

## International Armed Conflict and Drone Warfare: Quest for a New Apace in International Humanitarian Law

Abdul Alim

*(Lecturer, Department of Law and Human Rights, University of Asia Pacific)*

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**Abstract:** *International law is supranational, and its fundamental rules are binding on all states. Its goals are to maintain peace, to protect human beings in a just order and to promote social progress in freedom. International Humanitarian Law (hereafter IHL) though formally codified in the 19<sup>th</sup> century, is not confined within its old version. With the development of technology, IHL has to widen its field. The latest development in the area of airborne attack as a means of warfare is the unmanned aerial vehicle known as a drone. It is a means of carrying arms to the target with that aerial machine and which is controlled remotely by an operator who actually remains in a safe place without being physically present on board the aircraft. This high-class technology gives rise to a lot of questions, debates, dilemmas and intricacies in the field of legal realism. The author in this research intends to ascertain the legality of a drone attack by a state party against non-state actors. In this regard, the author addresses and seeks to find the solution to these following questions like as what is the status of a drone, whether it is a weapon itself or just a means which carries weapons? What is the nature of the conflict between state and non-state actor under which drones are used? Can strike by a drone be conformed to the norms of International law? International Humanitarian Law does not answer specifically to these questions. A drone, which is being operated by human, containing arms should never be considered as the weapon itself but a means. Armed conflict between state and a non-state actor can be treated as international armed conflict and should be governed by IHL. Hence, the demand of time is to expand the domain of IHL to cope with the advancement of technology.*

**Keywords:** Armed Conflict, Dilemma, Drone, International Humanitarian Law

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### 1. INTRODUCTION

Drones were primarily designed for reconnaissance. They were first used for surveillance in international armed conflict between state parties as we see in the Vietnam and Gulf wars.<sup>1</sup> But the recent change of armed conflict between state parties to the armed conflict between state and non-state actor widened the scope of using the drone as means of war as in the ‘global war on terror’<sup>2</sup> and other suspected terrorism. This counter-terrorist measure has led to the use of armed drones by state or non-state actors as we see. After the September 11, 2001 attacks, the U.S has started using drones for targeted killing in the countries like Afghanistan, Pakistan and Iraq.<sup>3</sup>The ambiguity of the status of drone attack

gives rise to the question whether its use is armed conflict or not as it is a conflict between state and non-state actors. If it is, then would it be governed by the IHL or not? This situation creates three arguments among scholars. Some argue that IHL cannot be applied. Some say IHL is still applicable but needs a new treaty or protocol and the rest argue otherwise that IHL is fully applicable with its own resources.

Drone warfare, the newest form, has triggered so much debate about its legality in the field of legal realism. This new system has changed the form of conducting warfare and blurred the concept of armed conflict. Some scholars try to treat it under International Human Rights Law and some say it is still to be regulated by IHL. Until now, there is no agreed universal convention on this to be followed by the states using armed drones. On the other hand, civilians who are protected under IHL do not get protection during drone warfare due to the absence of any agreed rule and regulation by the international community. The dilemmas created by this give an implied authorization to the attacking state to continue this strike even on civilians. The attacking states try to legalize it as 'Factum Valet' as Colonel Daniel Reisner<sup>4</sup> stated that "if you do something for long enough, the world will accept it...we invented targeted assassination thesis and we had to push it."<sup>5</sup> However, until the acceptance of a new agreement, IHL should operate in this field.

## **2. DRONES ATTACK AND ARMED CONFLICT**

The word 'drone' comes from the meaning of zooming noise (droning) that the planes make when it flies.<sup>6</sup> Some argue that the term drone originated from the non-stop buzzing of a machine making during the flight.<sup>7</sup> It is also claimed that the name derives from the use of robotic aircraft as training targets for World War II gun crews.<sup>8</sup> It is an unmanned aerial vehicle (UAV).<sup>9</sup> Though there is no pilot in person inside the vehicle to control, it is characteristically under the real-time human control.<sup>10</sup> We see the US Department of Defense termed it an unmanned aerial vehicle that can fly automatically or be piloted remotely, can be expendable or recoverable, and can carry a fatal payload. This automatic vehicle or drone may be operated of miles away from its location.<sup>11</sup>

Generally, a conflict is treated as armed conflict when it is conducted by means of arms. IHL applies in armed conflict only and it does not coat domestic fracas or disturbance. IAC and NIAC are two types of armed conflict under IHL based on the parties who are engaged in conflict and the geography of the battlefield.<sup>12</sup> An IAC exists where two or more state parties using armed forces engage themselves in the conflict.<sup>13</sup>

Common Article 2(1) of the four Geneva Convention of 1949 articulates the International Armed Conflict (IAC) as a conflict between two or more high contracting parties, even if the state of war is not acknowledged by the parties.<sup>14</sup> On the other hand, a NIAC is a conflict which is pursued either between the armed forces of a State and armed non-state groups or in between such groups.<sup>15</sup> There is no universal definition of NIAC but the definition given by the International Committee of the Red Cross can be considered a better one.<sup>16</sup>

The very crucial unsettled question in drone warfare is the identity of a remote drone attack by a country which is not directly engaged in war. The first and foremost issue is whether the drone attack should be considered within the ambit of armed conflict or not. If it can be, then it is required to examine what type of armed conflict it is. An armed conflict exists at least between two parties without defining what kind of parties they may be<sup>17</sup>. A much wider definition was provided by the International Criminal Tribunal for Yugoslavia (ICTY) in its judgment in *Prosecutor v. Tadic* case that,

*‘an armed conflict exists whenever there is resort to armed force between states or protracted armed violence between governmental authorities and organized armed groups or between such groups within a state.’*<sup>18</sup>

Additional Protocol II on the other hand narrowly defines armed conflict requiring a state party<sup>19</sup> and thereby excludes conflicts between two organized non-state actors from its applicability.<sup>20</sup>

The sole purpose of putting here the definition of armed conflict is to revisit the status of drone attack applicability under the IHL. The drone strikes such as made by the US in Pakistan and Yemen are not IAC as they are not between state parties.<sup>21</sup> The concept of NIAC according to the definition of Common Article 3 may raise the doubt about the applicability of IHL on US drone strike in other countries because the territorial limitation in Common Article 3 provides<sup>22</sup> that the conflict must take place within the territory of one of the high contracting parties. According to the ICRC, the conflict shall arise on the territory of a State for Common Article 3 to be applicable; clearly allowing for the possibility of “spillover” effects into the territory of other States.<sup>23</sup>

### **3. DRONE WARFARE IN THE CONTEMPORARY WORLD**

Drones were first used for surveillance and reconnaissance.<sup>24</sup> But with the requirements of originating countries, which actually invented drones for an armed attack, they started using drones fitted with weapons for targeted killings.<sup>25</sup> As one of the best-known users of armed drones,<sup>26</sup> the major aim of U.S. drone strikes today is combating the terrorist network which they call the ‘global war against terror’.<sup>27</sup> In drone operation, the military targets individuals whose identities are both known and unknown<sup>28</sup>. The US drone operation uses two types of drone attacks:<sup>29</sup> one is targeting identified individuals<sup>30</sup> known as “personality strikes”, and the other, targeting unknown individuals, often in groups, known as “signature strikes”.<sup>31</sup> The Bush administration decided to carry a weapon for the first time in Yemen<sup>32</sup> after 11 September 2001.<sup>33</sup>

There are various reasons for the increase of investment in the field of drone warfare. The main advantage of using drones is that they are unmanned and can fly to remote areas where troops are unable or unwilling to go.<sup>34</sup> Drones are used to gather better intelligence which can lead to more accurate situation assessments than soldiers, in their turn, can take into account and so reduce avoidable civilian casualties.<sup>35</sup> As ‘a mini air vehicle’ a shot-down drone is easily replaceable; they keep human pilots out of harm’s way<sup>36</sup>. Also, drones can

perform some risky manoeuvres that manned planes cannot.<sup>37</sup> O'Connell summarized the philosophy of using armed drones as follow:

“Drones are 30 times less than [the cost of] a fighter jet and Pilots operate them with a joystick at a comfortable site far from the attack zone. Thus, even if a drone is shot down, there is no loss of human life. Drones do not suffer from human weaknesses. [They] reach places ground troops would have great difficulty reaching.”<sup>38</sup>

The proponents of drone strike argued that they can strike more accurately than any other aircraft. Is their claim true? The civilian casualties in different countries speak against the claim of accuracy of drone strikes. Having many advantages of a drone attack, the main contradiction lies in the issue of accuracy of drone strikes. Faulty intelligence can also be the product of a simple mistake. As Medea said that

“Despite all the super-duper cameras, video images can be misinterpreted. A truck carrying boxes of pomegranates can look just like a truck carrying boxes of explosive. A tall, bearded man in a robe can look just like another tall, bearded man in a robe”<sup>39</sup>

The majority of drone strikes by the USA have ensued in Pakistan which US officials credited them with severely diminishing al-Qaeda's capacity in the region<sup>40</sup>. In Pakistan, the CIA began conducting strikes in 2004. President Bush ordered an increase late in his second term, in 2008<sup>41</sup>. The first known drone strike in Pakistan was conducted against Taliban commander Nek Mohammad. The government of Pakistan did not request U.S. assistance, let alone the use of drones.<sup>42</sup> Their position until 2009 had been to seek stability through peaceful means<sup>43</sup> and had been attempting through a variety of methods to prevent an armed conflict<sup>44</sup>. A recent report made by Amnesty International, of US drone attacks in Pakistan, shows the tragic picture of the effects on civilians in their lives. Amongst the various daily incidents, the following two are a little reflection of degrading humanity by drone attacks as narrated by the Centre for Civilians in Conflict.<sup>45</sup>

#### **4. THE CHEMISTRY OF USE OF FORCE AND THE LEGALITY OF DRONE ATTACK**

The UN Charter prohibits war;<sup>46</sup> it even prohibits the threat to use of force against the territorial integrity or political independence of any state<sup>47</sup>. The charter requires the parties to settle the disputes in a peaceful manner. But, at the same time, it does not impair the right of a state to resort to force in the exercise of its right to self-defense<sup>48</sup> and it even authorizes United Nations to take action to restore peace.<sup>49</sup> Thus, these articles reveal that war is prohibited with some exceptions for the rights of a state to defend itself against attack.<sup>50</sup>

IHL boards another plane and speaks when the exceptions are used by the state and armed conflict actually breaks out; no matter what reasons. Now we have to see the limitation of the term 'self-defense' and the legality of drone attack based on this term. Article 51 confers the right to self-defense to the victim state legally responsible for the attack<sup>51</sup> as the ICJ also said.<sup>52</sup> The users of armed drones assert that it is their response to global terrorism. But an armed response to a terrorist attack never meets the above parameters for the lawful exercise of self-defense.<sup>53</sup> A terrorist attack is generally treated as criminal acts as they have

all the hallmarks of crimes,<sup>54</sup> not armed attacks that can give rise to the right of self-defense. Mary Ellen O'Connell said that

“The strongest conclusion to draw under the *jus ad bellum* is that there is no legal right to resort to drone attacks in Pakistan. Drone attacks are uses of military force. Pakistan is not responsible for an armed attack on the United States and so there is no right to resort to military force under the law of self-defense...Even then, drone attacks may well be counter-productive to the military objective of eliminating the challenge from Pakistani militants, and they have been responsible for the deaths of many unintended victims, leading to serious questions about whether they may be used consistently under the principle of proportionality.”<sup>55</sup>

However, the fact is that the illegal exercise of the right to self-defense does not authorize the exercising state at its whim to ignore the principles of IHL as the law starts to operate as soon as the state started its armed exercise of self-defense.<sup>56</sup> Even if the government of Pakistan requests,<sup>57</sup> the US assistance must comply with strict limits on how it uses a drone. The state exercising the drone attack never avoids the core principles of International Humanitarian Law such as the rules of distinction, necessity, proportionality, and humanity.<sup>58</sup> Therefore, resort to the use of drones must be compatible with the principle *jus ad bellum* (law on resort to force) and the way they are used must be based on the basic principle of international humanitarian law.<sup>59</sup>

## **5. PRINCIPLES OF IHL AND DRONE ATTACK**

There are some basic principles of IHL which deal with the means and method of warfare and to the conduct of war. Hans-Peter Grasser<sup>60</sup> summaries the principles of humanitarian law in a few fundamental principles:

- Persons who are not, or are no longer, taking part in hostilities shall be respected, protected and treated humanely. They shall be given appropriate care, without any discrimination.
- Captured combatants and other persons whose freedom has been restricted shall be treated humanely. They shall be protected against all acts of violence, against torture. If they are put on trial, they shall enjoy the fundamental guarantees of a regular judicial procedure.
- The right of parties to an armed conflict to choose methods or means of warfare is not unlimited. No superfluous injury or unnecessary suffering shall be inflicted.
- In order to spare the civilian population, armed forces shall at all times distinguish between the civilian population and civilian objects on the one hand, and military objectives on the other. Neither the civilian population as such nor individual civilians or civilian objects shall be the target of military attacks.<sup>61</sup>

These basic principles of International Humanitarian Law are in operation during the armed conflict. But what we should see is the viability and compatibility of these principles in a modern era of technologies.

## **6. REVISITING THE LEGAL DILEMMA OF DRONE ATTACK**

The new invention of technology, in this case, requires new jurisprudence in the field of IHL. The emergence of autonomous technology represents a potential change in modern warfare as well as in humanitarian law.<sup>62</sup> It is actually not the drone which raises the legal issue but rather, the arms, weapons or the operator of drones. There are many dilemmas under humanitarian jurisprudence about the status of the drone operator and the degree of damage caused unintentionally or mistakenly by drone attacks. The persons who are liable for drone attack are also an unsettled question in the realm of IHL.

The main dilemma under IHL regarding drone attack concerns the questions as who controls the drones and who will be responsible for such an attack. As stated above, the main advantage of drone attacks is that they are unmanned. There is no pilot inside the drones at risk of being killed in a crash, or to be taken captive by enemy forces or to cause a diplomatic crisis if shot down in a 'friendly country' without official permission, and many potential issues are avoided. Medea states that

'If a drone crashes or is shot down, the pilot back home can simply get up and take a coffee break'.<sup>63</sup>

Not only this, suppose, a pilot mistakenly conducted a drone strike which caused huge damage, superfluous injury to civilians and civilian objects who are not related to war. Who do you make liable for this unexpected attack? What if the pilot were to say that he operated the drone in the correct way but due to a technical error it caused unexpected and so, the manufacturer of this drone is liable for this incident. On the other hand, the manufacturer says that it has made this drone perfectly with pinpoint accuracy to attack but that the operator mishandled it. This dilemma is not so difficult to unknot as the operator assumed all liabilities with this machine as having bought it from the producer. A second question concerns the status of the drone operator - whether he is a combatant or civilian directly participating in hostilities (DPH)? Of what significance is it that he is not on the battlefield, doesn't have a fixed distinctive emblem or he doesn't carry arms openly? As we see, the US drone strikes in Pakistan, Afghanistan or Yemen have been operated from dozens of military bases across the United States<sup>64</sup> and by the CIA which is not a military agency. The US drone soldiers monitor the live feeds from drones flying over Afghanistan on what they call Death TV.<sup>65</sup> If the answer to the second question is settled: that they are combatants, the third question arises as what would be the obligations of these combatants under IHL? A final question arises - is there any Humanitarian Jurisprudence to resolve these dilemmas as posted in these questions? From the information available they appear to be civilians, but they could acquire combatant status if they are subject to a command structure that is, in reality, conducting a war. The existence of such a command structure is a factual question that there is insufficient public information available to assess.

## **7. UNKNOTTING THE LEGAL DILEMMAS OF DRONE ATTACK**

The dilemma of drone attack has appeared in the questions is to be unknotted from the perspective of legal realism of IHL. First of all, we should revisit the concept of 'combatant'

under IHL and test this with the status of the drone operator. Then it is necessary to discuss what their responsibilities under IHL should be, and what the sanctions might be if they breach the norms of IHL. From very early times to today, the members of armed forces are allowed to take part in the war. There has been no specific rule or regulation to classify who will be combatants in war. In 1907, the Hague Regulations respecting the laws and customs of war specifically pointed out some criteria in a classification of who is to be treated as a combatant.<sup>66</sup> Article 1 States that the laws, rights, and duties of war apply not only to armies but also to militia and volunteer corps fulfilling the following conditions:

- To be commanded by a person responsible for his subordinates;
- To have a fixed distinctive emblem recognizable at a distance;
- 3. To carry arms openly; and
- To conduct their operations in accordance with the laws and customs of war

In countries where militia or volunteer corps constitute the army or form part of it, they are included under the description "army." The 1949 third GC went further by clarifying that the militia and volunteer corps must belong to one of the parties involved in the conflict.<sup>67</sup> Article 43 of AP I simplified the legal position by defining armed forces.<sup>68</sup> All those belonging to such armed forces will be treated as combatants according to article 44 of AP I<sup>69</sup> i.e. to combat and hence to give the responsibility to follow the norms of IHL.

Now, we need to examine the position of the drone operator. The development of the concept of combatant shows that the combatant is not only the force who combats in the field but also includes other forces. Concerning the drone operators, it seems primary, that they are not on the battlefield and operate drones as civilians - as we see in the case of the CIA. But as stated earlier in chapter four a drone strike in another country means there is an armed conflict. Hence, we may conclude that the drone operator is to be treated as a combatant according to article 43 and to be targetable under IHL. As a combatant, the drone operator's first obligation is to respect the basic principles of IHL i.e. proportionality, distinguishing between civilians and combatant, military objectives etc. Under the IHL principle of distinction, an attacking party must use every available means to avoid harm to non-combatants, must target only legitimate enemy personnel consistent with a lawful military objective.<sup>70</sup> The Supreme Court of Israel in *Public Committee Against Torture in Israel v. The Government of Israel*, the case says that:

“The discretionary use of force is not unlimited. It is within the judiciary's purview to address questions as to whether a program of targeted killings satisfies international legal constraints on the use of force.”<sup>71</sup>

## **8. CONCLUDING REMARK**

IHL does not speak about the legality of warfare but rather indicates the way in which it is to be conducted to lessen unnecessary and superfluous injury. Drone attack being the newest form of warfare raises the question of the legality of a strike by drone. Combat drones do not raise the legal question by themselves but the questions about targets. While the system of drone attacks has been taken as a solution respecting the principle of distinction

under IHL, the status of the operators and the targeted persons creates another problem of distinction. So it can be a logical conclusion that it is not the drone that raises the question of legality. It is the way in which drone warfare is conducted and hence IHL is capable of regulating drone warfare.

IHL does not cover internal tensions or disturbances. It applies only to armed conflict. The author in this paper has tried to show that drone attack, like asymmetric warfare between state and non-state actor, is a NIAC and hence, to be regulated under IHL. There are various debates as to the obligation of the parties on the following questions. The questions are; who are the targeted people? Why they are targeted? And how they are targeted? These questions are intertwined with central principles of humanity, distinction, necessity, proportionality and precaution which are the core principles of IHL<sup>72</sup> and this drone attack could be justifiable under IHL if the attacks target individuals directly participating in hostilities and casualties suffered are proportional. However, this paper has shown that drone war and casualties to civilians are inconsistent with the principles of IHL. As to the legality of drone strike, it can be concluded that though technology has been invented for the blessing of human beings, there is no reason to encourage technology which was invented to lessen human suffering at the same time as technology is adding to the suffering of humanity. Drone attack as a form of warfare should not be encouraged. But there are no special conventions and views of the international community regarding drone attack or for new technology used in warfare. The author suggests the followings:

- The International community must adopt new international conventions with the demand of new era of technology on armed drones within the purview of IHL and ensure that the key States participate in this process.
- The international community should come to an international consensus on the identified core legal concepts and questions and should condemn targeting policies that are developed or followed on the basis of suspicion.

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### **Endnotes:**

<sup>1</sup>P. Alston, Study on Targeted Killings, UN Doc. A/HRC/14/24/Add.6 (2010), 3.

<sup>2</sup>J. Mayer ‘The predator war: what are the risks of the CIA’s covert drone program?’ (2009). Available at: <http://faisalkutty.com/editors-picks/the-predator-war-what-are-the-risks-of-the-c-i-a-s-covert-drone-program/> (accessed 13 December 2015); RW Murphy & AJ Radsan ‘Measure twice, shoot once: higher care for CIA targeting’ (2010) available at: <http://illinoislawreview.org/wp-content/ilr-content/articles/2011/4/Murphy.pdf> (accessed 13 December 2015).

<sup>3</sup>O’Connell, ME ‘Unlawful killing with combat drones a case study of Pakistan, 2004-2009’ Notre Dame Law School Legal Studies (2010) 2 available at <http://ssrn.com/abstract=1501144>

<sup>4</sup>Former head of the Israeli Defense Forces Legal Department

<sup>5</sup>Yotam Feldman and Uri Blau, ‘Consent and Advice’ Hareetz, January 29,2009. Quoted by Medea (2012), 125p.

<sup>6</sup>CorOudes and WimJiwinenburg “Does Unmanned Make Unacceptable? Exploring the Debate on using Drones and Robots in Warfare” available at [www.paxvoorvrede.nl/media/files/does-u-make-ulowspreads\\_0.pdf](http://www.paxvoorvrede.nl/media/files/does-u-make-ulowspreads_0.pdf)

<sup>7</sup> Medea Benjamin (2012), *Drone warfare: Killing by Remote Control*, by 'Daily Star Books'.

<sup>8</sup> Rod power, 'Military Word/Phrase Origins,' United States Military Information.

<sup>9</sup> MQ9 prototype multi-mission, the 'hunter killer' which can stay in air for 30 hours, the 'eagle'; the 'vulture'; MQ- 88 Fire Scout, RQ-16 T-Hawk MAV etc.

<sup>10</sup> Shani Dann 'Drone Strikes and IHL' November 6, 2014 available at: <http://humanityinwarblog.com/2014/11/06/drone-strikes-and-ihl/>

<sup>11</sup> Peter W. Singer, *Wired for war: The Robotics Revolution and the Conflict in the 21<sup>st</sup> Century*(2009)

<sup>12</sup>Blank, LR & BR Farley 'Characterizing US operations in Pakistan: is the United States engaged in an armed conflict?' (2011)34 *Fordham International Law Journal*, 158.

<sup>13</sup> International Committee of the Red Cross Opinion Paper March 2008 at <http://www.icrc.org/eng/assets/files/other/opinion-paper-armed-conflict.pdf> (accessed on 3 January 2017), p 5.

<sup>14</sup> Common Article 2 of Geneva Conventions I-IV of 1949.

<sup>15</sup> J. Pejic, 'The protective scope of Common Article 3: more than meets the eye', (2011) 93 *International Review of the Red Cross* 1 p. 3.

<sup>16</sup> International Committee of the Red Cross Opinion Paper March 2008 at <http://www.icrc.org/eng/assets/files/other/opinion-paper-armed-conflict.pdf> (accessed on 3 January 2017), p 5.

<sup>17</sup>Discussion paper 2: Drone attacks, international law, and the recording of civilian casualties of armed conflict. Available at [www.oxfordresearchgroup.org](http://www.oxfordresearchgroup.org). (Last visited on 28 December 2017)

<sup>18</sup>Prosecutor v. DuskoTadic (aka Dule), No.IT-94-1-AR72, para 102 (2October 1995) (Decision on the Defense Motion for Interlocutory Appeal on Jurisdiction).

<sup>19</sup> Article 1 of AP II of 1977

<sup>20</sup> L. Moir, *The Law of Internal Armed Conflict*, op.cit. p.36

<sup>21</sup> See Oxford paper (n 18)

<sup>22</sup> "... occurring in the territory of one of the High Contracting Parties".

<sup>23</sup> J Mayer 'The predator war: what are the risks of the CIA's covert drone program?' (2009) available at <http://faisalkutty.com/editors-picks/the-predator-war-what-are-the-risks-of-the-c-i-a-s-covert-drone-program/> (accessed 13 December 2015); RW Murphy & AJ Radsan 'Measure twice, shoot once: higher care for CIA targeting' (2010) available at <http://illinoislawreview.org/wp-content/ilr-content/articles/2011/4/Murphy.pdf> (accessed 13 December 2015).

<sup>24</sup> O'Connell, Mary Ellen 'The International Law of Drones' available at <https://www.asil.org/insights/volume/14/issue/37/international-law-drones> (accessed on 29 Dec. 2017).

<sup>25</sup> N. Melzer, 'Targeted Killings in Operational Law Perspective', in T. D. Gill & D. Fleck (eds), *The Handbook of the International Law of Military Operations* (2010), 277-278.

<sup>26</sup>Cor Oudes and Wim Jiwinenburg "Does Unmanned Make Unacceptable? Exploring the Debate on using Drones and Robots in Warfare" available at [www.paxvoorvrede.nl/media/files/does-u-make-ulowspreads\\_0.pdf](http://www.paxvoorvrede.nl/media/files/does-u-make-ulowspreads_0.pdf)

<sup>27</sup> Sebastian, Wuschka, "The Use of Combat Drones in Current Conflicts– A Legal Issue or a Political Problem"? Available at [www.gojil.eu/.../33\\_article\\_wusc...](http://www.gojil.eu/.../33_article_wusc...)( Last visited on 25 Dec. 2015)

<sup>28</sup> The report of the Centre for civilians in conflict, on "The civilian impact of drones: Unexamined costs, unanswered question" at Columbia law School, p. 8

<sup>29</sup>According to Jane Mayer of the New Yorker: "The U.S. government runs two drone programs. The military's version, which is publicly acknowledged, operates in the recognized war zones of Afghanistan and Iraq.....The C.I.A.'s program is aimed at terror suspects around the world, including in countries where U.S. troops are not based. ..."

<sup>30</sup> P. Alston (2010), (n 2)

<sup>31</sup>The report of the Centre for civilians in conflict, on "The civilian impact of drones: Unexamined costs, unanswered question" at Columbia law School, p. 8.

<sup>32</sup> The first reported CIA drone killing occurred on 3 November 2002, when a Predator drone fired a missile at a car in Yemen, killing QaedSenyan al-Harithi, an al-Qaeda leader allegedly responsible for

the USS Cole bombing. See Jane's, Yemen Drone Strike: Just the Start? 8 Nov. 2002, available at [http://www.janes.com/aerospace/military/news/jdw/jdw021108\\_1\\_n.shtml](http://www.janes.com/aerospace/military/news/jdw/jdw021108_1_n.shtml).

<sup>33</sup> Discussion paper 2: Drone attacks, international law, and the recording of civilian casualties of armed conflict. Available at [www.oxfordresearchgroup.org](http://www.oxfordresearchgroup.org). (Last visited on 28 December 2017)

<sup>34</sup> Shani Dann 'Drone Strikes and IHL' NOVEMBER 6, 2014 available at: <http://humanityinwarblog.com/2014/11/06/drone-strikes-and-ihl/>

<sup>35</sup> See HRW (2009) Precisely wrong, Gaza Civilians Killed by Israeli Drone-Launched Missiles. And: Singer, P. (2009) Wired for War. New York, 2005 pp. 394.

<sup>36</sup> CorOudes and WimJiwinenburg (n 27 Above)

<sup>37</sup> See Graham, A. (2010) Drone operators rise on winds of change in Air Force. <http://uavc.mckee.house.gov/2010/03/drone-operators-rise-on-winds-of-change-in-air-force.html> (04-01-2011)

<sup>38</sup> O'Connell, ME (n 4)

<sup>39</sup> B.Medea, (2012) (n 7) p. 27

<sup>40</sup> "CIA Chief: 'Disrupted' Al Qaeda Is 'On the Run'," Fox News, March 18, 2010. Then-CIA director Leon Panetta arguing that the drones program is "seriously disrupting al-Qaida."; John Brennan, Assistant to the President for Homeland Security and Counterterrorism, "The Ethics and Efficacy of the President's Counterterrorism Strategy" (speech, Wilson Center, Washington, DC, April 30, 2012), <http://www.wilsoncenter.org/event/the-ethics-and-ethics-us-counterterrorism-strategy>.

<sup>41</sup> Bobby Ghosh and Mark Thompson, "The CIA's Silent War in Pakistan," Time, June 1, 2009, describing George W. Bush's order, during the final months of his presidency, that the CIA greatly increase drone strikes in Pakistan; Peter Bergen and Katherine Tiedemann, "Washington's Phantom War," Foreign Affairs 90.12 (2011).

<sup>42</sup> See Greg Miller, "At CIA, a convert to Islam leads the terrorism hunt," The Washington Post , March 24, 2012, noting that under CIA director Hayden, "the agency abandoned the practice of notifying the Pakistanis before launching strikes, and the trajectory began to change: from three strikes in 2006 to 35 in 2008."

<sup>43</sup> See, e.g., David Cortright, "Winning" in Afghanistan, How to Splinter the Taliban and Support Afghans, SOJOURNERS MAGAZINE, Mar. 2009, Available at: <http://www.sojo.net/index.cfm?action=magazine.article&issue=soj0903&article=winning-in-afghanistan>

<sup>44</sup> O'Connell, Mary Ellen (n 4)

<sup>45</sup> An organization which mission is to improve protection for civilians caught in conflicts around the world and is headquartered at Washington DC. Available at <http://civiliansinconflict.org/>

<sup>46</sup> Article 2(4) of UN Charter.

<sup>47</sup> Gasser, Hans-Peter (1993), International Humanitarian Law: An Introduction, Henry Dunant Institute, HAUPT

<sup>48</sup> Article 51 of UN Charter

<sup>49</sup> Article 41,42,Chapter VII of UN Charter

<sup>50</sup> ME O'Connell 'To kill or capture suspects in the global war on terror' (2003) 35 Case Western Reserve Journal of International Law 328; ME O'Connell 'Lawful use of combat drones: Hearing before the Sub-Committee on National Security and Foreign Affairs, 111th Congress' (2010)4; A Dworkin 'Military necessity and due process: The place of human rights in the war on terror' in D Wippman & M Evangelista (eds) New wars, new laws? Applying the laws of war in the 21st century conflicts (2005)53.

<sup>51</sup> Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 I.C.J. 136, 215 (July 9) (Separate Opinion of Judge Higgins)

<sup>52</sup> Nicaragua, at 110-11,127. States are also free, of course, to establish defenses on their own territory. See the Wall case.

<sup>53</sup> O'Connell, Mary Ellen (n. 52)

<sup>54</sup> *ibid*

<sup>55</sup> *ibid*

<sup>56</sup> W O'Hara 'Drone attacks and just war theory' (2010) 2 Small Wars Journal 4.

<sup>57</sup> The USA demands they have the consent of the territorial state like Pakistan to carry out armed drone in Pakistan as we see a US diplomatic cable released by WikiLeaks, The PK Prime Minister Yousuf Gilani saying, 'I don't care if they do it as long as they get the right people. We'll protest in the National Assembly and then ignore it.' See ,Delcan Walesh, WikiLeaks cable: US and Pakistan Play Down Impact of "Mischiev" The Guardian December 1, 2010. As Qouted by Medea Benjamin in Drone Warfare p.140.

<sup>58</sup>See Yves Sandoz, ET AL, COMMENTARY ON THE ADDITIONAL PROTOCOLS OF 8 JUNE 1977 TO THE GENEVA CONVENTIONS OF 12 AUGUST 1949, sec. 1389 (1987).

<sup>59</sup> O'Connell, Mary Ellen (n 52)

<sup>60</sup> Doctor of Laws, Legal Advisor, ICRC

<sup>61</sup> See <https://www.icrc.org/eng/resources/documents/misc/57jm93.htm#3>

<sup>62</sup>Jeffrey S. Thurnher is a Judge Advocate in the U.S. Army and a faculty member in the International Law Department at the U.S. Naval War College. Major Thurnher was the winner of the 2009 ASIL Lieber Society Military Prize.

<sup>63</sup> B. Medea (2012) (n 7) p. 18

<sup>64</sup> As above p. 84

<sup>65</sup> Thom Shanker& Matt Richet, 'Military Struggle to harness a Flood of Data' The new York times, January 17, 2011

<sup>66</sup>Annex To The Convention: Regulations Respecting The Laws And Customs Of War On Land - Section I: On Belligerents - Chapter I : The Qualifications Of Belligerents – Regulations.

<sup>67</sup> Third GC, Article 4A (2)

<sup>68</sup> See for details Article 43 of AP I 1977

<sup>69</sup> Article 44 (1) of the API 1977

<sup>70</sup>Kellman, Barry, in 'Exporting Armed Drones – The United States Sets Policy' available at: <https://www.asil.org/insights/volume/19/issue/17/exporting-armed-drones-%E2%80%93-united-states-sets-policy>

<sup>71</sup>Public Committee against Torture in Israel v. Government of Israel, HCJ 769/02, 46 I.L.M. 373 (2006). See generally Mayur Patel, *Israel's Targeted Killings of Hamas Leaders*, ASIL Insights (2004), <http://www.asil.org/insights/volume/8/issue/9/israels-targeted-killings-hamas-leaders>; Mary Ellen O'Connell, *The International Law of Drones*, ASIL Insights (2010), <http://www.asil.org/insights/volume/14/issue/37/international-law-drones>; (Last visited on 30 December 2015)

<sup>72</sup> W O'Hara 'Drone attacks and just war theory' (2010)2 Small Wars Journal 4.

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