitteri, "Drone Warfare" *CQ Researcher* 20, no. 28 (August 2010): 653-676.

11 Jane Mayer, "The Predator War, What are the Risks of the CIA's Covert Drone Program?" *The New Yorker* (October 2009): 44.

12 Shuja Nawaz, *FATA: A Most Dangerous Place: Meeting the Challenge of Militancy and Terror in Federally Administered Tribal Areas of Pakistan* (Washington, DC: CSIS, 2009): 18.

13 Mary Ellen O'Connell, "Unlawful Killing With Combat Drones: a Case Study of Pakistan 2004-2009," Notre Dame Law School, *Legal Studies Research Paper*, no. 09-43.

14 "All Pakistani Parties Demand End to Drone Attacks," Internet, <http://www.newsfrommiddleeast.com/?xstart=b&new=73356> (date accessed: 8 May 2011).

15 Shuja Nawaz, *FATA: A Most Dangerous Place: Meeting the Challenge of Militancy and Terror in Federally Administered Tribal Areas of Pakistan* (Washington, DC: CSIS, 2009): 13.

16 Naveed Ahmad Shinwari, *Understanding FATA: attitudes towards governance, religion & society in Pakistan's Federally administered Tribal Areas IV* (2010): 59-60.

17 *Ibid.*

18 *Ibid.*

19 *Ibid.*

20 Aleem Maqbool, "America's secret drone war in Pakistan," Internet, [http://www.dailytimes.com.pk/default.asp?page=2010%5C01%5C02%5Cstory\\_2-1-2010\\_pg3\\_5](http://www.dailytimes.com.pk/default.asp?page=2010%5C01%5C02%5Cstory_2-1-2010_pg3_5) (date accessed: 8 May 2011). The study found that around 80 percent of people interviewed in Pakistan's tribal belt felt that targeting by the drone strikes was accurate. Many said that foreign fighters (Arabs, Uzbeks and Tajiks, among others) in particular were being affected.