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Drones as a form of security: A critical analysis of targeted killings as a pre-emptive security

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Abstract---This paper has discussed the question of using drone as a form of pre-emptive security. This is a very old discussion and has divided the academic society into two sides. One of them talks in favour of using drone whereas other talks about not using it as a form of pre-emptive measure. The author in the present paper has used Bethlem's theory, consequential theory and cited a few scholars to submit that in the case of terrorism, drone should be used a pre-emptive measure.

Keywords---Pre-emptive, drone, Bethlem, consequential.

Introduction

Targeted Killing is a form of assassination based on the presumption of guilt. It is a method that has been around for the past few decades and is a tactic which has been generally used throughout the War on Terror with the aid of unmanned combat aerial vehicles(UCAV) or, Drones. After the atrocious attack of 9/11, the USA take the war on terror to another level as they changed the way they deal with terrorism to prevent any further major attacks against the nation by striking drones against any suspected militants. Following the attack, John Ashcroft described prevention as a “number one priority” for the justice department as preventive measures are considered more important than prosecution, especially in the case of terrorism. Additionally, Attorney General Alberto Gonzales in his speech on 5 January 2005, reiterated that ‘administrations top priority is to prevent attack’ and tactics involved for the preventive security measures include, checking the profile of person properly, tightening border security, preventive detention, targeting potential terrorists for assassination, and targeted killings; the present paper will focus only on one mechanism which is targeted killing as

the form of preventive measure. The “Bush Doctrine” announced in the National Security Strategy Document of 2002, that in the face of terrorist networks supported by hostile states, the United States would not “remain idle while danger gathers” but rather would seek to pre-empt emerging threats.

This essay aims to explore the issues related to targeted killings as pre-emptive security, and these issues revolve around the breach of International Human Rights Laws. Some scholars such as Akbar Nasir Khan argue that pre-emptive security as a solution breaches the right to life of human beings and in this, directly breach International Human Rights Law which means they perceive it as extra judicial execution. However, some such as Alan Dershowitz still argue that pre-emptive security is the legitimate action to dealing with terrorism. From a utilitarian perspective, sacrificing the few through targeted killing as a means of security, while protecting the majority can be justified. In addition, in Europe, there is a concept of the precautionary principle which suggests that all activities that can harm society should be avoided. The New York Times magazine listed the precautionary principles as the “most important ideas of 2001” in a catchphrase emphasising that it is ‘better safe than sorry.’

Moreover, there are also issues centred on the pre-emption of imminent threat and anticipatory action, as illustrated by Bethlem’s principles which will partly be analysed. The essay further deals with exploring and discussing issues regarding anticipatory threats, and imminent and actual threats. Scholarly articles and academic materials will be used throughout to address the issues mentioned above to gain perspective on the concept of drones as pre-emptive security through target killing. The essay can be divided into four-part first part deals with Introducing the problem second part discusses some theories supporting the arguments for targeted killing as pre-emptive security third part deals with the imminent and actual threat argument of the Bethlem principle and the fourth part is the conclusion.

Targeted Killing as Pre-emptive measures

“Believed anticipation of catastrophe is transforming the concept of society in the 21st century”

It can be inferred from the above quote that in today’s era even the believed presumption of any terrorist attack can lead to taking strong action against the suspected terrorist. One of the enormous structures established by human beings collapsed within a few seconds in an atrocious cloud of whirling and swirling dust a hundred-floor giant was transformed into a rising plume of white smoke, and the end of the world trade centre gave the ‘United States an idea of what it means to awaken suddenly in the strange new world risk society.’ Since the attack took place the United States has become strict about the terrorist attacks, therefore they increased the number of drone strikes, but the drone strikes also have a place in history as they were introduced in the first world war 1914-1918 and since then are still present as they have been used in several conflicts.

The drone strikes have since created a huge debate among the States and international authorities because some argue that they are against International

Human Rights law. Article 2(4) of the United Nations Charter* prohibits 'the threat or use of force against the territorial integrity of another state. This provision restricts drone strikes because the use of any force or threat goes against the integrity of other states. Furthermore, it can be argued that drone strikes are against international law and international human rights law because they take the life of innocent citizens. While some argue this, others argue, however, that there are some circumstances in International law where the states can attack. The background of autonomous use of force under the UN Charter necessitates a reference to the set of norms embodied.

On the other hand, Article 51 of the UN Charter pinpoints that "Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations until the Security Council has taken measures necessary to maintain international peace and security." In this inference, drone strikes are deemed as the legitimate action to take at the time if armed attacks or war arise, meaning if the Security Council has not intervened to create peace, self-defence is the necessary course of action to take for security purposes.

Similarly, with the hindsight of terrorist attacks, I believe targeted killings are a necessity in regards to State security and the protection of citizens. Moreover, forestalling attacks before citizens are harmed is more rational than awaiting an attack and acting after the attack has happened. For example, it is not rational to move into a neighbourhood with high crime and wait until you are burgled to install burglar alarms: It would be more rational to install the burglar alarms as a precaution once you know the neighbourhood is high in crime before you get burgled. Likewise, it is apparent that there are threats all over like the Taliban or ISIS etc., so is it a precautionary principle to take pre-emptive action. Furthermore, applying Jeremy Bentham's "greatest happiness principle" it can be maintained that if killing suspected terrorists in a drone strike and a few bystanders are also killed in the process, it is justified to sacrifice the few to save the most. So international human rights law should not be a hindrance to pre-emptive actions if the issue concerns state security because not only the bystanders are innocent, but the majority of people will die if a terrorist attack were to happen.

I do believe, however, that pre-emptive actions should be taken with due care, for example before any strike occurs, it needs to be ensured that the target is not in an area where there are citizens and must be somewhere isolated. To add to this, unless surveillance specifies the target and the state is certain that it is the target, the strike must not be conducted otherwise.

Just after the attack of 9/11, the Bush administration innovated a National Security Strategy (NSS) and many criticised the strategy of pre-emption derived from this because the strategy accepted the use of military force before an attack against the state. Before pre-emption is permissible, traditional International law required there to be "an imminent danger of attack," thereby, the risk of attack must be foreseeable otherwise that would breach International Law. The NSS also

contends that “the greater the threat, the greater is the risk of inaction, implying that greater harm can never be foreseeable, which is why anticipatory actions are compelled to prevent the state from enemy attacks.

In Joseph Fletcher’s theory of situational ethics, the principle of pragmatism suggests that ‘for a course of action to be right, it has to be practical.’ Through this illustration, it is clear that the course of action, in this case, pre-emptive action has to be reasonable in its use. Therefore, from the NSS’s strategic perspective it can be regarded as practical to use drones as pre-emptive action. In addition, before the UN Charter was adopted, through customary International Law, it was commonly recognized that pre-emptive force was permissible in self-defence. The Caroline case in which British nationals were on the Caroline and killed several US nationals, setting their ships on fire, they claimed that they acted in self-defence.⁴ This proves that pre-emption as a form of targeted killing is permissible for a state whenever there is a threat from an opponent.

The use of predator drones for targeted killing was also done in 1996, as the U.S. Secretary of Defence dispensed the U.S. Air Forces for the operational control over the first Predator drone systems. Since then, the existence of unmanned drones in current conflicts has progressively amplified. The U.S. drones have reportedly grown from less than ten in 2001 to 180 in 2007. But it is not only the U.S. which is armed with this technology. 43 States already possessed unmanned flight systems, and other states also have or are developing armed ones which shows that majority of states are now considering drone strikes as a valuable action as it seems to be the most effective solution to terrorist attacks.

Former Prime Minister of the United Kingdom Tony Blair suggested that ‘human rights should be amended if necessary to act against terrorism. Agreeing with this point, the law is dynamic, so a socio-legal approach has to be adopted and in this, if it means amending the Human Rights Law to fit with the pre-emptive action, that could be the possible solution.

In contrast, many scholars suggest that human rights provide the basics for human behaviour and it gives the power to the individual so that they can take up their case to the domestic law. However, we contend that there is no use in fighting for the human rights of the terrorist if they are the ones impinging on other people’s rights by attacking.

Some argue that under human rights law, targeted killings are expected never to be lawful, as “it is never permitted for killing to be the ulterior motive of an operation.” The main legal basis for this assessment is Art. 6 ICCPR which conditions that no one shall be arbitrarily deprived of life, and forbids the use of lethal force without lawful reasons. This provision stipulates that any person cannot be killed just because they are a threat to the state.

On contrary, the consequentialism theory suggests that an ‘act is right or wrong depending on the consequence of the act’, thus, pre-eliminating a threat using drones for targeted killing can be justified in the view that the outcome of that act

is to save more people and this idea falls in correlation with utilitarianism. Besides, according to human international law, 'a killing can be legal only when it is done to prevent an actual and imminent threat to life, and if there is the non-lethal alternative of preventing that threat to life.' This implies that, if there are no other alternatives to preventing imminent threats, killing is justified, tying in with the consequentialism theory. On the other hand, when tables are turned, the consequence is that some people are also killed through targeted killings which generate an immoral outcome that contrasts with my idea.

From my premise, if Human Rights Law says that no one shall be deprived of his life then why do we restrict targeted killing which is ultimately going to protect people from dying? Again, through the application of Bentham's Utilitarian theory, the 'greatest happiness principle, it is argued that to save a large majority from any attack, and if in this process few are killed, the step still can be taken because if pre-emptive actions are not taken to pre-eliminate a target if an attack happens people would die anyway.

The 2007 Somalia attack constitutes one of the most recent examples of the USA's 'targeted killing' programme, a highly classified initiative aimed at the destruction of an increasingly decentralized and fragmented terrorist network. Technically, this is not infringing Human Rights Law as International human rights law permits the use of lethal force outside of armed conflict situations if it is strictly and directly necessary to save human lives.

Socrates' interpretation that, "I know, I know nothing" applies here can be interpreted as we know that the enemy can attack but we do not know when an attack can happen, as we know nothing about it. Paradoxically, our constantly perfected technological society has granted us the fatal insight that we do not know what we do not know. And this again leads to the same argument that to save humans from the danger we need to anticipate the risk and terror attack. So, when Nietzsche pronounced that God is dead he paradoxically meant that human beings must henceforth find their explanations and justifications for imminent catastrophes. Since 2001, the USA has been engaged in at least 20 officially acknowledged targeted killing operations in a wide variety of countries, including Somalia, Yemen, Pakistan, the Philippines, Sudan and Iraq.

According to the Authorization for Use of Military Force (AMUF) signed by former President George W. Bush, states, 'the president has the authority to use all necessary force in dealing with terrorists or associated forces', which means if there is a threat to citizens a president can take any action which is needed. Moreover, the Deontological theory contends that it is more about the law that 'binds you to your duty' which highlights that rules are bound to the state and they should act in favour of its citizens through protective laws which save the citizens. In this aspect, pre-emptive actions bind the state to their duty of protection of the citizens which justifies targeted killing. Also, Kant argued in his theory that 'it is not the consequences of actions that make them right or wrong but the motives of the person who carries out the action' which gives my argument a stronger stance because the consequence of target killing involves the murder of innocent civilians but that is not what makes the action right or wrong: but the

motive to save citizens of your state is the action, which in this case justifies pre-emptive actions.

The classic theory of deterrence contemplates that, if a crime is committed, the state can apprehend the perpetrator and then punish him publicly and proportionally to demonstrate to future offenders that they pay for their crimes if they commit the same crime. Applying the theory, society will absorb it on a small scale because crime affects a lesser number of people in society. Therefore, the state should not use the deterrence theory in a terrorist attack, punishing offenders after they have killed the majority of the population would make no difference, and pre-emptive measures must be taken in case of any terrorist attacks. Additionally, the state cannot use the same proportion of punishment for a minor crime that affects society, so in this, the state needs to use stricter measures to punish a terrorist. Hence drone attacks can be accepted as a form of pre-emptive measures to pre-empt attack before it takes place.

Moreover, targeted killings as Oliver and Kessler articulate, 'are a specific form of 'uncertain absorption, literally aimed at the elimination of danger.' By this, he means drone strikes are the ultimate consequence of how the fight against terrorism is framed by the state for citizens, it is certainly a new step against war. In support of this argument, M Morgan adds to this by stating that 'every level pre-emptive decisions must be taken based on uncertain predictions which will rarely be anywhere close to 100 per cent accurate.' We must be prepared to accept some false positive predictions that would not have occurred to prevent some predicted harm with irreparable damage. This is a good measure because by predicting threats we could eliminate more harm instead of sitting and doing nothing.

The security paradigm that says that 'The US should act to pre-empt security threats even if there is only a 1 per cent chance of particular threat coming to fruition' written by Ron Suskind, implies that pre-emptive measures should be taken if there is even one per cent threat of a terrorist attack. For a long time, deterrence and retributive system of punishment has been there and with hindsight, it is better to kill suspected terrorists instead of waiting to lose innocent lives, because with each passing day threat increases.

Daniel Bethlehem his principles of imminent and actual threat has made it clear that the "state has right to self-defence against an imminent or armed attack by non-state actor" There is always a divide between some scholars who argue in favour of a restrictive approach and others who believe that credibility of law depends ultimately upon its ability to address effectively the realities of contemporary threat, while I argue that customary international law, as well as UN Charter, already include right to self-defence as Bethlehem principle is just another backup of the same, where there is imminent threat state must react to the non-state actor before the actual attack happens. The principles follow *Just ad bellum* (law relevant to resort armed force) rather than *just in bello* (use of force in military operation) clearly the principle says the use of force for self-defence and not in military operations.

Also, Alan Dershowitz asserts that 'pre-emptive action distinguishes itself from prevention because it is more imminent yet a less precise threat while the failure

to act may cost a society dearly, even catastrophically.' This means imminent threat needs to be addressed; prevention of crime knows the crime while pre-emption is presuming the same. Additionally, Bush himself put it in his famous westpoint speech "if we wait for the threats to fully materialise, we will have waited too long" which supports that pre-emptive measures are a form of risk management which should be taken.

Precautions moreover require urgency in regards to political action not just because of the imagined apocalyptic future (Fitzpatrick, 2003:247) but also because of the implicit assumption that the responsible institutions are guilty if they do not detect the presence or actuality of danger even before it is realised (Ewald, 1994: 221-2) as the duty of states towards its citizens, they are supposed to save the citizens by tightening their security or by taking any other action necessary. Also, it is more viable to connect the dots of terrorist-related information before any fatal attack takes place instead of taking any actions afterwards. However, targeted killing as pre-emptive security no matter how carefully implemented can never be perfect, especially in a large urban area where terrorists hide, because innocent bystanders are sometimes killed and injured along with the terrorist, even if it is often the case the only ones killed are suspected terrorist. Additionally, they are being eliminated without the due process of the trial also.

Conclusion

To conclude, this paper justifies the use of targeted killings by the drone strikes as the pre-emptive security against suspected terrorists for the anticipated attack, contending that the use of pre-emptive measure is the best possible solution to any attack against the state. Some scholars argue that it is a breach of International Law as human rights are being violated while others assert that United Nations Charter contains an article which allows the use of pre-emptive security in the form of self-defence. Furthermore, the article strongly recommends the use of drone strikes as pre-emption by using different theories. Moreover, using Bethlem's principle of imminent and actual threat the paper justifies the use of pre-emption as self-defence whenever there is any presumption of threat. The essay further explores that it is acceptable to kill suspected terrorists either because they are illegal combatants who kill thousands of people or because they count as civilians participating directly in the hostilities, suspected terrorists are killed by strikes not because they have got this status but because they are connected to past terrorist activities and because of which they are considered as a future threat. United States, Europe and Israel have already defined their policies regarding targeted killing to prevent any evil act of war and terror in future.

This article furthermore deals with the arguments how other legal scholars have defined the anticipatory self-defence should always be based on logic and should not be conducted on whims and fancies of the states, should only be conducted on the immediate threat. For the concluding argument, I refer to an old saying which asserts (more or less) 'if you have an excellent hammer, everything looks like a nail' and from this, it can be inferred that when the state has the power it must use it in its favour.

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