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Unpacking the US's questionable drone strike

Through its drone strike on Al-Zawahiri, the US has placed its exceptionalism over international jurisprudence with dangerous consequences

At the end of July, the United States killed the leader of al-Qaeda, Ayman al-Zawahiri, in a drone strike in Afghanistan. The use of armed drones for targeted killings is a complex discussion under international law. Nonetheless President Joe Biden boasted about the Ayman Al-Zawahiri strike as justice 'delivered'. We must acknowledge that the Zawahiri strike came 21 years after the 9/11 attacks, which triggers some very uncomfortable legal questions on how it can be justified - under *jus ad bellum* (right to war) and *jus in bello* (law of war) frameworks.

The last two decades of the Global War on Terror have seen extensive debates on the legality of killing the likes of Osama Bin Laden in Pakistan, Anwar al-Awlaki in Yemen, and Qassem al-Soleimani in Iraq, yet the same level of introspection was not given to the Zawahiri strike. We must question why this is the case, and if the use of armed drones has now been normalised? Particularly following the inception of the Ukraine-Russia war.

In western media only a few legal blogs showcased interesting critical perspectives on the Zawahiri strike, namely Just Security and Articles of War. There were also a few US military academics, advocating for the use of over-the-horizon strikes as a counter-terrorism strategy moving forward in Afghanistan. I only wonder what the British establishment was thinking, as Ben Wallace, the UK Defence secretary said he was prepared to launch drone strikes in Afghanistan following withdrawal.

A clear violation of international law

The US needs to come clean on justifications, first on its use of force against Afghanistan, and second how Zawahiri was qualified as a lawful target.
Afghanistan is not in the context of war; it is in a transitional peace phase

– or post-conflict, reconstruction, and reconciliation phase - thanks to a Qatar-brokered-Doha agreement between the Taliban and US. To add on top of that, last year, President Biden claimed that the war was over and withdrew the American troops. But following the killing of Zawahiri, Biden said he authorised the drone strike to 'remove [Zawahiri] from the battlefield'.

This inconsistency is not new. We've seen US drone strikes outside warzones in Pakistan, Somalia, and Yemen. The US drone playbook permits such strikes and night raids all over the world. The world is a battlefield for the CIA and the US Army.

Ultimately, the US's over-the-horizon strike violates the territorial sovereignty of Afghanistan – it is irrelevant whether the US recognises Taliban rule and effective control under international law.

Currently, Biden's Zawahiri strike is at odds with the US Congress's domestic Authorization for the Use of Military Force (AUMF) 2001 - which permitted the targeting of 'Al-Qaeda, Taliban and Associated forces'– and the Qatar-brokered Doha Agreement as well as International law.

A 20-year old legal justification is never likely to hold its merit when it comes to self-defence under international law by way of a war paradigm – particularly with a non-state armed group that is not likely to keep up with the legal threshold to form 'armed attacks' against nation states. In fact, a UN Resolution (1267) sanctions team held in July this year that Al-Qaeda 'is not viewed as posing an immediate international threat from its safe haven in Afghanistan because it lacks an external operational capability and does not currently wish to cause the Taliban international difficulty or embarrassment.' In a stark support to this argument, a US intelligence assessment in August 2022 held that Al-Qaeda 'does not have a capability to launch attacks against the US or its interests abroad from Afghanistan'.

The allegation that the Taliban violated the Doha agreement for continuing to harbour Al-Qaeda members is an important consideration, though does not lawfully warrant a targeted killing against Zawahiri following the US withdrawal. The legal dynamics have changed, and a third state-brokered agreement is not necessarily a treaty. While there are disagreements with the wording of the terms of the Doha agreement – one question remains – how this situation emerged between parties following years of talks in Qatar between all parties. Anas Al-Haqqani, a senior Taliban member, claimed that the US forces and Biden breached the agreement almost a thousand times in an interview with a Qatar-

backed media network, Al-Jazeera.

Ultimately, the US's over-the-horizon strike violates the territorial sovereignty of Afghanistan – it is irrelevant whether the US recognises Taliban rule and effective control under international law. The legal prohibition to not interfere in the internal affairs of another country or use force unjustly is clearly defined under the UN Charter.

It's likely that the US will argue that the Taliban are 'unwilling and unable' to contain the threat from Al-Qaeda or the Islamic State. This doctrine is controversial for non-consenting states, and while western scholars have attempted to strengthen the doctrine, it ultimately lowers the threshold of vital definitions and principles on armed attack and imminent threat.

Implications for drone warfare

The US have achieved its grand strategy in exceptionalism to a rule based international global order. American legal thinking threatens a traditional reading and interpretation of international jurisprudence. Consequently, rising drone powers will observe this exceptionalism while they ink their own armed drone policy and execute elsewhere.

At this inflection point, while rising drone powers are observing the US's drone playbook in action – nothing can prevent them from drawing on alternative military codes, customs, and jurisprudential traditions to guide their own future of remote warfare – or counter-terrorism operations elsewhere.

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The use of drone warfare is now normalised and an accepted weapon system for targeted killings and assassinations. It's a cheap and less risky option for governments hesitant to deploy troops. A drone pilot can wake up in the morning, have breakfast and even be dropped off to work by his partner, and still participate in targeted killings across the globe sitting only a few miles away from his family home.

The armed drone is not only being procured on mass by states around the globe, they are being developed to include artificial intelligence, autonomy, and greater intelligence, surveillance and reconnaissance (ISR)

reach via satellite and signal links from space.



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