

PESHAWAR HIGH COURT RULES US DRONE STRIKES IN PAKISTAN ARE ILLEGAL, COMPRISE WAR CRIMES

In a remarkable ruling (pdf), the Peshawar High Court has ruled that US drone strikes carried out within Pakistan are illegal, that they are war crimes and that they must be stopped immediately. The court also directed Pakistan's military to intervene should drones enter Pakistan air space.

As described by Alice Ross at The Bureau of Investigative Journalism, this ruling comes in a case brought by the son of one of the tribal elders killed in the March 17, 2011 drone strike that killed as many as 40 innocent elders gathered to discuss mineral rights:

The judgment applies to a lengthy case against the CIA brought by the Foundation for Fundamental Rights on behalf of Noor Khan, a tribesman whose father was among dozens of civilians killed in a drone strike on a gathering of tribal elders on March 17 2011. Last year, Noor Khan also attempted to bring legal action against the UK government for providing information that could lead to deaths in drone strikes, in a case backed by legal charity Reprieve. The attempt was refused but he is appealing.

Lawyer Shahzad Akbar, who argued the Peshawar case, said: 'It is a landmark judgment: drone victims in Waziristan will now get some justice after a long wait. This ruling will also prove to be a test for the new government as if drones continue and government fails to

act, it will run the risk of contempt of court.'

The Independent described the case and ruling further:

In what activists said was an historic decision, the Peshawar High Court issued the verdict against the strikes by CIA-operated spy planes in response to four petitions that contended the attacks killed civilians and caused "collateral damage".

Chief Justice Dost Muhammad Khan, who headed a two-judge bench that heard the petitions, ruled the drone strikes were illegal, inhumane and a violation of the UN charter on human rights. The court said the strikes must be declared a war crime as they killed innocent people.

"The government of Pakistan must ensure that no drone strike takes place in the future," the court said, according to the Press Trust of India. It asked Pakistan's foreign ministry to table a resolution against the American attacks in the UN.

"If the US vetoes the resolution, then the country should think about breaking diplomatic ties with the US," the judgment said.

For more background on the Peshawar High Court itself, this web page describes its jurisdiction and also has links to its history and other relevant information.

The ruling itself runs 22 pages. It begins by reciting the facts and requests provided by the petitioners to the court (emphasis added):

i. "to order the respondents to immediately assert its State Sovereignty and convey forcefully to the US in clear terms that **no further drone strikes will**

be tolerated on its sovereign territory;

ii. to order the respondents to protect the 'right to life' of its citizen and **use force if need be to stop extrajudicial killings with drones;**

iii. to provide **redress for the criminal offences** committed by those involved inside and outside Pakistan in drone operations and in particularly involved in the strike on 17th March 2011 by directing the relevant authorities that criminal charges, under the relevant laws of the Islamic Republic of Pakistan be registered against those responsible;

iv. to order the respondents to immediately contact the Security Council of the United Nations for violation of Pakistan's territorial sovereignty, protected by Article 2 (4) of the UN Charter and demand the adoption of a resolution condemning drone strikes and requiring the US to stop the strikes in Pakistan;

v. to order the respondents to gather DATA of victims of drone strikes and encourage any such victims to come forth for the wrong done to them and approach the UN Human Rights Council and the Special Rapporteur on extrajudicial, summary or arbitrary executions for launching their complaint;

vi. to order the respondents to use its 'right to reparation' for the wrongful act under the customary international law and under the International Law Commission's Draft Articles on State Responsibility and seek remedies available under Draft Articles of International Law Commission and any customary International Law.

Any other relief that this Hon'ble Court deems fit may also kindly be granted.

After that lengthy list of petitions, the decision launches immediately into a description of the situation, pulling no punches as it does so. It starts with a stunning sentence:

The serial killing of local civilians both of North & South Waziristan Agency, adjoining Khyber Pakhtunkhwa Province through drone strikes visibly commenced from the year 2008 which is still continuing unabated.

Later, it hits very hard on the process the US has used to claim its drone strikes are legal while decrying the low number of militants killed compared to civilians:

The United States through self framed opinion labeled these foreign elements as their enemy. The U.S decision making troika, the President, Pentagon & CIA have joined hands to carryout drone strikes in these areas on spy information to hit & kill these elements, however, the ratio of killing of foreign elements is negligible while local civilians, non-combatants, casualties are shockingly considerable, beside damage caused to the properties of the local population, their households and other moveable properties including cattle heads, in great number, is a painful phenomena. The most shocking, gruesome & goriest side of these ruthless strikes is that the degree of precision is hardly maintained and why the figures, given above, would prove that these are carried out at random and innocent civilians casualties mostly of infant babies, pre-teen & teenage children, women & others including their properties are hundred times greater than those, killed alleged to be militants.

Signature strikes in particular are regarded as

problems:

Mary O Connell in "Unlawful Killing with Combat Drones" based on the case study of Pakistan SSRN, 2004-2009, has clearly pointed out that since a majority of drone strikes in Pakistan fall under "signature strikes", these would not be proportionate under the Geneva Conventions and thus, is illegal under International Law. The forming of an opinion by the CIA that these strikes target groups of men, who are militants having links with terrorist groups, is based on figment of imagination and till date no tangible, reliable & convincing proof has been furnished to that effect by the U.S Authorities including CIA.

Oh my. That paragraph is going to leave a mark on the author of US signature strike policy, John Brennan.

There also is reference to the practice of killing first responders:

The international observers' analysis un rebuttably proved that through drone strikes in Pakistan territory residential houses, vehicles, worshippers in mosques, mourners in funeral procession and even rescue personnel have been attacked with brutality.

The decision concludes with a long "holding" (emphasis added):

Under the Constitution of Pakistan, 1973 particularly Article 199 thereof put this Court under tremendous obligation to safeguard & protect the life & property of the citizen of Pakistan and any person for the time being in Pakistan, being fundamental rights, hence, this Court is constrained to hold as follows: –

i. "That the **drone strikes**, carried out in the tribal areas (FATA) particularly North & South Waziristan by the CIA & US Authorities, are **blatant violation of Basic Human Rights** and are against the UN Charter, the UN General Assembly Resolution, adopted unanimously, the provision of Geneva Conventions thus, it is **held to be a War Crime, cognizable by the International Court of Justice or Special Tribunal for War Crimes**, constituted or to be constituted by the UNO for this purpose.

ii. That the drone strikes carried out against a handful of alleged militants, who are not engaged in combat with the US Authorities or Forces, amounts to breach of International Law and Conventions on the subject matter, therefore, it is held that these are **absolutely illegal & blatant violation of the Sovereignty of the State of Pakistan** because frequent intrusion is made on its territory/airspace without its consent rather against its wishes as despite of the protests lodged by the Government of Pakistan with USA on the subject matter, these are being carried out with impunity.

iii. That the civilians casualties, as discussed above, including considerable damage to properties, livestock, wildlife & killing of infants/suckling babies, women and preteen children, is an **uncondonable crime on the part of US Authorities including CIA** and it is held so.

iv. That in view of the established facts & figures with regard to civilians casualties & damage caused to the properties, livestock of the citizens of Pakistan, **the US Government is bound to compensate all the victims' families** at the assessed rate of compensation in

kind of US dollars.

v. The Government of Pakistan and its **Security Forces shall ensure that in future such drone strikes are not conducted** & carried out within the sovereign territory of Pakistan. Proper warning be administered in this regard and if that does not work, the Government of Pakistan and State Institutions particularly the Security Forces shall have the right being under constitutional & legal obligations to shutdown the drones, attacking Pakistani territories or when these enter the airspace of Pakistan Sovereign territory.

vi. The Government of Pakistan is directed to **take the matter seriously before the Security Council** of the UNO and in case it does not succeed there if VETTO (sic) power is unduly exercised by the US Authorities then, urgent meeting of the General Assembly be requisitioned through a written request to resolve this menace in an effective manner.

vii. The Government of Pakistan shall also file a proper complaint, giving complete details of the losses sustained by the Pakistani civilians citizens both to life & properties due to drone strikes, making a request to the UN Secretary General to constitute an independent War Crime Tribunal which shall have the mandate to investigate & enquire into all these matters and to give a final verdict as to whether the same amounts to War Crime or not and in the former case to direct the US Authorities/Government to immediately stop the drone strikes within the airspace/territory of Pakistan and to immediately arrange for the complete & full compensation for the victims' families of the civilians of Pakistan

both for life & properties at the rate & ratio laid down under the international standards.

viii. The Ministry of Foreign Affairs is directed to prepare draft resolution/complaints and requisition for doing the needful within a minimum possible time in line of the above guidelines given by the Court, also asking & requiring the Security Council and the General Assembly, as the case may be, to pass a resolution condemning the drone strikes, flown by the CIA/US Authorities and violating the sovereign territory of Pakistan in violation of UN Charter and various Conventions of the UNO, referred to above.

ix. In case the US Authorities do not comply with the UNO Resolution, whether passed by the Security Council or by the General Assembly of UNO, the **Government of Pakistan shall sever all ties with the USA** and as a mark of protest shall deny all logistic & other facilities to the USA within Pakistan.

The underlying drone strike of March 17, 2011 had bothered me for a long time and was the basis for my thoughts that a number of strikes carried out by the US were more political retaliation than strikes aimed at militants. Such strikes that looked political to me occurred several times.

This ruling reads as a long criminal indictment of Obama's signature tool for the US Great War on Terror. If the ruling gains any traction, a number of US officials could find themselves in significant legal trouble and the entire US policy on fighting terrorism will need a complete reset.

It will take quite a while for this to play out, especially since Pakistan goes to the polls on Saturday to elect a new government. Given the

internal violence already leading up the election, it would seem like the new government will need quite a bit of time to settle in before it even can address and begin to implement the ruling, should it choose to do so.

Meanwhile, expect stone silence from the US press and the Obama administration even though it is likely a number of people now realize they could be facing huge problems arising from the policies they have developed and implemented.