

WAR ON TERROR AND THE UNITED STATES HUMAN RIGHTS VIOLATIONS IN AFGHANISTAN AND PAKISTAN: AN INTERNATIONAL LAW PERSPECTIVE

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Abstract

The 9/11 attacks triggered a paradigm shift in the United States security policy, prioritizing to ensure homeland security and to fight against the terrorism in the new American strategy. The United States invasion of Afghanistan further ravaged the existing fragile state damaging the already crumbling socio-economic and human infrastructure. In addition, the spillover of war into Pakistan started a new era of instability and misery further complicating the socio-economic fabric of the country making it the most vulnerable to terrorism related incidents. The two decades prolonged conflict not only destroyed the economic, social, and political infrastructure in both states, meanwhile mass human rights violations have been committed by the coalition forces under the leadership of the United States. In this context, the present paper investigates human rights abuses through the prism of international human rights law. The study addresses the following questions. (a) To what extent the United States war against terror violates the international law of human rights, and how it helps Washington to reconsolidate the regional hegemony. (b) Whether the war on terror improve the situation of human rights or further aggravate the conditions of civilians in targeted states. The study underlines that the war on terror failed to meet the merit of the right to intervene for self-defense, yet the coalition forces deliberately assimilate the innocent civilians under the vague anti-terror war rhetoric. In addition, the war serves the United States hegemonic interests in South Asia, as the American presence in Afghanistan and the Indo-United States strategic partnership brought serious geopolitical implications for China and Pakistan.

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1. Introduction

The day of September 11, 2001, brought about a paradigm shift in world history by demolishing the World Trade Center (WTC) towers and the subsequent death of 2996 individuals. A group of nineteen hijackers associated with Al-Qaeda, a global terrorist group hijacked the four transcontinental flights and smashed them into the WTC and Pentagon. Immediately, nobody claimed the responsibility for attacks, however the Bush Administration pointed Al-Qaeda leader Osama bin Laden an ally of Taliban and stationed in Afghanistan a culprit of worst tragedy and announced to hit back hard.¹ President Bush addressed the American nation from the Oval office and proclaimed that “we will make no distinction between those who planned these acts and those who harbor them”.² His statement was a reflection of firm resolve to fight against the menace of global terrorism.

Once the United States decided to chase the terrorists, Pakistan regained its geostrategic significance for successful American intervention in Afghanistan. To gain support from Pakistan, Washington applied coercive diplomacy, and on 12th September 2001, the director-general of Inter-Services Intelligence (ISI) Lt. General Mahmood Ahmed called upon for a meeting with the Deputy Secretary of State Richard Armitage. He put forward not other option to Pakistan except to align and support the United States invasion in Afghanistan.³ The unfortunate approach is also confirmed by former President Pervez Musharraf. He stated that Armitage threaten Pakistan to bomb back into the Stone Age.⁴ Pakistan has had limited choice in the emerging politico-security dynamics. So, to save the vital interests and ensure sovereignty and territorial integrity, Islamabad decided to work with the United States to dislodge the Taliban and al-Qaeda from Afghanistan.

The war against terrorism officially launched on October 7, 2001. The allied forces headed by the United States expelled the Taliban and Al-Qaeda from Kabul within a matter of days and installed a moderate government. But, the American war gave birth to a new era of wreckage and criminality in Afghanistan and neighboring Pakistan⁵. The war spilled over to Pakistan and

¹ 9-11 Commission, “*The 9/11 Commission Report*,” (Washington: Government Printing Office, United States of America, 2004).

² Boob Woodward, “*Bush at War*,” (New York: Simon & Schuster, 2002)

³ Owen Bennett Jones, “*Pakistan: Eye of the Storm*,” (New Haven: Yale University Press, 2002)

⁴ Pervez Musharraf, “*In the Line of Fire: A Memoir*,” (London: Simon & Schuster, 2006)

⁵ *Enduring Freedom: Abuses by U.S. Forces in Afghanistan* . (Human Rights Watch, 2004)

cause huge human and infrastructure damage to the country.⁶ So this protracted conflict requires an objective and critical investigation to define its legitimacy and the United States championship for the respect of human rights. The paper applies the international human rights law as a framework to investigate the legitimacy of the American intervention in Afghanistan, and subsequent war crimes and human rights abuses. The paper uses a qualitative research approach and is supported by the data gathered from different primary and secondary sources. It is tailored as followed. After introduction, legal framework has been developed to frame the United States intervention in Afghanistan, followed by the separate sections on Afghanistan and Pakistan. The section conclude the study.

2. Legal Debate on the War on Terror

Less than two weeks after the 9/11 mayhem, President Bush vowed to eliminate and defeat al-Qaeda and its allies. The 2002 National Security Strategy document outlines the specific objectives of the United States war on terrorism including; preventing terrorist acts, eliminating distinct terrorist organisations, and reducing the circumstances that encourage terrorism by advancing democracy and human rights.⁷ Washington portrayed the inherent right of self-defense endorsed by the United Nations Charter to wage a war in Afghanistan. The article gives an authority to intervene to eliminate the threat or the use of force. Yet, article 2(4) of the UN Charter forbids the “threat or use of force against the territorial integrity or political independence of any state”⁸. The member states can only use force when the UNSC authorizes it under article 51 of the charter. However, the United Nations can propose various peaceful means to resolve the conflict before permitting a direct intervention.

Article 33 of Chapter VI of the United Nations Charter laid the guiding principles for member states to resolve disputes through investigation, judicial settlement, mediation, negotiation, arbitration, reconciliation and involvement of regional organizations and arrangements, or activating other peaceful means to settle the disputes.⁹ The Security Council may also inquire any dispute which endangers international peace and security and

⁶Nadia Mushtaq Abbasi, “Impact of Terrorism on Pakistan,” *Strategic Studies* 33, no. 2 (2013): 33-68.

⁷Erik W. Goepner, “Measuring the Effectiveness of America's War on Terror,” *Parameters* 46, no. 1 (Spring 2016).

⁸“*Charter of the United Nations and Statute of the International Court of Justice*,” (San Francisco: United Nations, 1945).

⁹Ibid

offer its arbitrary services to settle the dispute. If a UN member state comes under the foreign attack, peaceful measures can not replace the inherent right of self defence granted to individuals and groups of individuals. But the member states are required to inform the United Nations Security Council about their actions and do not infringe the authority and responsibility of the UNSC.¹⁰

In case of United States and its allies, invasion and bombing in Afghanistan was patently illegal and was not mandated by the Security Council. Marjorie Cohn, a California based law practitioner argued that attack on Afghanistan was illegal and criminal act for two reasons because it failed to qualify under article 51. First, rather than being a "armed strike" by another state, the attacks in New York and Washington, DC, were criminal in nature. Second, following the September 11, the United States wouldn't even have delayed 3 weeks to begin its airstrikes if there had been an immediate threat of a military strike against it.¹¹

No military intervention could represent self-defense, even when a state had carried out the 9/11 attacks; the need for self-defense must be immediate, overpowering, leaving no choice of means, and no opportunity for deliberation.¹² As a guarantor and guardian of international peace and order, it was the responsibility of the Security Council to evaluate the intensity of the threat to the United States. The UN can propose the United States to sue Afghanistan in the International Court of Justice for sheltering and supporting Al-Qaeda to attack on the WTC and seek immediate arrests of culprits. It can suggest the member states to terminate air, postal, sea, telegraphic, radio, economic and other modes of communication with Afghanistan. The UN have had the authority to establish a tribunal for justice, as well as to establish a special UN force to prevent attacks, arrest culprits and prevent further attacks on the United States. If measures provided under 'Article 41' are inadequate or insufficient, the UNSC is entitled to take action by sea, air, and land forces as may be necessary to maintain or restore international peace and security.¹³

¹⁰ "Chapter VII: Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression (Article 39-51)," United Nations, Available at: <https://www.un.org/en/about-us/un-charter/chapter-7>

¹¹ Rabia Khan, "Was the NATO Invasion of Afghanistan Legal?," *E-IR*. November 6, 2013, Available at: <http://www.e-ir.info/2013/11/06/was-the-nato-invasion-of-afghanistan-legal/>.

¹² Professor Marjorie Cohn, "Bombing of Afghanistan is Illegal and Must be Stopped," (Jurist. Org. November 6, 2001), Available at: <http://www.jurist.org/forum/forumnew36.htm>

¹³ *Charter of the United Nations and Statute of the International Court of Justice*,

International humanitarian law is a field that protects the rights of civilians in an armed conflict. Henry Dunant's pioneer work in 1864 laid the foundations of international humanitarian law. The terrible brutality of the battle of Solferino urged the civilized nations to adopt the "Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the field". The St. Petersburg declaration of 1868 prohibited the small explosive or incendiary projectiles.¹⁴ Further more the Hague Conferences of 1899 and 1907 prohibited the use of force against villages and towns. The Four Geneva 'Red Cross' Conventions of 1949 replaced the earlier arrangements and introduced the new rules for the treatment of prisoners, wounded, sick and civilians in wartime. The Geneva Conventions framework is based on the idea that people who aren't fighting must be handled with humanity.¹⁵

The fourth Geneva Convention set the rules for the protection of civilians in war time. According to Protocol I, 1977, Article 51(1) a civilian is defined as a person not involved in a combat or fight. Furthermore, the convention ensure the safety of civilians through dignity and respect for honor, religious practices, convictions, and prohibition of cruel, degrading and inhuman treatment, hostage-taking and reprisals.¹⁶ Article 43 of the Hague Regulations ensure the protection of inhabitants of the occupied territory against acts of violence, and not to tolerate such violence by any third state. International law prohibits taking legitimate military actions if the collateral civilian casualties disproportionate to the specific military gain from the attack. Article 51 of the Convention prohibits the attack on the civilian population, as well as non-combatant individuals. Additionally, indiscriminate attacks are forbidden.

Following the September 11 attacks, the United States approached the Security Council on two occasions, and the Security Council passed two resolutions; 1368 and 1373, neither of the resolutions authorizes the use of force or the intervention. However, the resolutions condemned the 9/11 attacks, froze the assets of Afghanistan, established the mechanism to deter terrorist attacks, urged to share necessary information, emphasized to

¹⁴ "Declaration Renouncing the Use, in Time of War, of Explosive Projectiles Under 400 Grammes Weight. Saint Petersburg, 29 November/11 December 1868," (International Committee of the Red Cross, December 1868), Accessed May 9, 2020, <https://ihl-databases.icrc.org/ihl/full/declaration1868>

¹⁵ "The Geneva Conventions of 1949 and their Additional Protocols," (International Committee of the Red Cross, January 1, 2014), Accessed May 11, 2020, <https://www.icrc.org/en/document/geneva-conventions-1949-additional-protocols>

¹⁶ Malcolm N. Shaw, *International Law*. (New York: Cambridge University Press, 2008)

ratify and enforce global conventions to eliminate terrorism.¹⁷ But despite the warnings given by the UNSC and various international law instruments, the United States war on terrorism is an overt violation of the sovereignty of states and international humanitarian law. The United States intervention deprived the civilians from their homes, and belonging, increased insecurity and hardships. The protracted conflict not only destabilizes Afghanistan and Pakistan, meanwhile the chaos consumed thousands of innocent civilians in both states, destabilizes the political system, damaged education, health, and social infrastructure.

3. United States War on Terror in Afghanistan

On October 9, 2001, the United States launched the Operation Enduring Freedom (OEF) along with the United Kingdom and the Afghan United Front forces. After a brief period of corporate bombing, teams from the CIA's special Activities Division (SAD) were the first to land in Afghanistan, later reinforced by the 5th Special Forces Group, USSOCOM units, British Special Forces and Northern Alliance militants. The massive air power ousted the Taliban regime from power and most of Afghanistan in a matter of weeks, and only after 62 days of conflict Washington declared victory over Afghanistan.¹⁸

The invasion of Afghanistan by the United States in response to the September 11, 2001 attacks was justified on the basis of national security and the defence of basic liberties. But as part of its continuous security and intelligence missions, Washington was operating a system of arbitrary arrests and detentions that willfully flouts international human rights law and international humanitarian law.¹⁹ A report by Human Rights Watch published in 2004 exposed that the United States forces are operating in a climate of almost total impunity, and the military personnel are involved in numerous abuses including the arbitrary and indefinite detention; cases of excessive force during arrests; and mistreatment of detainees. From 2002 to 2004 more than one thousand Afghan and other nationals have been arrested by the NATO forces in Afghanistan and were miserably mistreated in detention.²⁰

¹⁷Cohn, "Bombing of Afghanistan is Illegal and Must be Stopped"

¹⁸Mason, Thoma H Johnson and Chris Mason, "Terrorism, Insurgency, and Afghanistan," (Monterey: Naval Postgraduate School, National Security Affairs Department, 2007).

¹⁹"The Cost of War: Afghan Experiences of Conflict, 1978-2009," (CDN, Oxfam, November 2009), available at https://www-cdn.oxfam.org/s3fs-public/file_attachments/afghanistan-the-cost-of-war_14.pdf

²⁰"Enduring Freedom: Abuses by U.S. Forces in Afghanistan", *Human Rights Watch*, 16, no. 3(C), (March 2004)

It is a matter of grave concern that the United States and NATO forces killed thousands of Afghan civilians in air and ground attacks because in the early years the mechanism to count civilian casualties was absent.²¹ The coalition forces were counting the dead soldiers on their side, whereas intentionally ignoring the numbers of dead civilians in Afghanistan. To count the bodies, two methods are widely used. One is a passive method that includes reports from media, police, or hospital announcements, and it captures a fraction of those killed. On the other hand, an active method is more accurate which is based on local polls data, but it is quite difficult to implement in a war-ravaged country like Afghanistan. Thus, the longest war of NATO in Afghanistan only counts deaths through the passive method, and this means numbers circulating in media are too low, and actual casualties can be manifold.²²

The United States invasion of Afghanistan failed to bring peace, security, and economic development but increased the intensity of war and the plight of Afghan people. The data disclosed that countries the United States attacked had 143 more terror attacks per year than countries the United States did not invade.²³ Similarly, countries, where it conducted drone strikes, were home to 395 more attacks per year than those where it did not. The media reports revealed that the United States soldiers are blatantly involved in civilian killings. For instance, "SPIEGEL" published a story posing the United States soldiers with their civilian victims. It was pointed out that the soldiers involved in civilian killing called themselves "kill team".²⁴ Similarly, in a February 2010 incident, the United States and Afghan forces killed five civilians including two pregnant women and a teenage girl, and wounded several others.²⁵ In another incident, on October 3, 2015, coalition forces attacked a hospital in Kunduz province killing 22

²¹ "Civilian Harm Tracking: Analysis of ISAF Efforts in Afghanistan", (Center for Civilians in Conflict, 2014)

²² Luhr Henken, "Body Count-Number of Victims after 12 Years of the "War on Terror" in Afghanistan and Pakistan," (Physicians for Social Responsibility (PSR), March 2015)

²³ "Saving Ourselves: Security Transition and Impact on Civilian Protection in Afghanistan," (Center for Civilians in Conflict, Recognize, Prevent, Protect, Amend, November 21, 2016), Available at: <https://civiliansinconflict.org/publications/research/saving-security-transition-impact-civilian-protection-afghanistan/>

²⁴ Jurgen Dahlkamp and Susanne Koelbl, "Afghanistan's Human Rights Disaster," (SPIEGEL International, March 27, 2006), Available at: <https://www.spiegel.de/international/spiegel/worlds-colliding-afghanistan-s-human-rights-disaster-a-408103.html>

²⁵ Neeta C. Crawford, "Civilian Death and Injury in Afghanistan, 2001-2011," (Boston University, 2011)

peoples and injuring thirty-seven. It was a grave violation of the Geneva Conventions, which imposes restrictions on states to protect hospitals, injured, and civilians. The MSF had already provided its exact GPS coordinates to the United States forces on multiple occasions.²⁶

The coalition forces in Afghanistan also used white phosphorous to kill Afghan civilians. White phosphorous can be used to light a target, light up the night sky, or create smokescreens, however using it as a weapon is prohibited under international law. In 2009, the United States forces conducted an airstrike in a village of Farah province and allegedly used the white phosphorous.²⁷ The doctors identified terrible burns on the victims which they have never seen before.²⁸ The United States Army denied using white phosphorous bombs in an Afghan airstrike but Marc Garlasco, a senior military analyst at Human Rights Watch and a former senior Pentagon analyst reportedly said the coalition forces have been using white phosphorous regularly in Afghanistan, and the former Afghan president Hamid Karzai had confirmed the killing of at least 125 to 130 civilians in the white phosphorous attacks.²⁹

3.1 Civilian Fatalities

Afghanistan has suffered widespread human rights violations since the beginning of the anti-terrorism war started in 2001. It intensified the hardships and plights of Afghan nationals and have considerable negative impacts on their physical and psychological life. The American assault forced the seven million Afghans to migrate internally or neighboring Iran and Pakistan. The ill-coordinated and careless American air assault killed thousands of Afghan civilians and the lack of sensitivity by the United States troops to local perceptions, laws, and customs disenchanting the locals.³⁰ Local Newspapers reported that during sweeps of Afghan villages searching for weapons and members of anti-American forces, the United States Special

²⁶Majorie Cohn, "The Kunduz Hospital Bombing," *Telesur*. October 13, 2015, Available at: <https://www.telesurtv.net/english/opinion/The-Kunduz-Hospital-Bombing-20151013-0018.html>

²⁷ "Afghanistan", *International Center for Transitional Justice*, Available at: <https://www.ictj.org/location/afghanistan>

²⁸ "They Burn Through Everything: The Human Cost of Incendiary Weapons and the Limits of International Law," (Human Rights Watch, November 9, 2020), Available at: <https://www.hrw.org/report/2020/11/09/they-burn-through-everything/human-cost-incendiary-weapons-and-limits>

²⁹Subhabrata Das, "Did US army use white phosphorous in recent Afghan war," *Digital Journal*, (May 11, 2009), Available at: <http://www.digitaljournal.com/article/272452>

³⁰ Dylan Matthews, "20 years, \$6 trillion, 900,000 lives," (September 11, 2021), Available at: <https://www.vox.com/22654167/cost-deaths-war-on-terror-afghanistan-iraq-911>

Forces have physically abused villagers, damaged personal property, and subjected women to body searches, a major affront on a family honor.³¹

The war on terrorism in Afghanistan consumed enormous human lives and destroyed the health, education, and communication infrastructure. Over the past 20 years, approximately 111,000 peoples have been killed and more than 116,000 individuals have been injured in the war in Afghanistan.³² Despite the huge human and economic sacrifices, the security situation has been weakened in Afghanistan, especially in the South, near the border with Pakistan. The Afghan government in Kabul is controlling 60 percent of the territory and the remaining is ruled by the anti-government forces, such as the Taliban and the warlords. The United Nations Office for the Coordination on Humanitarian Affairs (OCHA) reported that from January 1st to April 30th, 2016 approximately 117,976 peoples were newly displaced from 24 out of 34 provinces.³³

More than 31,000 civilians have been harmed as a result of indirect warfare in Afghanistan since October 7, 2001. But given that there were lengthy periods during the conflict when civilian casualties from fighting were either undercounted or not counted at all, this figure is unavoidably an estimate. The Civilian Causality Cell, established by the International Security Assistance Force (ISAF) in 2008, evolved into the Civilian Casualty Mitigation Team in 2011.³⁴ A database of civilian deaths and injuries has also been created by ISAF, although it is not accessible to the general public. Only soldiers and commanders have access to it, allowing them to gain knowledge from events where people were harmed.

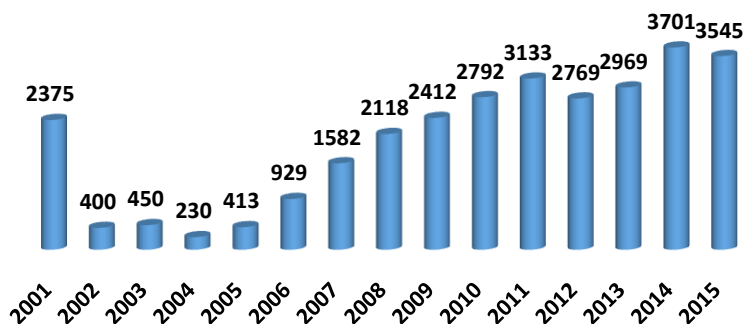
³¹ Jonathan Horowitz, 'Human Rights as a Weapon of War', in Beth Bailey and Richard H. Immerman (ed), *Understanding the U.S. Wars in Iraq and Afghanistan*, (New York: New York University Press, 2015)

³² Meg Cramer, "Mass Murder in Afghanistan: 40 Years of Conflict," (The Institute of World Politics, 2020)

³³ "Afghanistan: Conflict Induced Displacements," *United Nations Office for the Coordination of Humanitarian Affairs* (OCHA, May 15, 2016), Available at: https://www.humanitarianresponse.info/en/system/files/documents/files/afg_conflict_idps_2016_jan_apr_s

³⁴ "Quarterly Report to the United States Congress," *United States Special Inspector General for Afghanistan Reconstruction* (SIGAR, July 30, 2016), Available at: <https://www.sigar.mil/pdf/quarterlyreports/2016-04-30qr.pdf>

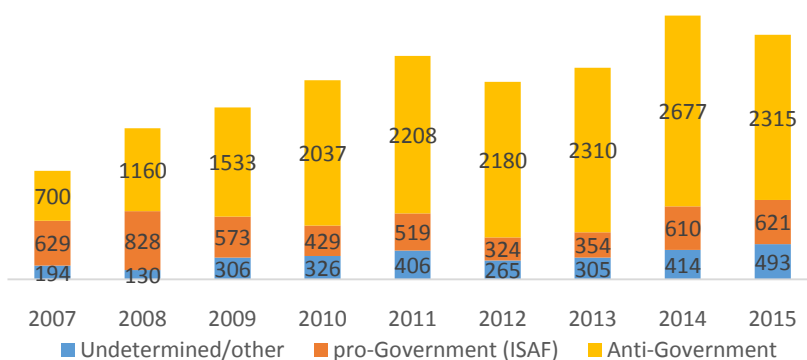
Fig- 1 Number of Civilians Killed in Afghanistan from 2001 through 2015



Source: Neeta C. Crawford

In 2007, UNAMA reported that pro-government forces have killed 41 percent of civilians indirect violence; that percentage dropped to a low of 12 percent in 2012 and 2013, but later that trend has been reversed. In 2014 and 2015, pro-government forces including ISAF killed 16 and 18 percent of Afghan civilians respectively. Additionally, as the battle grew more intense, it became more difficult for UNAMA to identify the perpetrators of the confirmed civilian deaths. In 2015, UNAMA was unable to assign responsibility for 14% of all civilian fatalities.³⁵

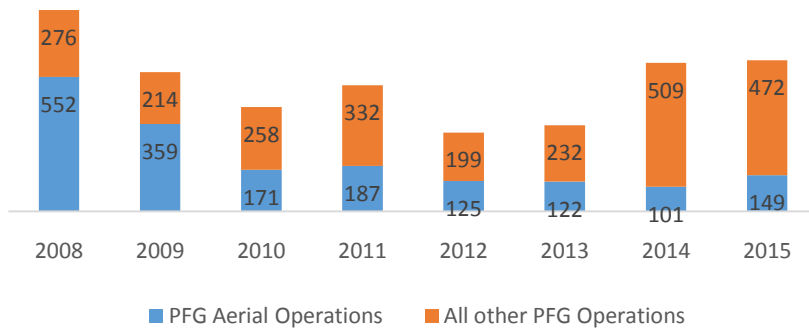
Fig-2 UNAMA Attribution of Civilian Deaths from 2007-2015



³⁵ “Afghanistan Annual Report 2015: Protection of Civilians in Armed Conflict,” United Nations Assistance Mission in Afghanistan, February 2016, Available at: <https://unama.unmissions.org/protection-of-civilians-reports>

The figure-2 elucidates the Afghan civilian deaths in protracted war from 2007 to 2015. It explains that anti-government forces caused more civilian deaths but pro-government forces are also involved in civilian cleansing.³⁶ The figure discloses that anti-government groups killed 17,120 civilians, whereas pro-government forces including ISAF killed 4,887 Afghans in total.

Fig-3 Civilian Deaths in Aerial and all other Pro-Government Operations



Source: *Neeta C. Crawford*

Figure-3 explains the civilian deaths in pro-government Aerial and other operations. It examined that since 2008 war intensified in Afghanistan and the government forces had starkly increased the Aerial and ground operations. The counter-insurgency operations are seriously harming the civilians and 4,258 civilians have been killed in pro-government forces operations.³⁷

According to an ICRC poll, almost all Afghans (96%) have experienced direct or indirect effects from combat since 2009; nearly half (45%) have experienced a family member's death and a third (35%) have sustained injuries during the fighting. According to UNAMA's annual statistics, the number of civilian deaths increased by 40% in 2008 compared to the year before; 55% of these deaths were ascribed to armed opposition forces, and 39% to forces supporting the government. Similar to this, around 90 civilians,

³⁶ "Casualty Figures after 10 Years of the War on Terror: Iraq, Afghanistan, Pakistan," *Body Count Physicians for Social Responsibility (PSR)*, (March 2015)

³⁷ Neeta C. Crawford, "War Related Death, Injury and Displacement in Afghanistan and Pakistan 2001-2014," *Watson Institute Brown University*, (May 22, 2015)

mostly women and children, were murdered in an airstrike in August 2008 in Shindand, southern Herat.³⁸

3.2 Afghan Civilian Injuries and Displacement

In the fight against terrorism, more than 40,000 Afghan civilians have suffered significant injuries. Since January 2009, UNAMA has recorded over 40,900 civilian injuries in Afghanistan, and some victims have had significant traumatic amputations.³⁹ In 2015, the International Committee of the Red Cross registered 9,200 new patients, among them 1,261 were amputees. Well over 1,600 persons suffering spinal injuries received assistance from the Red Cross in 2015.⁴⁰ Similar to this, more than 7,000 new patients were treated by the Handicap International in 2015. Of those, about 20 percent had lower limb amputations caused by improvised explosive devices, land mines, and other weapons.⁴¹ The persistent war and lack of development have turned Afghanistan into one of the poorest countries in the world. The concerns of insecurity and vulnerability affect a large part of the country, leading to massive displacement and a lack of humanitarian access. In the past 10 years, over 4.7 million refugees have returned, but 3-4 million refugees are still residing in neighboring Iran and Pakistan.⁴²

4 War on Terrorism in Pakistan

Soon after the American assault in Afghanistan, remnants of al-Qaeda, Taliban, and other transcontinental terrorist groups slipped into the northwestern region of Pakistan. The porous border between the two countries was almost unruly, which facilitated the terrorists to cross over into Federally Administer Tribal Areas (FATA) and merging with the local tribes.⁴³ In the meanwhile, Washington pressured Pakistan to mount a

³⁸Norah Niland, "Civilian Casualties in Afghanistan: Evidence-based advocacy and enhanced protection," *Humanitarian Practice Network (HPN)*, (February 2011)

³⁹UNAMA, "*Afghanistan Annual Report 2015: Protection of Civilians in Armed Conflict*"

⁴⁰ICRC. "Afghanistan: Thousands received life-saving assistance in 2015," *International Committee of the Red Cross*. January 30, 2016, Available at: <https://www.icrc.org/>

⁴¹"Afghanistan: Helping Victims of Weapons and IEDs," *Handicap International*. 2016, Available at: <http://www.handicap-international.us>

⁴²David Vine, Cala Coffman, Katalina Khoury, Madison Lovasz, Helen Bush, Rachael Leduc, and Jennifer Walkup, "Creating Refugees: Displacement Caused by the United States Post-9/11 Wars," Watson Institute Brown University, September 21, 2021, Available at: https://watson.brown.edu/costsofwar/files/cow/imce/papers/2020/Displacement_Vine%20et%20al_Costs%20of%20War%202020%2009%2008.pdf

⁴³Masood Ur Rehman Khattak and Muhammad Mushtaq, "Pakistan's Counter-Terrorism Strategy (2001-2014): An Analysis," *Pakistan Journal of History and Culture* XXXVI, no. 1 (2015)

counter-terrorism operation in FATA. Consequently, Pakistan started a counter-terror war on its soil, and hundreds of militants linked with al-Qaeda and other organizations were captured and killed by the security forces.

The war in Afghanistan compelled Pakistan to step forward with stringent measures to fight against terrorism. After sixty years of its existence, in 2001 Pakistani regular army entered into FATA area for the first time to eliminate the presence of terrorists. However, Pakistan reached a peace agreement with tribal chief Nek Muhammad in 2004 that was later sabotaged by an American drone strike because Washington thought Nek Muhammad was responsible for attacks on NATO forces in Afghanistan. As a result of the drone strike, which harmed relations between the army and the local tribes, the army eventually began counter terrorism operations under new code names throughout the whole FATA region. For instance; operation Zalzala (Earthquake), operation-Sher-Dil in Bajur Agency, operation Daraghalam (Here I Come) in Khyber Agency, and operation Al-Mizan during President Pervez Musharraf's regime. Later the incumbent government of the Pakistan People's Party launched two major operations namely Rah-I-Raast in Swat and Malakand regions and operation Rah-I-Nijaat in South Waziristan Agency in 2009.⁴⁴ But, the successive civilian government transferred powers to make decisions for military operations to Army Chief General Ashfaq Pervez Kiyani, who delayed the operation for four years which caused huge human and economic destruction to Pakistan. But the government of PML-N began a major offensive code-named Operation Zarb-e-Azab on June 15, 2014, to expel the terrorists from North Waziristan Agency. By 2003, the Pakistani army had been instrumental in the fight against terrorism and had managed to apprehend more than 400 notable al-Qaeda members from FATA and the 9/11 mastermind Khalid Sheikh Muhammad from Rawalpindi.⁴⁵

The so-called war against terrorism was not without any pitfalls, contrary it destroyed the socio-economic and human infrastructure of the country. Since 2001, Pakistan has sustained almost 62,000 lives and an additional 67,000 injuries.⁴⁶ Due to military operations in the tribal belt,

⁴⁴Iram Khalid and Muhammad Iqbal Roy, "Pakistan's Military Operations: The Counter Terrorism Strategy (2001-2013) Prospects and Implications," *Journal of the Research Society of Pakistan* 53, no. 2 (July-December 2016)

⁴⁵Peter L. Bergen, *The Osama bin Laden I Know: An Oral History of Al-Qaeda's Leader*, (New York: Simon and Schuster, 2006)

⁴⁶Neta C. Crawford, "Human Cost of the Post-9/11 War: Lethality and the Need for Transparency," Watson Institute Brown University, November 2018, Available at:

about three million Pakistani nationals were internally displaced and the operation destroyed their homes, schools, roads, health and sanitation facilities. Education and health are the most affected sectors due to the ongoing war on terror. Around 120 girls are killed and 80 different schools are demolished by the terrorists in Swat Valley alone. From 2001 to 2009, military operations endured an aggregate loss of \$45 billion to Pakistan and an estimated \$70 billion till 2012.⁴⁷ As a result of counter-terrorism operations, a new wave of the lethal insurgency had started which rapidly expanded its orbit across the state, and the terrorists started attacking every major public and government installation. For instance, on December 14, 2014, Tehreek-e-Taliban Pakistan terrorists attacked an Army Public School in Peshawar massacring 141 individuals including 132 school-going children. The spokesperson of the Taliban told BBC Urdu media service that the attack was a retaliatory response to military operations in the FATA area and we will hit back the military hard for its operations.⁴⁸

4.1 Drone Attacks

Unmanned Aerial Vehicles (UAVs), generally known as Drones are the most effective and destructive weapons of America in the 21st century. The New York Times reported in 2011 that Pentagon has requested around \$5 billion dollars from the Congress to add more drones in its available 7,000 capacity.⁴⁹ But, many experts in international law are raising the illegitimacy of drone attacks. For instance, Sarwar opined “This is per se illegal unless it is proved that the state is supporting or encouraging the militants”. Therefore, after mounting criticism in 2010, for the first time the United States took a legal position by saying that Washington is at the war against al-Qaeda, Taliban, and other militant groups and using drones for self-defense, complying with the laws of war, killing those who pose an imminent threat and not launching an attack on civilians.⁵⁰ But still, many opponents are skeptical about the legal status of drones because the drone attacks are a clear violation of sovereignty and territorial integrity which is a

<https://watson.brown.edu/costsofwar/files/cow/imce/papers/2018/Human%20Costs%2C%20Nov%208%202018%20CoW.pdf>

⁴⁷ Ibid

⁴⁸“Pakistan Taliban: Peshawar School Attack Leaves 141 Dead,” *BBC News*, December 16, 2014, Available at: <http://www.bbc.co.uk/news/world-asia-30491435>

⁴⁹“Predator Drones and Unmanned Aerial Vehicles (UAVs),” *The New York Times*, October 21, 2011, Available at: http://topics.nytimes.com/top/reference/timestopics/subjects/u/unmanned_aerial_vehicles/index.html

⁵⁰Ari Shapiro “US Drone Strikes are Justified, Legal Advisor Says,” *National Public Radio*, March 26, 2010, Available at: <https://www.npr.org/templates/story/story.php?storyId=125206000>

universal law, and the drones have killed more civilians than militants a crime against humanity.

Washington is deliberately using drones to kill terrorists in Afghanistan, Pakistan, Yemen, and some other countries. On the one hand, United States designated Pakistan a key non-NATO ally in the war on terror, on the other hand, Washington persistently violated its sovereignty and territorial integrity. Article 2(4) of the United Nations Charter states “All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or any other manner inconsistent with the purposes of the United Nations”⁵¹ but Washington is maximizing its security at the expense of Pakistan. Thus, under the UN Charter, Rome Statute of International Criminal Court, and the Geneva Conventions of 1949 drone attacks are illegal and cannot be granted legitimacy.

Table-4 Total Fatalities and Injuries in US Drone Strikes in Pakistan from 2004-2018

Year	Drone Strikes	Min Killed	Max Killed	Min Injured	Max Injured
2004	1	6	8	1	1
2005	3	16	16	1	1
2006	2	94	105	3	3
2007	5	36	56	20	37
2008	38	252	401	146	228
2009	54	471	753	266	404
2010	128	755	1,108	351	428
2011	75	362	666	158	236
2012	50	212	410	100	212

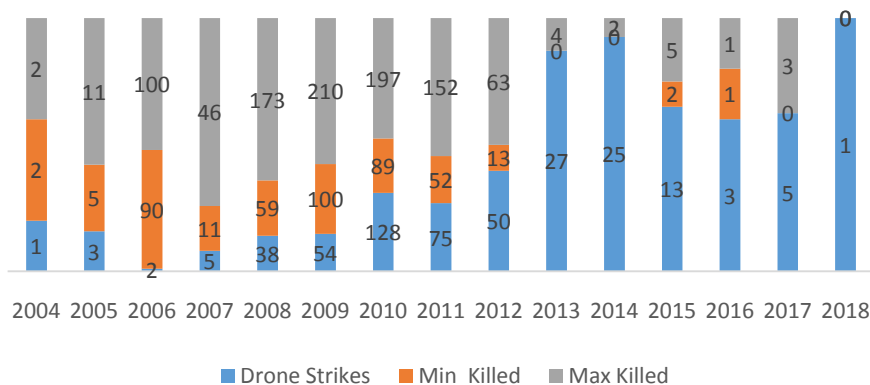
⁵¹ “Charter of the United Nations and Statute of the International Court of Justice”

2013	27	109	195	43	89
2014	25	115	186	44	67
2015	13	60	85	25	32
2016	3	11	12	3	6
2017	5	15	22	1	5
2018	1	1	3	0	0
Total	430	2515	4026	1162	1749

Data Sources: *The Bureau of Investigative Journalism*

In 2004, the United States fired the first drone in Pakistan and since then it has been pervasively increasing the intensity of drones in Pakistan. Table-4 discloses that the Obama presidency used drones as a lethal weapon to kill terrorists and increased the frequency of drone warfare in Pakistan. By 2018, 430 drone attacks are reported in Pakistan with maximum deaths of 4026 and 1749 injuries respectively.⁵²

Fig-5 Civilians Killed in US Drone Attacks



Data Sources: *The Bureau of Investigative Journalism*

⁵² “Drone Strikes in Pakistan,” *The Bureau of Investigative Journalism*, Available at: <https://www.thebureauinvestigates.com/projects/drone-war/pakistan>

Fig-6 Children Killed in US Drone Attacks

Year	Drone Strikes	Min Killed	Max Killed
2004	1	2	2
2005	3	4	5
2006	2	73	76
2007	5	1	1
2008	38	26	45
2009	54	36	39
2010	128	23	23
2011	75	6	11
2012	50	1	2
2013	27	0	1
2014	25	0	2
2015	13	0	0
2016	3	0	0
2017	5	0	0
2018	1	0	0
Total	430	172	207

Data Sources: *The Bureau of Investigative Journalism*

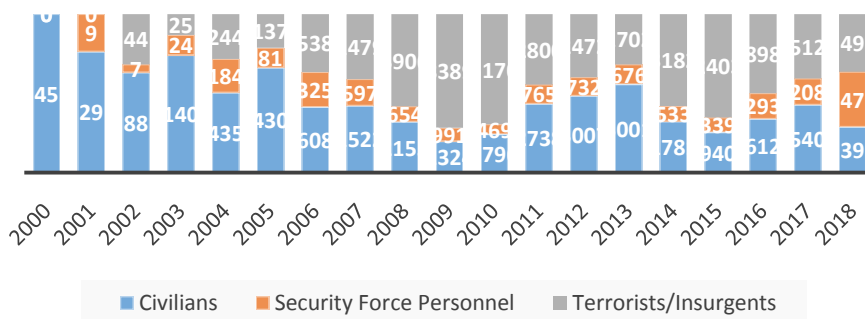
Besides, terrorists, innocent civilians, and children are also subject to illegal drone warfare in Pakistan. The Bureau of Investigative Journalism reported 172 minimum and 207 maximum children being killed in drone

attacks. Similarly, figure-5 exposes that 424 minimum numbers and 969 maximum numbers of civilians being killed in drone attacks. Some 24 men were specifically targeted in Pakistan resulting in the death of 874 peoples. Washington made multiple abortive attempts to kill major figures of various terrorist groups, but in the course of pursuing those 24 men, it has killed 142 children.⁵³ Gram reported that only one was identified as a terrorist in 49 individuals killed in the United States drone strikes.⁵⁴

4.2 Damage to Health, Economy, and Education

Pakistan is a major victim of the war on terror, as it has destroyed the unity of the nation, caused heavy damage to national assets, and loss of valuable lives. The education sector is severely damaged in war-ravaged areas. Government data show that only 17% of people in FATA are literate, and terrorists have devastated what little infrastructure there is in the tribal areas. About 188 girls' schools and 97 boys' schools have been destroyed by the terrorists in Swat alone, and pupils are frequently prevented from attending school because to fear of terrorism. Similar to this, many individuals left their homes and sought sanctuary in the nearby areas after the military operations against the extremists. 1.9 million internally displaced people (IDPs) have been registered by the National Database Registration Authority (NADRA), with KPK accounting for 96% of these IDPs.⁵⁵

Fig-7 Fatalities in Terrorist Violence in Pakistan from 2000-2018



Source:South Asia Terrorism Portal (SATP)

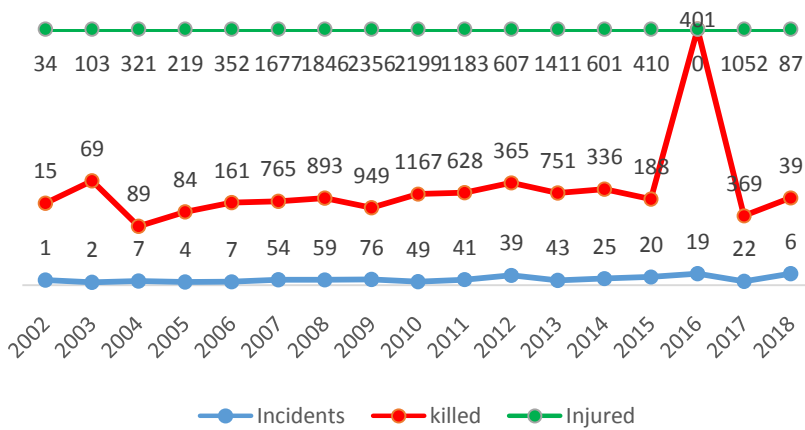
⁵³Spencer Ackerman, “41 men targeted but 1,147 people killed: US drone strikes-the facts on the ground,” *The Guardian*. November 24, 2014, Available at: <https://www.theguardian.com/us-news/2014/nov/24/-sp-us-drone-strikes-kill-1147>

⁵⁴Danielle Gram, “Drone Strikes in Pakistan kill one terrorist for every 50 deaths,” *MIC.Com*. September 26, 2012, Available at: <https://mic.com/articles/15340/drone-strikes-in-pakistan-kill-one-terrorist-for-every-50-deaths>

⁵⁵Manzoor Ahmad, “Implications of the War on Terror for Khyber Pukhtunkhwa, Pakistan,” *Journal of Critical Globalisation Studies*, (2010)

The war on terror cost Pakistan huge human and economic loss. Pakistan lost nearly 6,934 security forces personnel and 22,230 civilians in terrorism calamity. The cost of fighting the insurgency financially is already having an impact. More money, weaponry, and equipment are needed because the defence budget has been increased by more than 35%. Pakistan has reportedly lost over \$120 billion as a result of being a front-line state in the war against terrorism, according to some estimates.⁵⁶

Fig-8 Suicide Attacks in Pakistan from 2002-2018



Source:South Asia Terrorism Portal (SATP)

The counter-insurgency war gives rise to a new phenomenon called suicide attacks. The terrorists launched massive suicide strikes on public places, government, and military installations, which paralyzed the life of the country. Though in initial years lethality was moderate, however since 2007 the attacks intensified with 54 attacks and killing of 765 peoples annually. Similarly, since 2002, Pakistan lost 7,269 peoples in suicide attacks and bear an economic loss of billionsof dollars.⁵⁷The war on terror restricted the social life of the general masses and increased the sense of insecurity which further led the country towards a security state. Yet, in recent years, Pakistan regained stability and social, political, and economic life come to normalcy.

⁵⁶Talat Masood, “Pakistan’s Fight Against Terrorism,” *Defense Against Terrorism Review* 4, no. 1 (Spring & Fall 2012)

⁵⁷MoonisAhmer, “The Impact of the War Against Terror on Pakistan,” *Journal of South Asian and Middle Eastern Studies*, 35 no. 1, (Fall 2021): 63-79

5 Conclusion

The September 11, 2001 terror attacks transformed the foreign policy course of the United States and the fight against terrorism gained new momentum in the foreign policy of President Bush. Afghanistan became the first victim of American retaliatory assault which further pushed the country into chaos and anarchy. America attacked Afghanistan in the name of self-defense and humanitarian crisis, but both claims lack legal support from the United Nations and the international law which raised questions for the legal status of American intervention. Similarly, the ongoing war on terror killed thousands of innocent civilians which is a serious war crime and crime against humanity. Both pro-government and anti-government forces are maiming the civilians and spreading further terror in the name of an anti-terror war. The United States has killed thousands of innocent civilians in drone strikes which is another dark side of the American anti-terror war. The in-depth analysis of available literature and data sources on the war on terror revealed that the American war is lacking the legal grounds and spreading terrorism in Afghanistan and Pakistan.

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