

2012

Legality of Drones



SYM-MUN'12

GA-6 Background Guide

Letter from the Executive Board

Dear Delegates,

Welcome to the simulation of the General Assembly (Legal Committee) at SYM MUN. Symbiosis Law School, Noida is one of the top law schools in India, having stated the obvious fact it must be known that everyone will be expecting a lot more from a Legal committee than what they would from any other committee. Over the course of this Background guide, we have provided a small introduction about the current scenario then went on to show how Drones are being used in many countries for various legitimate purposes and also taken up a small case study about United States of America. Over the course of this background guide you will see that there are many questions posed within, apart from the last part where we have specifically asked you to answer a few questions. Your objective is to follow the medium of debate in such a manner that you try to answer all the questions asked. Please only use this background guide as a start for more research that you're supposed to do. Nothing beats a well researched delegate. Law can always be fun.

May the best delegate win,

Executive Board GA-6

Chairperson: Ashwin Shanbagh

Vice-Chairperson: Akhil Raina

Background information

Many countries in this 21st century have acquired the technology of drones. Though their intention varies, we are bothered about countries using the drone technology in combat medium in particular. So we will be concentration on the Unmanned Aerial Combat Vehicles (UCAVs). Many countries ,especially countries like United States of America and Israel have been accused of violating International legal conventions by carrying out drone attacks in parts of Pakistan and the Gaza strip as part of their operations to stifle 'terror groups'. On one hand though there exist a lot of political tension behind such operations to hunt down enemies in foreign territory, the United Nations(Legal committee) is more concerned with the potential violations of international treaties and conventions which are being violated by such attacks, in additions to questions about sovereignty and territorial integrity of the countries to which targeted territories belong. This has resulted in the expansion of the legal framework being used in committee,such as- Human rights law, law of warfare and those laws regulating the inter-state force.

What are drones?



What is a Drone?

An unmanned aerial vehicle (UAV), commonly known as a Drone, is an aircraft without a human pilot on board. Its flight is either controlled autonomously by

computers in the vehicle, or under the remote control of a navigator. There are a wide variety of drone shapes, sizes, configurations, and characteristics. Historically, UAVs were simple remotely piloted aircraft, but autonomous control is increasingly being employed.

The first demonstration of a remotely piloted vehicle took place in May 1898 at the Electrical Exposition in New York City's Madison Square Garden. Attitudes, of course, evolved during the 20th century. As early as 1917, the U.S. Navy pursued the development of a pilotless aircraft for use against German U-boats; during the Second World War, Nazi forces filled the skies over Britain with thousands of pulse-jet-powered flying bombs; and Israeli Defense Forces used drones against Syrian forces in Lebanon in 1982. But it was only during the past decade that unmanned aerial vehicles matured into fully controllable and reusable combat aircraft. They have also proliferated, often in miniaturized forms, providing easily deployed eyes in the sky for ground troops.

Use:

Their largest use is within military applications. UAVs are also used in a small but growing number of civil applications, such as firefighting or nonmilitary security work, such as surveillance of pipelines. UAVs are often preferred for missions that are too "dull, dirty, or dangerous" for manned aircraft.

Military commanders use tactics and strategy in combat to inflict as much damage on the enemy while trying to risk as few personnel and resources as possible. This principle was at the heart of the development of the RQ-1 and MQ-1 Predator Unmanned Aerial Vehicle.

These high-tech aircraft, controlled by a crew miles away from the dangers of combat, are capable of reconnaissance, combat and support roles in the hairiest of battles. In a worst-case scenario, if a Predator is lost in battle, military personnel can simply "crack another one out of the box" and have it up in the air shortly -- and that's without the trauma of casualties or prisoners normally associated with an aircraft going down.

Types:

1) UAS: Wasp

The Wasp Micro Air Vehicle (MAV) is a small, portable, reliable, and rugged unmanned aerial platform designed for front-line day/night reconnaissance and surveillance. Wasp is the result of a multi-year joint development effort between AeroVironment and the Defense Advanced Research Projects Agency (DARPA). With a wingspan of 72 cm and a weight of 430 grams, the Wasp is AeroVironment's smallest UAS. Wasp can be manually operated or programmed for GPS-based autonomous navigation.

To ensure system interoperability, Wasp uses the same advanced technology found in other AeroVironment small UAS systems, such as Raven RQ11-B and Puma, and is controllable through a common Ground Control Station.

2) UAS: Raven

The Raven B system, an enhanced version of the battle proven Raven A system, is a lightweight solution designed for rapid deployment and high mobility for military applications, requiring low-altitude surveillance and reconnaissance intelligence. The Raven can be operated manually or programmed for autonomous operation, utilizing the system's advanced avionics and precise GPS navigation. With a wingspan of 4.5 feet and a weight of 4.2 pounds, the hand-launched Raven provides aerial observation, day or night, at line-of-sight ranges up to 10 kilometers. The Raven delivers real-time color or infrared imagery to the ground control and remote viewing stations.

United States:



United States intelligence officials call unmanned aerial vehicles, often referred to as drones, their most effective weapon against Al Qaeda. More C.I.A. drone attacks have been conducted under President Barack Obama than under President George W. Bush.

In September 2011, a drone missile killed Anwar al-Awlaki, the radical American-born cleric, using live video on Yemeni tribal turf where it is too dangerous for American troops to go.

The United States government (USG) is currently engaged in a covert air war in northwestern Pakistan, particularly in FATA. FATA, with its rugged terrain, supportive Pashtun population, and shared border with Afghanistan, serves as a key sanctuary for elements from insurgent and terrorist organizations allegedly tied to al Qaeda. American airstrikes target senior al Qaeda and al Qaeda-affiliated leaders, as

well as other high-value militants, who have taken refuge there in recent years. The United States government has made hundreds of attacks on targets in northwest Pakistan since 2004 using drones (unmanned aerial vehicles) controlled by the Central Intelligence Agency's Special Activities Division. These attacks are part of the United States' War on Terrorism campaign, seeking to defeat Taliban and Al-Qaeda militants in Pakistan. Most of these attacks are on targets in the Federally Administered Tribal Areas along the Afghan border in Northwest Pakistan. These strikes have increased substantially under the Presidency of Barack Obama. Pakistan's government publicly condemns these attacks[3], but has secretly shared intelligence with the United States and also allegedly allowed the drones to operate from Shamsi Airfield in Pakistan until 21 April 2011, when 150 Americans left the base.[4] According to secret diplomatic cables leaked by Wikileaks, Pakistan's Army Chief Ashfaq Parvez Kayani not only tacitly agreed to the drone flights, but in 2008 requested Americans to increase them.[However, Pakistan's Interior Minister Rehman Malik said, "drone missiles cause collateral damage. A few militants are killed, but the majority of victims are innocent citizens." [11] The strikes are often linked to anti-American sentiment in Pakistan and the growing questionability of the scope and extent of CIA activities in Pakistan.

India

The "Lakshya" is an Indian remotely piloted high speed target drone system developed by the Aeronautical Development Establishment (ADE) of DRDO. The drone, remote piloted by a ground control station provides realistic towed aerial sub-targets for live fire training. The drone is ground or ship launched from a zero length launcher and recovery is by a two stage parachute system developed by ADE (DRDO), for land or sea based recovery. The drone has a crushable nose cone, which absorbs the impact of landing, minimizing damage. The flight path may be controlled or pre-programmed, based upon the type of mission.

Resources For:

- 1) Data- <http://www.satp.org/satporgtp/countries/pakistan/database/Droneattack.htm>
- 2) Effectiveness-<http://ftp.iza.org/dp6262.pdf>
- 3) Processes- <http://www.repriev.org.uk/investigations/drones/>
- 4) Impact of Drones- http://www.upi.com/Top_News/Special/2010/01/19/Pakistan-debates-impact-of-drone-attacks/UPI-35371263936000/
- 5) Effects- <http://patrickjohnston.info/materials/drones.pdf>



The introduction about Drones was to show you some of the advantages it poses in the current global scenario. The committee is urged to concentrate on UCAVs (Unmanned Combat Aerial Vehicles) Which brings up a lot of legal issues.

The killing in Yemen of Anwar al-Awlaki and three al-Qaeda associates by a drone on September 30th has caused far more fuss in America than previous drone attacks. The reason is that al-Awlaki and one of his fellows were American citizens. Few will mourn al-Awlaki's passing. But such apparently extra-judicial executions provoke three broad questions. Are drone strikes compatible with the laws of war? Was this killing legal? CIA drone strikes are now common in the tribal areas of Pakistan that border Afghanistan, an area over which the Pakistani government has little effective control. In Yemen, additionally, the US military's secretive Joint Special Operations Command is believed to have carried out a couple of drone strikes late last year. The use of drones to target suspected militants raises a plethora of complex legal and policy questions.

The issue of civilian casualties feeds directly into the question of legality. According to the Law of Armed Conflict, two important principles must be observed when making a targeting decision: distinction and proportionality. "Distinction" requires that attacks be limited to military objectives; "proportionality" prohibits attacks that may be expected to cause incidental loss of civilian life that would be excessive in relation to the concrete and direct military advantage anticipated. Thus, what is imperative in a drone attack is that such attacks need to pass the tests of

discriminating between combatants and non-combatants and not causing disproportionate “collateral damage”.

While the necessity of the distinction between a civilian and a combatant is undisputed as far as the requirement of international law is concerned, what becomes difficult is the determination of who exactly is a civilian or rather, a non-combatant. Technically, civilians can be targeted in an armed conflict if and when they directly participate in hostilities—by picking up a gun to shoot a soldier, for instance. Members of armed forces or organized armed groups may also be targeted. The difficulty is distinguishing when a non-combatant civilian crosses the line into direct participation or membership in an armed group, thereby becoming a potential target of attack. The problem of this distinction is especially more so in Pakistan where the societal and environmental factors, such as the proliferation of weapons in tribal areas and mixing between civilian and combatant populations, make it even more difficult to distinguish between the two. The ICRC Interpretative Guidance on Direct Participation in Hostilities mandates that criminal activity, political support, financial assistance, or other general and indirect war supporting activities is not considered conduct that would constitute ‘direct participation in hostilities’ or qualify as a ‘continuous combat function’ and in such a situation, such an individual should not be a target of attack. However, in recent past the U.S., which has taken the forefront in drone attacks, has refused to clarify where it draws the line between civilians and combatants, on what basis, or the standard of proof applied.

Apart from this two-fold test, they also need to get past the UN Charter’s ban on using force against the territorial integrity of other states. There are two ways to do this (1) by getting consent from the “victim state” and (2) by properly invoking the right of self-defence re the non-state actors concerned and claiming truly that the victim state is “unwilling or unable” to deal with the threat posed. The United States in its drone campaign appears to be relying on self-defence and the “unwilling or unable” test. This, strikes as problematic to many on two grounds, the first is that the Caroline test is not met. The Caroline states that necessity of self-defence has to be “instant, overwhelming, leaving no choice of means, and no moment of deliberation”. However many counter that by saying that the United States is simply continuing a campaign of self-defence that began after September 11th 2001 and has continued since. As a matter of US domestic law, the State Department Legal Advisor has further explained, the strikes were authorized by the 2001 Authorization for the Use of Military Force (AUMF). The second reason is that if the doctrine the United States is relying upon is to be justified, then “targeted assassinations” by other states on US soil at various times against individuals or groups planning or engaged in actions against those states, whom the US was unwilling to suppress, will also seem to be justified.

As part of its commitment to the rule of law, the importance of accountability in adhering to international law standards needs to be stressed on. Questions with respect to this are especially raised with respect to who conducts the targeting. While the U.S. armed forces have established frameworks for promoting

accountability, including institutionalized procedures for applying humanitarian law standards and investigating possible violations a variety of non-military personnel—including the CIA, private contractors and special operations personnel—may not be subject to the same rules and procedures as the U.S. military. Reports about drone strikes conducted by or with the participation of these actors raise questions about the suitability, as a legal and policy matter, of actors outside the regular forces of the U.S military to conduct targeting operations somewhat regularly, and on a large scale. .

Areas of debate include:

- (1) the legal status of CIA personnel conducting targeting practices in an armed conflict;
- (2) the CIA's standards for conducting targeting practices under humanitarian law; and
- (3) the command and oversight structures and training programs adopted by the CIA.

Placing the CIA in control of drone strikes, a clandestine entity not traditionally trained in the laws of war, may increase the risk of IHL violations and also obstructs the adoption of proper mechanisms of transparency and accountability.

Two things would make America's conduct somewhat less controversial. First, all drone killings should be carried out by the armed forces, not the CIA: they must be part of the conventional chain of command. And second, there should be some system of formal judicial review to determine whether the evidence against someone is sufficiently strong to make that person a target for assassination.

International humanitarian law imposes upon warring parties legal obligations to reduce unnecessary suffering and to protect civilians and other non-combatants. It is applicable to all situations of armed conflict, without regard to whether the conflict itself is legal or illegal under international law (i.e., whether a given party is an aggressor or a defender), and whether those fighting are regular armies or non-state armed groups. Individuals who willfully commit serious violations of international humanitarian law can be prosecuted for war crimes before national or international court. The fundamental tenets of international humanitarian law are "civilian immunity" and "distinction". Parties to a conflict are required to distinguish at all times between combatants and civilians, and to direct attacks only against combatants and other military objectives. Deliberate attacks on civilians and civilian objects are strictly prohibited.

Civilians are protected from attack unless and for such time as they take a direct or active part in the hostilities. For example, civilians firing weapons or loading ammunition during a firefight, or actively serving as spotters for artillery, may be attacked. However, civilians who for example merely observe belligerent forces or who remain in a combat zone are not lawful targets of attack.

In the conduct of military operations, warring parties must take constant care to spare the civilian population and civilian objects from the effects of hostilities, and are required to take precautionary measures with a view to avoiding, and in any event minimizing, incidental loss of civilian life, injury to civilians, and damage to civilian objects



Looking from the above background, we clearly understand that some of the main issues to be answered are:

- a) The question of targeted killings*
- b) The question of breach of territorial integrity and sovereignty*
- c) Can a non-armed force use drones? In a more narrow sense is the CIA allowed to use drones? On a legal basis?*
- d) If so, is the CIA or any other non armed force body for that matter subject to judicial review?*
- e) The protection of civilians during such drone attacks*

Sources:

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