



WHETHER THE USE OF DRONES IN A FOREIGN TERRITORY WITHOUT A DECLARATION OF WAR DOES NOT VIOLATE THE HUMAN RIGHT TO LIFE?

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SUMMARY

Human rights have always been considered to be important, however respect for these rights came into international law as mandatory with the adoption of the Universal Declaration of Human Rights, only later that human rights came to have legal power among states through the adoption of the International Covenant on Civil and Political Rights. Human rights are considered to be an inherent right, which cannot be breached arbitrarily. However, some limitations are permissible, such as the use of force resulting in civilian death is allowed when the person is posing an imminent threat to others, nonetheless it must be used as a last resort. The protection of human right to life is conveyed in international human rights law and international humanitarian law. An attack that results in the death of a civilian in an armed conflict may not be considered to have breached the human right to life. This thesis reflects and analyses few of the contemporary issues of the use of drones in a foreign territory without a declaration of war: combatant differentiation problem, transparency issue, failure to ensure safety of civilians during drone operation. The conducted analysis of the scope of the protection of human right to life in conflict and non - conflict zones, overview of the technologies enabling the usage of drones for lethal antiterrorist operations, research of the legal problems of using drones for taking away human life, evaluation of the current framework of international law, has showed that the core principles of protection of human life, such as principle of distinction and proportionality are not met by states when carrying out the drone strikes in a foreign state, therefor states fail to ensure the safety of civilians. Ergo, the research confirms the raised hypothesis – the use of drones in a foreign territory without the declaration of war violates the human right to life.

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KEY WORDS

Human rights, right to life, non-conflict zone, conflict zone, armed drones.

INTRODUCTION

The right to life is a fundamental right that each and every one of us is born with. States, international organizations have emphasized how crucial this right is. Extreme effort has been done to put the right to life in writing and the protection of it. Rapid changes, progress of science has led states to use unmanned, autonomous machines for proliferation and later as means to eliminate targets in combat, especially drones. The use of drones for military operations offers many advantages. However, while deploying a drone to another country for target pursuit, drones governed by states go beyond the traditional notion of a conflict zone and pursue the target further into a non-conflict zone of non-belligerent state. States claim that the targets are individuals posing legal threat to the state or its civilians, however, states have their own standard or understanding of an individual posing legal threat, which leads to false identification of those who are actually posing the threat. In addition to that, we have the target pursuit and the strikes carried out resulting in civilian deaths. States are reluctant to disclose information regarding conducted drone strikes in the areas of armed conflict as well as those that have occurred in non-conflict zones, leading to lack of transparency about the drone operations. Combatant differentiation problem remains, as many of the strikes result in the deaths of civilians, due to the fact that states have taken upon themselves to minimize the international requirements for confirming a person to be a valid target for a drone strike. There is a lack of regulation regarding drone strikes and target assessment, as the issue raised by the increased use of drones in military covert operations is fairly new. Therefore, states are risking the lives of simple civilians, ordering strikes with little information about the target in the areas of a non-conflict zones, justifying drone operations as necessary means to combat terrorism. The goal of this research was to determine whether drone strikes conducted in a foreign territory without a declaration of war stays within the limits of permissible exceptions to the protection of human right to life or it goes beyond and infringes this right. To achieve this goal four tasks have been chosen: to analyse the scope of the protection of human right to life in conflict and non - conflict zones; to overview the technologies enabling the usage of drones for lethal antiterrorist operations; to research the legal problems of using drones for taking away human life; to evaluate the current framework of international law. Methods such as: analysis of scientific literature, legal sources, secondary data analysis, case study were used to help investigate whether the use of drones in a foreign territory without declaring war does not violate the human right to life.

SCOPE OF THE PROTECTION OF HUMAN RIGHT TO LIFE IN CONFLICT AND NON - CONFLICT ZONES

The standpoint on Human Rights was not as strong as it is today. However, after World War II things have changed. The horrifying crimes committed by states, especially Nazi Germany, shook the world to a point, where something had to be done. With the means to ensure

such horrors would never fall upon the world again, governments began to make the respect for Human Rights as international mandatory law:

*As World War II was about to end in 1945, nations were in ruins, and the world wanted peace. Representatives of 50 countries gathered at the United Nations Conference on International Organization in San Francisco, California from 25 April to 26 June 1945. For the next two months, they proceeded to draft and then sign the UN Charter, which created a new international organization, the United Nations, which, it was hoped, would prevent another world war like the one they had just lived through.*²

The creation of this international organization has led to a breakthrough in the light of Human Rights. In 1948 the members of United Nations (UN) adopted the Universal Declaration of Human Rights, where Article 3 clearly states: “Everyone has the right to life”³, combined with Article 30: “Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.”⁴ It is important to mention that the Universal Declaration of Human Rights had no legally binding power. The International Covenant on Civil and Political Rights that was adopted later had such power and permanently enshrined human rights in international law. Taking into consideration the declaration and treaty, mentioned states cannot violate the right to life by any means. Before going into detail if that is the only truth possible, we need to establish what does the protection of Human Right to life actually mean.

WHAT DOES THE PROTECTION OF HUMAN RIGHT TO LIFE MEAN?

The protection of humans' right to life is a positive measure taken by a state.⁵ The duty to protect the lives of those under state authority extends beyond the prohibition on intentional and unlawful killing, requiring governments to take reasonable measures to secure the lives of those within its jurisdiction and create the necessary conditions for a person to live a dignified life.⁶

The difference between international human rights law and humanitarian law is that the first one is applicable to all persons and is applied mostly in peace time, whereas international humanitarian law is applied mostly in armed conflicts and has a strong need for differentiation between combatants, civilians and military objectives: “International humanitarian law protects those who do not take part in the fighting, such as civilians and medical and religious military personnel. It also protects those who have ceased to take part, such as wounded, shipwrecked and

² History of the United Nations, United Nations // <https://www.un.org/en/about-us/history-of-the-un>.

³ *Universal Declaration of Human Rights*, United Nations // <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.

⁴ Ibid.

⁵ “Right to Life”, Queensland Human Rights Commission // <https://www.qhrc.qld.gov.au/your-rights/human-rights-law/right-to-life>.

⁶ “Positive Obligations Imposed by the Right to Life”, Iceland Human Rights Center // <https://www.humanrights.is/en/human-rights-education-project/comparative-analysis-of-selected-case-law-achpr-iachr-echr-hrc/the-right-to-life/positive-obligations-imposed-by-the-right-to-life> [accessed 7 February 2022].

sick combatants, and prisoners of war.”⁷ International humanitarian law also acts as a guideline on how to treat civilians in a territory taken over by enemy force, as well as taking care of prisoners of war.⁸

However, there are certain circumstances where human right to life may be limited. In some cases, a state's use of force that resulted in a person's life can be justified and will not be held as a breach of human right to life.

Permissible Grounds for Limitation of Human Right to Life

For the rights that are not absolute, such as the right to life, to be limited they have to fit at least five criteria:

*[Limitation] must be provided by law or, in the case of limits on peaceful assembly, imposed in conformity with the law; The objective must be one or more from the following exhaustive list: protection of national security and/or public safety, protection of public order <...>, protection of public health or morals, protection of the rights and freedoms of others; It must be necessary to achieve its objective; It must operate without discrimination; It must be exceptional and not impair the essence of the freedom itself.*⁹

Following the threat to national security has to be immense political or military threat,¹⁰ facing this threat the UN Human rights committee has also issued a limitation on freedom of movement for suitable civilians for performing their national obligations of service.¹¹ Threat to public safety indicates the threat to the security of people or things that do not reach the volume of state-level threat.¹² A state has the right to use force against a person that could eventually result in the death of the said person, if he/she poses a threat to others or the state as well, for the purpose of stopping such threat.

Differences Between Human Right to Life in Conflict and Non - Conflict Zones

Conflict zones or better known as war zones are zones where militants engage in extreme violence - war broadly, with disrespect to the rights or opinions of neutrals by the belligerent power in time of war.¹³ To define conflict zones as such it is quite complicated: the conflict may arise in a certain area from state to state, or within a state from civilians in a failing country, or

⁷ “What is International Humanitarian Law?”, (International Committee of the Red Cross, 2004), p.2.

⁸ Ibid.

⁹ Meredith Wilkie, Kate Eastman, “Lawful Limits on Fundamental Freedoms, Human Rights Brief No. 4, Australian Human Rights Commission”, Last updated 08 March 2006, ISSN: 1442-0813 // <https://humanrights.gov.au/our-work/publications/human-rights-brief-no-4#hr4.10>.

¹⁰ Ibid.

¹¹ Peltonen v. Finland, Communication No. 492/1992, U.N. Doc. CCPR/C/51/D/492/1992 (1994).

¹² Meredith Wilkie, Kate Eastman, supra note 8.

¹³ Definition of war zone, Merriam-Webster dictionary // <https://www.merriam-webster.com/dictionary/war%20zone#:~:text=1%20%3A%20a%20zone%20in%20which,area%20marked%20by%20extreme%20violence.>

from actions of an insurgent organization.¹⁴ Killing a civilian during conflict may not be a breach of the human right to life:

Assuming that jurisdictional issues can be overcome, a death in wartime will not violate the right to life if it is in accordance with the rules of international humanitarian law. Proportionality and military necessity are the key restraining factors upon legitimized state killing during armed conflict, and these considerations fit well with the prohibition of arbitrary deaths under human rights law.¹⁵

These deaths of civilians are stated as collateral damage.

Non-conflict zones are zones free of violence, quite the opposite of conflict zones. The situation in those areas is neutral. Here the human right to life has to be respected and does not pass a green light for killing a civilian as lightly as in conflict zones:

States, public institutions and those acting on behalf of them (e.g. security forces) have the express burden of protecting human life; <...>States are further liable to take measures to protect human life against unlawful assaults by third parties (e.g. terrorists, various legal or illegal institutions) as well as respecting the right to life.¹⁶

In a non-conflict zone a state can take action against a person if the person poses an imminent threat to others, the state itself or subduing a riot, insurrection.¹⁷ The table below depicts core differences of human right to life in conflict zones and non-conflict zones.

	Applicable laws	Killing a person that is posing imminent threat to others	Killing a person that does not pose imminent threat to others
Non - Conflict zone	International humanitarian law; Human rights law	Can be justified	Cannot be justified
Conflict zone	International humanitarian law; Human rights law (not in full)	Can be justified	Can be justified

Table 1 Differences of human right to life in conflict zones and non-conflict zones.

¹⁴ John Mackinlay, “Co-operating in the Conflict Zone” (NATO, 2002) // <https://www.nato.int/acad/fellow/99-01/mackinlay.pdf>.

¹⁵ Elizabeth Wicks, “The Right to Life in Times of War or Armed Conflict, in the Right to Life and Conflicting Interests” (Oxford: Oxford University Press, 2010) // doi: 10.1093/acprof:oso/9780199547395.003.0004.

¹⁶ Dr. Safa Reisoğlu, Right to Life, Perceptions Journal of International Affairs, Vol. III – No. 4 (December 1998 - February 1999), p. 2.

¹⁷ Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols No. 11 and 14, 4 November 1950, ETS 5, p. 6 // https://www.echr.coe.int/documents/convention_eng.pdf.

From the provided information, we can clearly see that during a conflict there is more room for a party to justify killing a civilian that was not involved in the conflict in any way, by disregarding it as collateral damage. However, non-conflict zones carry a more profound protection of human right to life: it is less possible that an action which resulted in the death of a civilian could be justified. Even though in an armed conflict international humanitarian law provides more ground for a strike to be conducted, the law does not permit the strikes to happen globally, meaning it can only be right for the use of force to be used in an armed conflict, leaving non conflict areas alone.¹⁸

Before we further consider if and how the use of drones by a state violates the human right to life, it is crucial to explore aspects of drone technology employed for military purposes.

TECHNOLOGY AND POSSIBILITIES OF DRONES TO FIGHT TERRORISM

With the rapid changes of the world terrorists obtain and use the newest technologies they can acquire. Meanwhile, states struggle to keep up with the new ways' terrorists find means to act. The prompt changes call states to take action arming themselves with new tactics to fight terrorism.

Reasons Causing Expansion of Drone Usage for Military Purposes

Drones also known as Remotely Piloted Vehicles (RPVs), Remotely Operated Aircrafts (ROAs), or Unmanned Aerial Vehicles (UAVs)¹⁹ are not something new in the horizon of the military. The first idea about an aircraft not piloted by a man was considered during World War I.²⁰ However, the first drones were only used for exercise and target practice and only after World War II, in 1955, during the Vietnam war, reconnaissance drones were released.²¹ Only after the unfortunate events during 9/11, the use of drones in military has increased significantly:

Since 9/11, the US government has adopted a wide range of controversial tactics to address the transnational terrorism threat from Al-Qaeda and its affiliates as well as the Islamic State in Iraq and Syria (ISIS). Given that these are nonstate actors with diffuse networks spread across many countries, one tactic has included the targeted killing of suspected terrorists in undeclared war zones (in Pakistan, Yemen, Somalia, and Libya). Rapid advances in unmanned aerial vehicle (or “drone”) technology have facilitated much of the targeted killing deemed necessary to the US security strategy—allowing more limited use of force missions without a

¹⁸ Rosa Brooks, “Drones and the International Rule of Law”, *Ethics & International Affairs* 28, no. 1 (2014), p. 15.

¹⁹ “Drones: What are they and how do they work?”, BBC News, 2012 // <https://www.bbc.com/news/world-south-asia-10713898>.

²⁰ Kashyap Vyas, “A Brief History of Drones: The Remote Controlled Unmanned Aerial Vehicles (UAVs)”, *Interesting Engineering*, 2020 // <https://interestingengineering.com/a-brief-history-of-drones-the-remote-controlled-unmanned-aerial-vehicles-uavs>.

²¹ “A Brief History of Drones”, Imperial War Museums // <https://www.iwm.org.uk/history/a-brief-history-of-drones>.

corresponding risk to US personnel. As such, drone strikes have become a cornerstone of US security strategy in fighting the war on terrorism.²²

There is a high demand for states to improve, so it is no surprise that the drone usage in military operations has increased substantially. Even the technology of drones that we see today may change in the future:

*drones can be expected to become more sophisticated and available in more compact form, and also to become less expensive and therefore more accessible. They are likely to form part of the arsenals of an increasing number of States that may be able to deploy such force across international borders in relatively non-intrusive and sometimes non-attributable ways, on the battlefield and to pursue targets far removed from what would traditionally be seen as zones of armed conflict.*²³

The use of drones has already shown its results: there are far less soldiers dying as states send drones for decoy missions first. For example, in the 1973 Yom Kippur War an extensive amount of decoy drones was launched and succeeded, making the enemy launch all their anti-missile equipment,²⁴ while the soldiers were safe on the ground. Back then, drones were expensive and hard to come by.²⁵ Consequently, drones offer many advantages from being cheap and accessible to minimizing the loss of soldiers. Their advantages and capability will be discussed in the next chapter.

Advantages and Capabilities of Drones in Covert Lethal Operations

The United States is not the only one that has and use drones for their military purposes: “several other countries have employed them as well, including Iraq, Israel, Nigeria, Pakistan, and the United Kingdom. Almost a dozen states, including China, Iran, and Saudi Arabia, reportedly now possess armed drones, and many others—including India—are racing to acquire them.”²⁶

Using drones for military and political gains has many advantages other than being cheap to produce. One of them is accessibility:

Drones increase the options available to state and non-state actors to apply military force where they might not have had the resources or will to act without access to uninhabited (“unmanned”) technology. This increased optionality is particularly impactful in so-called

²² Kerstin Fisk, Jennifer L. Merolla, et al., Emotions, “Terrorist Threat, and Drones: Anger Drives Support for Drone Strikes”, *Journal of Conflict Resolution* 63, no. 4 (1 April 2019):977.

²³ Alston Philip, “Report of the Special Rapporteur on Extra Judicial, Summary or Arbitrary Executions”, in *Challenges in International Human Rights Law*, edited by Kamminga Menno T., 1st ed., (Routledge, 2017):9.

²⁴ David Rodman, “Unmanned Aerial Vehicles in the Service of the Israel Air Force: “They Will Soar On Wings Like Eagles”, *Middle East Review of International Affairs (Online)*; *Herzliya Vol. 14, Iss. 3, (Sep 2010): 77-84* // <https://www.proquest.com/docview/816226210>.

²⁵ Kashyap Vyas, *supra* note 19.

²⁶ Michael C. Horowitz, Sarah E. Kreps, et al., “Separating Fact from Fiction in the Debate over Drone Proliferation”, *Quarterly Journal: International Security*, vol. 41. no. 2. (Fall 2016): 7.

“hybrid” and “gray zone” conflicts, the types of ambiguous interactions short of full-scale war that are typical in today’s security environment.²⁷

Secondly, we find that covert drone operations offer more accurate targeting, sparing the lives of civilians as to compare with the more traditional methods of counter-terrorism such as bombing.²⁸ The side, which is deploying the drones, is saving its soldiers lives as it allows the states to deploy only the aircraft without the pilot, that being yet another benefit of drone usage.²⁹ Furthermore, using drones in covert operations allows the states to keep not only their men safe, but it disrupts propaganda from the other side: “drones also obviate the need for combat search and rescue operations should an aircraft be shot down. Their use denies hostile regimes the propaganda advantage that would come with parading a captured pilot before television cameras.”³⁰

Even though drones have many advantages and are maybe even more capable to operate in covert operations than a manned vehicle, their usage does not come without problems.

LEGAL PROBLEMS OF USING DRONES FOR TAKING AWAY HUMAN LIFE

Combatant Differentiation Problem

During conflict states are bound to rules and limitations by international humanitarian law. One of those limitations is targets must be combatants. Differentiation is at most important as non-combatants, meaning neutral civilians, nationals, those who have not and are not directly participating in combat, have to be protected under international humanitarian law.³¹ According to counterterrorism expert John Brennan strikes carried out fulfill international law in the sense of differentiation: with the unprecedented ability of remotely piloted aircraft to precisely target a military objective while minimizing collateral damage, one could argue that never before has there been a weapon that allows us to distinguish more effectively between an al-Qaida terrorist and innocent civilians.³²

And looking into the UN charter article 51 it is clear that states have the right to self-defense in an event of armed attack. Nevertheless: “American presidents from George W. Bush to Donald Trump have interpreted the right of self-defense in an extensive manner to create cover for unilateral actions against non-state actors outside official war zones like Afghanistan, Syria,

²⁷ Alexandra Sander, “Proliferated Drones Game of Drones: Wargame Report”, (Center for a New American Security, 2016):1.

²⁸ Alston Philip, supra note 22.

²⁹ Ibid.

³⁰ Prem Mahadevan, “The Military Utility of Drones”, CSS Analysis in Security Policyno, No. 78 (2010):3 // https://www.files.ethz.ch/isn/118844/CSS_Analysis_78.pdf.

³¹ *Treaties, States Parties, and Commentaries - Geneva Convention (IV) on Civilians*, 1949, Article 4 Definition of Protected Persons, ICRC, // <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/9861b8c2f0e83ed3c1256403003fb8c5/78eb50ead6ee7aa1c12563cd0051b9d4>.

³² “The Efficacy and Ethics of U.S. Counterterrorism Strategy”, (Wilson Center, Apr. 30, 2012) // <https://www.wilsoncenter.org/event/the-efficacy-and-ethics-us-counterterrorism-strategy>.

or Iraq.”³³ At first drones were used in the response of terrorist attacks. However, states have stretched the notion of self-defense, as already said, using the notion as an excuse, for example:

*In September 2015, British Prime Minister David Cameron announced that Britain had carried out drone strikes in Syria on August 21, 2015, which were intended to kill a British national associated with the Islamic State of Iraq and Syria (ISIS). Cameron characterized the strikes, which reportedly killed three, as a lawful exercise of Britain’s inherent right to self-defense against a very real threat.*³⁴

Having said that, we can see that not only known terrorists are the targets of drone operations, but also those that have been or are associated with terrorism. This practice leads to recognizing a person as a militant by their style of life, a certain behavior that meets the criteria for one to be called a terrorist, such drone attacks unleashed by the state are so called ‘signature strikes’.³⁵

This new approach to identify terrorists and measuring their threat has brought several cases, one of them being Faisal bin Ali Jaber and others v. the Federal Republic of Germany. The United States is using a Germany based Air Base for drone operations. Claimants have brought the claim against Germany hoping for the Ramstein Air Base to be prohibited to use force for attacks in Yemen by the United States government, as the plaintiffs have lost close relatives during a drone strike.³⁶ Facts of the case are as follows:

*In late August 2012, Salem bin Ali Jaber, a Yemeni imam known for openly challenging Al Qaeda was invited to deliver a sermon at the local mosque of Khashamir, Yemen. After the sermon, which he used to reiterate his criticism of Al Qaeda, he was approached by three members of the terrorist group requesting a meeting. Salem asked his relative, and local police officer, Waleed to accompany him. Shortly after the meeting commenced, a US drone fired a series of four Hellfire rockets killing both Salem and Waleed bin Ali Jaber as well as the three Al Qaeda members.*³⁷

The court did not decide fully in favor of the claimants, however, the drone strikes carried out have been ruled to be noncompliant with the need of differentiation between combatant and noncombatant the way that international humanitarian law requires:

The Senate was unable to find an indication that this distinction, which is imperative in international law to protect the civilian population is made to a sufficient degree. Reliable information on drone strikes in Yemen including from official US sources indicates instead that this process of distinguishing, required by international law, is

³³ Marcus Müller, “The Fog of Drone War: Lessons from the U.S. and European Armed Drone Policy”, (AICIGS, 2019) // <https://www.aicgs.org/2019/04/the-fog-of-drone-war-lessons-from-the-u-s-and-european-armed-drone-policy/>.

³⁴ Mary Ellen O’Connell, “Review of Game of Drones, by Grégoire Chamayou, Sikander Ahmed Shah, and Chris Woods”, *The American Journal of International Law* 109, no. 4 (2015): 889–900, p. 889.

³⁵ Marcus Müller, *supra* note 32.

³⁶ OVG Münster, Judgment of 19 March 2019, 4 A 1361/1, // http://www.ovg.nrw.de/behoerde/presse/pressemitteilungen/16_190409/Jemen.pdf. An unofficial English translation of the transcript of the oral pronouncement of the decision is available at https://www.ecchr.eu/fileadmin/Juristische_Dokumente/OVG_Muenster_oral_declaration_of_judgment_19_March_2019_EN.pdf.

³⁷ Leander Beinlich, “Drones, Discretion, and the Duty to Protect the Right to Life: Germany and Its Role in the US Drone Programme before the Higher Administrative Court of Münster”, (*SSRN Electronic Journal*, 2019):5 // <https://doi.org/10.2139/ssrn.3506602>

*insufficiently carried out, and not just in isolated cases. In particular, civilian supporters of the group who are not directly involved in the armed conflict, and former fighters who have definitively turned away from the group are not legitimate.*³⁸

Another example comes from the Netherlands. The Dutch gather information about call traffics in Somalia in account for their own purposes, but the metadata is shared with the United States intelligence. However, the Dutch claim that they are not aware for what purpose the United States uses the given metadata. In 2015 complicity charges were brought to the Dutch government by the Dutch human rights law firm Prakken d'Oliveira assisting two nomads of Somali, that in 2014 were hit by the United States drone attack. However, no legal investigation was conducted, nor the Dutch, nor the United States confirmed that the strikes were carried out due to the metadata that the Dutch agencies provided.³⁹ Nevertheless, according to Amnesty international report, the United States relies massively on the data provided from the Dutch and other European countries to the United States supporting the lethal drone program.⁴⁰

A reasonable assumption can be made that states do not meet the international law standard of distinction between a combatant and a civilian. The fact that states have moved further from battlefields:

*While many US drone strikes have taken place as part of actual armed conflicts, the USA has asserted the right to target and deliberately kill individuals, members of particular groups or those believed to have an association with certain groups, wherever they are and often far from any recognised battlefield*⁴¹

puts civilians in danger not only being suspected as a terrorist without legitimate grounds, but also to get involved in the fire of a drone strike. This will be discussed in the next part.

Failure to Ensure the Safety of Civilians

The United States strongly believes that drones are impeccable tools in fighting terrorism. It is also emphasized that the use of drones in covert operations is so effective and accurate that it minimizes the damage to the states soldiers as well, as there are little or no 'boots on the ground' to having little or no civilian casualties.⁴² It is also emphasized that the states meet the principles of proportionality and humanity while using drones of covert military operations:

Targeted strikes conform to the principle of proportionality, the notion that the anticipated collateral damage of an action cannot be excessive in relation to the anticipated military advantage. By targeting an individual terrorist or small numbers of terrorists with ordnance that can be adapted to avoid harming others in the immediate

³⁸ OVG Münster, Judgment of 19 March 2019, supra note 35.

³⁹ Srdjan Cvijic, Lisa Klingenberg et al, "Armed Drones in Europe", Amnesty International, (Open society European policy institute, November 2019) // <https://www.opensocietyfoundations.org/uploads/2ded5bae-143a-45ee-9fc9-7d30dbf3b62d/armed-drones-in-europe-20191104.pdf>

⁴⁰ Amnesty International, "Deadly assistance: the Role of European States in US Drone Strikes", (Amnesty international, 2018): 5 Index: ACT 30/8151/2018

⁴¹ Ibid, 11.

⁴² Testimony of Ambassador Nathan A. Sales, "Targeted Killing" and the Rule of Law:

The Legal and Human Costs of 20 Years of US Drone Strikes, Senate Committee on the Judiciary February 9, 2022 // <https://www.judiciary.senate.gov/imo/media/doc/Sales%20testimony.pdf>

vicinity, it is hard to imagine a tool that can better minimize the risk to civilians than remotely piloted aircraft.⁴³

Other sources claim that the damage to civilians is greater than it is led to believe: the Bureau of Investigative Journalism has been tracking the United States strikes in Afghanistan, Somalia, Pakistan and Yemen with current information gathered from various sources. Between 2010 and 2020 there have been minimum of 1400 confirmed strikes, total killed between 8000 to 17000, during the strikes between 910 to 2200 civilians were killed, among those numbers about 283 to 454 were children.⁴⁴

To accurately answer how states fail to ensure the safety of civilians it is important to mention that states obligation to protect civilians, to be exact, the human right of life, expands beyond states territory:

*Reference was made earlier to the status of the right to life as a general principle of international law and a customary norm. This means that, irrespective of the applicability of treaty provisions recognizing the right to life, States are bound to ensure the realization of the right to life when they use force, whether inside or outside their borders.*⁴⁵

Now that this has been cleared, we can move on to the ways drone strikes are carried out.

First, the combatant differentiation problem complements this part of the article as well. While getting the target wrong an unsuspecting civilian dies. Thus, by not fulfilling thorough research on the target, basing the legality of the hit merely on speculation, states fail to ensure the safety of civilians.

Secondly, there is not one (the signature strike type discussed above) but two types of drone strikes used. The other one being the ‘double-tap strike’. A ‘double-tap strike’ is an attack that after hitting a target unleashes a second strike on the first person to respond to the shutdown individual by the first strike, meaning it can be a mere bystander, a friend or relative, or it could even be a professional medic trying to assist the man on the ground as an obligation of his oath to help people in need.⁴⁶ We can clearly see that in the action of “double tap strike” the principle of distinction between combatants and non - combatants is again breached. Nonetheless, the second strike may be indicated as a violation of Article 3 of the 1949 Geneva convention, which roughly states no harm shall be done to a person that is not active in combat and those situated under hors de combat.⁴⁷

States fail to meet international law requirements, even though they find justifiable arguments to conduct such attacks with little or no accountability. Drone usage for military use is surely not illegal, however, the way states employ and manage the strikes not only in armed conflict areas, but beyond them brings harm to civilians and raises questions of legality, not only by getting the wrong unintended target, or shooting a second strike, that are clear violations of

⁴³ Wilson Center, supra note 31.

⁴⁴ “Drone Warfare”, The Bureau of Investigative Journalism // <https://www.thebureauinvestigates.com/projects/drone-war>

⁴⁵ Alston Philip, supra note 22. 9

⁴⁶ Arcadio Díaz Tejera, “Drones and Targeted Killings: The Need to Uphold Human Rights and International Law”, PACE - Doc. 13731 (2015) // <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=21580&lang=en>.

⁴⁷ *Treaties, States Parties, and Commentaries - Geneva Convention (III) on Prisoners of War, 1949, Article 3 Conflicts Not of an International Character*, ICRC, // <https://ihl-databases.icrc.org/ihl/WebART/375-590006>.

human right to life, but also not being fully transparent about the drone strikes. Which will be discussed in the next part.

Transparency Issue

Most of the drone strikes are organized by the United States of America. Other states provide the United States with the information on which the strikes are conducted, however they do not play a huge role in conducting the strikes themselves yet. Due to that this part will focus mainly on the transparency of the United States drone strike operations.⁴⁸

Transparency is a major factor for drone strike operations.⁴⁹ However, the states provide information lacking in the aspects of how many strikes have been conducted, the total number of targets killed, civilian victims, location of the strikes, nor the legality for the strikes to be done in the first place.⁵⁰ To put the matters into perspective, the Amnesty International has provided a table that shows just how little information the United States government is, compared to drone strike operation investigations done by various sources. The research has been done during the period 2004 and 2013 of drone strike operations in Pakistan.

	Number of drone strikes	Total killed	Civilians killed	Total injured
Government of Pakistan	> 330	2,200	400-600	> 600
Long War Journal/New America Foundation/Bureau of Investigative Journalism	348-374	2,065-3,613	153-926 including, (168-200 children according to The Bureau of Investigative Journalism) classified	1,117-1,505
US government	classified	4,700 (Unclear whether this refers to all drone strikes or just some countries, including Pakistan)	classified	classified

⁴⁸ Rosa Brooks, supra note 17, 96.

⁴⁹ Arcadio Díaz Tejera, supra note 45.

⁵⁰ Amnesty International USA, *Will I Be Next? Us Drone Strikes in Pakistan*, Amnesty International Publications (2013), p.48 ASA 33/013/2013.

Table 2 Information provided by governments and found by journalists, other organizations of the period 2004 and 2013 of drone strike operations in Pakistan

From the table provided above it is clear that the United States is not complying with the requirements of transparency, not only that this table provides the information about the drone strike operations in Pakistan, it also shows that, however the United States are not only set on conducting operations in Pakistan, but are operating globally.

The United States, as a countermeasure to the events of 9/11, has claimed war on terror against al Qaeda and has been in an armed conflict with the group since then. However, the United States has moved the strikes from the known armed conflict zone in Pakistan, to other states with the utmost secrecy about the operations.⁵¹ It is clear that the United States are abusing their power:

*the lack of transparency surrounding drone strikes resonates with the Assembly's previous work on the "Abuse of State secrecy and national security: obstacles to parliamentary and judicial scrutiny of human rights violations". This is not only the case in respect of States that carry out drone strikes, but also those which refuse to confirm or deny whether intelligence has been shared in furtherance of drone strikes.*⁵²

With the lack of transparency states are left unaccountable for their actions (whether it is the United States that conducted the strike, or another state that helped for the strike to take place) by not acknowledging the collateral damage done.⁵³

ANALYSIS EVALUATION OF CURRENT FRAMEWORK OF INTERNATIONAL LAW

Till this day there is no one proper legal regime governing the operations of drone strikes. However, international law does give guidance on the use of force in an armed conflict and beyond it, provides principles such as principle of distinction, precaution and proportionality, when it comes to the protection of human right to life as under international law an arbitrary deprivation of life is prohibited.⁵⁴

Current Legal Protection Against Threats to Human Right to Life Caused by Proliferating Drone Usage

One of protections provided by the international law is that the strikes need to be feasible in consideration of the principle of precaution with respect to customary international humanitarian law:

Rule 15. In the conduct of military operations, constant care must be taken to spare the civilian population, civilians and civilian objects. All feasible precautions must be

⁵¹ Ibid., 34.

⁵² Arcadio Díaz Tejera, supra note 45.

⁵³ "Armed Drones Killing Human Rights?", (WILPF, 29 September 2014) // <https://www.wilpf.org/armed-drones-killing-human-rights/>.

⁵⁴ International Covenant on Civil and Political Rights, Article 6: right to life, Human Rights Committee, General comment No. 36, (United Nations, 3 September 2019).

*taken to avoid, and in any event to minimize, incidental loss of civilian life, injury to civilians and damage to civilian objects.*⁵⁵

This means they need to meet such factors as:

*the availability of intelligence on the target and its surroundings, the level of control exercised over the territory, the choice and sophistication of available weapons, the urgency of the attack and the security risks which additional precautionary measures may entail for the attacking forces or the civilian population.*⁵⁶

States must be aware of the number of civilians the strike could affect, they also need to choose their weapons wisely as it is prohibited to use weapons that inflict unnecessary pain.⁵⁷ The prohibition of such weapons is enshrined in numerous treaties and is part of customary international humanitarian law practice relating to rule 70: “Weapons of a Nature to Cause Superfluous Injury or Unnecessary Suffering.”⁵⁸

Attacks are also prohibited if the outcome of collateral damage would be greater than the military gain from the attack in consideration of the principle of proportionality in respect of customary international humanitarian law practice relating to Rule 14: “Proportionality in Attack,”⁵⁹ that was introduced in the Protocol Additional to Geneva Conventions 1949, and relating to the Protection of Victims of International Armed Conflicts (protocol I), in Article 51 (5) (b): “an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated,”⁶⁰ meaning the higher the target is ranked, more collateral damage (civilian harm) is allowed.⁶¹ Even though the target strikes are not illegal during an armed conflict, civilians and others that fall under the status of hors de combat cannot be targeted,⁶² as stated in customary international humanitarian law:

Rule 47. Attacking persons who are recognized as hors de combat is prohibited. A person hors de combat is:

(a) anyone who is in the power of an adverse party;

(b) anyone who is defenceless because of unconsciousness, shipwreck, wounds or sickness; or

⁵⁵ Customary IHL - Rule 15. Principle of Precautions in Attack, // https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule15.

⁵⁶ European Parliament, Directorate General for External Policies of the Union, *Human Rights Implications of the Usage of Drones and Unmanned Robots in Warfare*, (LU: Publications Office, 2013): 24.

⁵⁷ George Dvaladze, Alies Jansen et al., “Human Rights and Human Realities Local perspectives on drone strikes and international law”, (Colophon October 2018) // <https://paxforpeace.nl/media/download/pax-report-drones-human-rights.pdf>.

⁵⁸ Customary IHL - Practice Relating to Rule 70. Weapons of a Nature to Cause Superfluous Injury or Unnecessary Suffering, // https://ihl-databases.icrc.org/customary-ihl/eng/docs/v2_rul_rule70.

⁵⁹ Customary IHL - Practice Relating to Rule 14. Proportionality in Attack, // https://ihl-databases.icrc.org/customary-ihl/eng/docs/v2_rul_rule14.

⁶⁰ Protocols Additional to the Geneva Conventions of 12 August 1949, (ICRC, May 2010):38 // https://www.icrc.org/en/doc/assets/files/other/icrc_002_0321.pdf.

⁶¹ European Parliament, Directorate General for External Policies of the Union, *supra* note 55.

⁶² Markus Reiser, “Current Drone Warfare in the Light of the Prohibition of Interventions: The Use of Drones in Armed Conflicts in Afghanistan, Iraq, Israel, Yemen, Libya, Mali, Pakistan, the Philippines, Somalia, and Syria”, *University of Vienna Law Review* 2, no. 1 (10 October 2018): 69–94.

(c) anyone who clearly expresses an intention to surrender;
provided he or she abstains from any hostile act and does not attempt to escape.⁶³

Principle of distinction, as stated in customary international humanitarian: “Rule 1. The Principle of Distinction between Civilians and Combatants. The parties to the conflict must at all times distinguish between civilians and combatants. Attacks may only be directed against combatants. Attacks must not be directed against civilians,”⁶⁴ also has its place when considering the legal protection of human right to life⁶⁵ not only in armed conflict but in the territory of a non-belligerent state as well. As stated in Protocol Additional I to Geneva Conventions of 1949:

*Article 51(2) The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.*⁶⁶

During an attack that originates not in an armed conflict zone, but outside it, the strike needs to be utmost necessary, or imminent.⁶⁷ Nevertheless, states find ways in gaps of the legislation to undermine the protection of human right to life to exercise their will as they please.

Gaps of Current International Legal Framework

The Article 2 of the UN charter on the use of force in another states territory, stipulates: “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 in any other manner inconsistent with the Purposes of the United Nations,”⁶⁸ to undermine it states use the provisions of article 51 of the UN charter the right to self-defense: “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.”⁶⁹ Using the article 51 as justifications of numerous attacks in non-conflict zones on foreign soil:

*In defense of sovereignty violations, American officials contend that the United States is exercising its inherent right to self-defense under Article 51 of the United Nations (UN) charter by using lethal force when a targeted country is unable or unwilling to counter imminent and significant threats.*⁷⁰

On the other hand, a state might have asked for another state's help dealing with terrorists. Proceeding that, the state that may have helped assumes that it is allowed to exercise the use of force in that state, without further formal consent on the use of force:

⁶³ Customary IHL - Rule 47. Attacks against Persons Hors de Combat // https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule47.

⁶⁴ Customary IHL - Rule 1. The Principle of Distinction between Civilians and Combatants // https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule1.

⁶⁵ George Dvaladze, Alies Jansen et al., supra note 56.

⁶⁶ Protocols Additional to the Geneva Conventions of 12 August 1949, supra note 59, 37.

⁶⁷ European Parliament, Directorate General for External Policies of the Union, supra note 55, 31.

⁶⁸ United Nations Charter, United Nations // <https://www.un.org/en/about-us/un-charter/full-text>.

⁶⁹ Ibid.

⁷⁰ Micah Zenko, “Reforming U.S. Drone Strike Policies”, Council on Foreign Relations, Council Special Report No. 65, (USA January 2013):17 // https://cdn.cfr.org/sites/default/files/pdf/2012/12/Drones_CSR65.pdf.

As a result, the USA, but also Great Britain and France are acting in their attacks in Pakistan, Yemen, Syria, Somalia or broader Africa without a clear mandate under international law. On the other side, Russia might argue it is acting on the request of the Syrian state, but it is clearly violating the international law in Ukraine. All of the them do not strike against clearly defined, enemy armed forces, but direct their attacks, on the basis of reconnaissance data they have generated, against groups and individuals, subsumed under the vague and politically highly problematic term terrorists.⁷¹

As there is such an exception of article 51 for states to legally use force in another states territory, states practice this exception and risk the lives of civilians.

According to Tshwane (The Global Principles on National Security and the Right to Information) principle 9, that states: Public authorities may restrict the public's right of access to information on national security grounds, but only if such restrictions comply with all of the other provisions of these Principles, <...>. ⁷² States have the right to withhold information, however, Tshwane principle 3 stipulates that:

No restriction on the right to information on national security grounds may be imposed unless the government can demonstrate that: (1) the restriction (a) is prescribed by law and (b) is necessary in a democratic society (c) to protect a legitimate national security interest; and (2) the law provides for adequate safeguards against abuse, including prompt, full, accessible, and effective scrutiny of the validity of the restriction by an independent oversight authority and full review by the courts.⁷³

The information about the deaths of civilians and how one is considered to be a valid target does not breach principle 9,⁷⁴ but falls under the provision of principle 3.⁷⁵ And the lack of transparency provided by states about the drone operations allows them to navigate in the principle of proportionality⁷⁶ and the requirement of international law of the importance of combatant differentiation.⁷⁷

Target killings have more freedom during an armed conflict under international humanitarian law,⁷⁸ some states are trying to change the notions of armed conflict, so that they could exercise their power to full extent undermining the lives of civilians in non-conflict zones of a non-belligerent states.⁷⁹

When civilians have claims to states for the legality of attacks, most of the claims are turned down, no investigations are conducted, victims and their families do not get compensated for the attacks carried out:

Transparency, accountability and mechanisms to provide redress, however, remain almost non-existent. The U.S. government has not provided estimates of overall of civilian

⁷¹ Markus Reisner, supra note 61, 84.

⁷² The Global Principles on National Security and the Right to Information: The Tshwane Principles, (New York NY: Open Society Foundations, 2013):20, ISBN: 978-1-936133-98-7.

⁷³ Ibid, 14.

⁷⁴ Ibid, 20.

⁷⁵ Ibid, 14.

⁷⁶ Customary IHL - Practice Relating to Rule 14., supra note 58.

⁷⁷ Customary IHL - Rule 1. Supra note 63.

⁷⁸ Council of Europe, supra note 16.

⁷⁹ Arcadio Díaz Tejera, supra note 45.

*casualties from drone strikes, publicly acknowledged any specific instances of civilian casualties, or publicly investigated credible claims of civilian casualties.*⁸⁰

Even though, under article 91 of Additional Protocol I to the Geneva Conventions of 1949 clearly states: “A Party to the conflict which violates the provisions of the Conventions or of this Protocol shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces.”⁸¹ It is clear that civilians are entitled to compensation, when the strikes have been illegal, however, the current mechanism is not working, because there is no international legal body monitoring the process of litigation of such cases.

All legal frameworks have gaps and are not perfect, however, there is always room for improvement.

Ways to Improve the Current International Legal Framework

With regard to article 51 of UN charter⁸² states often interpret and assume that right to self-defense, meaning the use of force in another state’s territory, is valid in time of imminent threat. Also, in a non-conflict zone international human rights law is fully active, which means that the use of force by states against civilians needs to be imminent.⁸³ However, the meaning of “imminent threat” is being modified as well, especially by the United States and their wider use of target killings⁸⁴:

*legal frameworks applicable to drone strikes was the need for states and others to challenge the expansive interpretations of international law principles put forward by the United States and others. The initial focus was on the interpretation of an »imminent threat« as justification for an armed attack. Many speakers noted that the US adopts a very broad interpretation of imminence, and justifies attacks against »continuing and imminent« threats.*⁸⁵

That said, the provisions of use of force in time of imminent threat needs to be not widened, as it needs to strictly stay between international and non-international conflicts, it should not in any means be applicable to non-conflict zones with regard of fighting terrorism. States must abide by the international law notions, not interpret them to fit their needs.

Moreover, adaptation of more concrete situations where the right of self-defense⁸⁶ of a state is applicable or better yet a situation where it could not have an effect. Today the world is in a situation where the United States has solely declared the whole world a battlefield combating

⁸⁰ “After the Dead Are Counted: U.S. and Pakistani Responsibilities to Victims of Drone Strikes”, (Open Society Foundations, November 2014): 6 // <https://www.opensocietyfoundations.org/publications/after-dead-are-counted-us-and-pakistani-responsibilities-victims-drone-strikes>.

⁸¹ Protocols Additional to the Geneva Conventions of 12 August 1949, supra note 59, 66.

⁸² United Nations Charter, supra note 67.

⁸³ Council of Europe, supra note 16.

⁸⁴ Arcadio Díaz Tejera, supra note 45.

⁸⁵ “Litigating Drone Strikes Challenging the Global Network of Remote Killing”, ECCHR, (Berlin, May 2017): 21 ISBN: 978-3-00-056493-2.

⁸⁶ United Nations Charter, supra note 67r.

terrorism,⁸⁷ and it should be made clear that in a zone, where there is no recognized conflict, where civilians lead their normal lives, drone strikes against terrorist should be prohibited even under the states right of self-defense.⁸⁸

Under customary international humanitarian law, the principle of distinction between a civilian and combatant⁸⁹ is highly important. And it is clear that states do not bother to identify the targets to the length that meet international law requirements and violate the human right to life, especially in areas beyond armed conflict: “any person deemed to be an operational leader of al-Qaeda or its “associated forces” inherently presents an imminent threat at all times - and as a result, the United States can lawfully target such persons at all times, even in the absence of specific knowledge relating to planned future attacks.”⁹⁰ Also, as established before, the United States has considered and made targets for drone strike operations persons who have not even seen a battlefield.⁹¹ Thus, such interpretations of this clause, need to be considered unlawful, as they violate international law. States need to be held accountable for such actions, however, information provided by states about the drone operations are shrouded in mystery. International organizations must not only call for more transparency regarding the drone strikes, but also need to be stricter to states, compel them to justify the so called “collateral damage” even after the attack took place and hold them accountable of the numerous deaths of civilians for not meeting the international law. In addition to that, a new body of international justice needs to be established, or litigation for such cases needs to be appointed to an established body.

CONCLUSIONS

1. During peace time, a state is obliged to protect its civilians from any danger, including an imminent threat. Thus, when a civilian poses imminent threat to others or his/hers surroundings, a state has the right to use force and take the life of the civilian in order to neutralize the imminent threat to others. The protection of human right to life does not end with the start of a conflict. During that time, not only international human rights law is active, but also international humanitarian law joins the protection of human right to life as well. The main difference of these two international law instruments is that during conflict taking a civilians’ life that is not posing imminent threat to others can be justified under international humanitarian law, since during this time the extent of international human rights law is limited.
2. As threat to states from terrorist becomes more advanced, states employ more drones for military operations. The use of drones in such operations has shown prompt results in sparing the lives of its soldiers and is cost efficient. Drones do have many advantages for reconnaissance and other military operations, however, what states portray does not always come to be true, as the so claimed better targeting, being more precise, seems to be false advocacy. Drones bring

⁸⁷ Arcadio Díaz Tejera, *supra* note 45.

⁸⁸ United Nations Charter, *supra* note 67.

⁸⁹ Customary IHL - Rule 1. *Supra* note 63.

⁹⁰ Rosa Brooks, *supra* note 17, 96.

⁹¹ Amnesty International, *supra* note 39.

lethal force not only on conflict zones, but unfortunately on non-conflict zones as well, while the operators of drones enjoy warmth and peace in their offices, monitoring, guiding drones from across the seas, far away from any damage the drones' cause.

3. While incorporating international law provisions into national law, states take the opportunity to interpret broadly, similarly with the principle of differentiation between combatant and civilian, the United States fails to meet the needed requirements of this international principle and flags civilians as valid targets for drone operations, based on their lifestyle and metadata provided by other states. Some might agree that signature strikes in another state's territory do provide less significant collateral damage when the target is a high rank terrorist and has not only mere association with terrorists, however, drone strikes come in several forms. Double tap strikes do not meet the international requirements by its nature, as the second strike that is released after 20-30 minutes or even an hour later the first strike took place, violates the principle of hors de combat, where all injured parties with no discrimination, including terrorists, should be protected from any more harm that could come their way. In addition to that, during the second strike bystanders and people who try to help, regardless if the helper is a doctor or just a civilian, they get killed or injured during the process. Thus, states fail to ensure the safety of civilians. Another requirement that states need to meet for the drone strikes to be legal is transparency. Nonetheless, states do not provide full information about the expected outcome of the strike nor the details after the strike. Such interaction with the international community does raise questions whether the United States and other states that are supporting the United States global war on terror, do not abuse their power. Not only that they do not meet international requirements, but also violate human right to life, when the strikes are being carried out in non-belligerent state's territory without properly meeting the international law.
4. Civilians and those that are wounded fall under the protection of international law provisions, however, if the situation requires imminent response and the attack is absolutely necessary, there are exceptions where such attack could be held legal. Nevertheless, states use international law exceptions for their own nefarious means. Gaps in the current legal international framework, such as the right of self-defense, that allows use of force, the right to withhold information for national security reasons, lack of accountability and monitoring of an international legal body of a state's activities and breaches of international law, allows states to act disregarding international principles of differentiation, proportionality and precaution. Leading to not only the failure of keeping the civilians safe, but also, by carrying attacks with such disregard to international law and its principals in another state's territory without the declaration of war, to the violation of the human right to life.
5. The conducted research displayed, that the use of drones (due to advanced technological capabilities) makes it problematic to enforce the principles of international law for the protection of human life, essentially the distinction of combatants and non-combatants and the principle of proportionality. It also

blurs the concept of conflict zone and makes the issue of compensation for unlawful acts problematic in current international law. All this leads to the conclusion that the uncontrolled use of drone technology for military operations is becoming incompatible with the fundamental principles of human rights protection. Therefore, there is a need for a review of international law to protect the human right to life. In order for this regulation to respond adequately to the challenges posed by new technologies to the protection of the human right to life. Evidently, the research confirms thesis hypothesis – the use of drones in another state’s territory without the declaration of war violates human right to life.

6. Recommendation for further analysis, more case studies need to be conducted, to deepen the understanding of how current international law principles can be applied directly to the use of drones and help with the much-needed regulation establishment of international use of armed drones in military operations in order to protect human right to life more accurately and take responsibility for the unlawful acts the states commit employing drones for military operations.

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SANTRAUKA

AR DRONŲ NAUDOJIMAS SVETIMOJE TERITORIJOJE NEPASKELBUS KARO NEPAŽEIDŽIA ŽMOGAUS TEISĖS Į GYVYBĘ?

Žmogaus teisė į gyvybę yra laikoma paveldima, kuri negali būti pažeista be pagrindo, kadangi ši teisė nėra laikoma absoliučia, jai yra taikomos ribos, kur prireikus, ją galima pažeisti. Ataka, kurios eigoje žūsta civiliai konflikto metu, nebūtinai bus laikoma žmogaus teisės į gyvybę pažeidimu. Tokios atakos turi daug daugiau laisvės konflikto metu, tačiau valstybė turi teisę ginti savo piliečius ir pareigą gerbti kitos valstybės piliečių gyvybę taikos ir konflikto metu. Daugėjant karinių operacijų, kur yra pasitelkiami dronai vykdyti atakas, daugėja ir žmogaus teisės į gyvybę pažeidimų, kadangi valstybės aplaidžiai laikosi tarptautinės teisės įtvirtintų žmogaus teisės apsaugos nuostatų. Valstybės, o ypač Jungtinės Amerikos Valstijos, pilnai nesilaiko nuostatų, kurios leistų tinkamai nustatyti ir įvardinti norimų taikinių. Atakos yra vykdomos pilnai nesurinkus informacijos apie taikinį, nenustačius jo konkretaus ryšio su teroristinėmis grupuotėmis, spekuliuojant dėl galimo ryšio tarp jų. Atsižvelgiant į Tarptautinę humanitarinę teisę, teisėti atakų taikiniai yra kombatantai – dalyvaujantys konflikte arba tiesiogiai susiję su konfliktu, tačiau valstybėms besidalinant informacija apie galimus taikinius dažnai yra nukrypstama nuo kombatanto sąvokos ir taikiniai tampa tokie asmenys, kurie atitinka pačių valstybių sudarytą teroristo sąvoką, ieškant sąsajų vien tarp asmens gyvenimo būdo, tai yra, atkreipiamas dėmesys į tai, su kuo asmuo bendrauja gyvai, peržiūrimi telefoniniai skambučiai, artimi kontaktai. Konkretus žuvusių civilių skaičius nėra atskleidžiamas, tik nepriklausomų organizacijų dėka turime galimybę suvokti, kokią iš tikrųjų didelę problemą kelia dronų operacijos taikos zonose. Skaidrumo trūkumas gaubia šias operacijas, todėl net tarptautinės organizacijos pradeda kreipti dėmesį į valstybių aplaidumą tarptautinei teisei, tačiau pastovūs prašymai valstybių daugiau atskleisti apie vykdomas atakas didelės įtakos neturi. Karinėms operacijoms, kuriose pasitelkiami dronai, trūksta reguliavimo ir valstybių tiesioginės atsakomybės. Šiuo metu atakas išgyvenusieji civiliai, norėdami, jog valstybės prisiimtų atsakomybę už atakas, tiksliai nežino, į kurią valstybę ir į kokį teismą reikia kreiptis, todėl dauguma keliamų bylų yra atmetamos, paliekamos nenagrinėtos, kadangi valstybės neprisiima tiesioginės atsakomybės už atakas, tai apsunkina civilių teisybės paieškas. Nors dronų naudojimas suteikia daug pranašumų ir naudos valstybėms, padaroma žala svetimoje teritorijoje taikos metu gerokai perauga tarptautines normas. Vienas iš civilių saugumo užtikrinimo principų yra – proporcingumas, tai reiškia, kad atakos metu atsirandanti netiesioginė žala turi būti ne didesnė nei norimas rezultatas. Kuo taikinyis yra aukštesnio rango teroristas, tuo didesnė gali būti atsirandanti netiesioginė žala, tačiau taikiniais tampa asmenys, kurie net nėra dalyvavę konflikte, tai yra asmenys, paprasti civiliai - ne kombatantai. Paleidžiant ataką turint tokį taikinį, atsiradusi netiesioginė žala yra gerokai aukštesnė, nei įsivaizduojama, kokia ji galėtų būti, kadangi rezultatas nėra pasiektas. Toks taikinyis tarptautinės teisės nuostatų lygmenyje nėra teroristas, nėra kombatantas ir nėra validus taikinyis, tačiau valstybės plečia ne tik asmenų, kurie gali būti laikomi validžiais taikiniais, bet ir konflikto zonos sampratą. Šioje vietoje didžiulę rolę turi Jungtinės Amerikos Valstybės, kurios karą prieš terorą paskelbė pasauliniu. Jungtinėms Amerikos Valstijoms į pagalbą ateina Europos valstybės, kurios taip pat vykdo ir savo atskiras atakas, tačiau ne tokiu plačiu mastu kaip

Jungtinės Amerikos Valstijos. Šiame darbe yra aptariama žmogaus teisių apsauga taikos ir konflikto metu. Vykdoma dronų naudojimo karinėse operacijose naudosis ir pranašumo kovoje prieš teroristines grupuotes apžvalga. Aptiriamos teisinės problemos, gaubiančios dronų naudojimą šiose operacijose. Įvertinami galiojantys reguliavimai ir įstatymai, analizuojami moksliniai darbai, teisiniai šaltiniai, antrinių duomenų analizė, atvejo analizė. Šie metodai naudoti siekiant išsiaiškinti, ar dronų naudojimas svetimoje teritorijoje nepaskelbus karo nepažeidžia žmogaus teisės į gyvybę. Išsamaus tyrimo eigoje nustatyta, jog iškelta hipotezė pasitvirtina ir dronų naudojimas svetimoje teritorijoje nepaskelbus karo pažeidžia žmogaus teisę į gyvybę.

REIKŠMINIAI ŽODŽIAI

Žmogaus teisės, teisė į gyvybę, nekonflikto zona, konflikto zona, ginkluoti dronai.