

**ARE U.S DRONE TARGETED KILLINGS WITHIN THE CONFINES OF THE  
LAW?**

**A DISSERTATION SUBMITTED IN PARTIAL FULFILMENT OF THE  
REQUIREMENTS OF THE LLM (HUMAN RIGHTS AND  
DEMOCRITISATION IN AFRICA)**

**BY**

**THOMPSON CHENGETA  
STUDENT NUMBER: 11368579**

**PREPARED UNDER THE SUPERVISION OF**

**MR GUS WASCHFORT**

**AT THE INTERNATIONAL CRIMINAL COURT, THE HAGUE,  
NETHERLANDS**

**31 October 2011**

**PLAGIARISM DECLARATION**

---

I, CHENGETA THOMPSON do hereby declare:

1. That I understand what plagiarism entails and am aware of the University's policy in this regard.
2. That this dissertation is my own original work. Where someone's work has been used (whether from a printed source, the internet or any other source) due acknowledgment has been given and reference made according to the requirements of the Faculty of Law.
3. That I did not make use of another student's work and submit it as my own.
4. That I did not allow anyone to copy my work with the aim of presenting it as his or her own work.

**SIGNATURE :**



**DATE : 30/10/2011**

**SUPERVISOR: GUS WASCHFERT**

**SIGNATURE: .....**

**DATE:.....**

## **DEDICATION**

---

For the love, security and financial support; thank you Mr and Mrs Hananda for being the parent who believed I could do anything I put my mind to. To Kuda Ntando whose proud face I really wished to see every day. To Mas, without your encouragement I would have fallen. To my father, I hope I will surpass your great works you achieved while you were alive. This one is for you my mother!

## **ACKNOWLEDGMENTS**

---

Praises to the Almighty God who led me through this busy yet exciting year. I can start nowhere else but with acknowledging the Centre for Human Rights for selecting me to be part of the 2011 class. I appreciate the DAAD for sponsoring me on this programme. To a supervisor whose tips were more than guidance to me in writing this thesis; thank you Mr Gus Waschefort. As for you Mas, I appreciate and acknowledge your encouragement especially when I felt like falling. Your constant care and technical assistance is truly cherished. My warm appreciation also goes to Mr Norman Taku, when you believed in me I believed in myself. I also appreciate the help given by Professor Frans Viljoen especially in the initial stages of formulating this thesis. Your contribution is highly valued. I also give gratitude to all my cadres in the 2011 class whose inspiration is beyond measure. Thank you very much comrades!

## ACRONYMS/ABBREVIATIONS

---

ACHPR	African Charter on Human and Peoples' Rights
AP	Additional Protocol
CCF	Continuous Combat Function
CIA	U.S Central Intelligence Agency
GC	Geneva Convention
IAC	International armed conflict
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICCPR	International Covenant on Civil and Political Rights
ICJ	International Court of Justice
ICTR	International Criminal Tribunal of Rwanda
ICTY	International Criminal Tribunal of the Former Yugoslavia
IHL	International Humanitarian Law
IHRL	International Human Rights Law
NIAC	Non-International armed conflict
U.S	United States of America
UDHR	Universal Declaration on Human Rights
UN	United Nations
VCLT	Vienna Convention on the Law of Treaties

## TABLE OF CONTENTS

---

---

PLAGIARISM DECLARATION.....	II
DEDICATION.....	III
ACKNOWLEDGMENTS.....	IV
ACRONYMS.....	V
<b>Chapter One: Introduction</b>	
1.1 Background.....	1
1.2 Statement of the problem.....	3
1.3 Research questions and objectives.....	4
1.4 Significance of the research.....	5
1.5 Limitations.....	5
1.6 Definition of terms.....	6
1.6.1 Drones.....	6
1.6.2 Targeted killing.....	7
1.7 Methodology.....	7
1.8 Literature review.....	7
1.9 Chapter outline.....	9
<b>Chapter Two: Determining the applicable law</b>	
2.1 Introduction.....	10
2.2 Qualification of the 'global war on terror'.....	11
2.2.1 Threshold of violence.....	11
2.3 Classification of the conflict.....	14
2.3.1 Parties to the conflict.....	16
<i>U.S as a belligerent.....</i>	16
<i>Terrorists as a belligerent.....</i>	17
2.3.2 Geographical delineations of the conflict.....	19
2.4 Simultaneous application of IHRL norms and IHL principles.....	24
2.5 Conclusions.....	25
<b>Chapter Three: Drone targeting and IHRL norms</b>	
3.1 Introduction.....	27
3.2 The right to life.....	28
3.3 Due process.....	29
3.4 The parameters of taking life to protect life.....	30
3.5 U.S drone targeted killings.....	31
3.6 Examining the US targeting criteria.....	33
3.7 The necessity of killing.....	36
3.8 Disproportionate killings.....	37
3.9 Accountability.....	39

3.10 Conclusion.....	41
----------------------	----

**Chapter Four: Legality of drone strikes under IHL principles**

4.1 Introduction.....	43
4.1.1 IAC/NIAC customary law principles applicable to drones.....	43
4.2 Principle of humanity .....	45
4.3 Principle of distinction.....	47
4.3.1 Targeting on the basis of direct participation in hostilities.....	49
4.3.2 Targeting on the basis of continuous combatant function.....	52
4.3.3 Targeting on the basis of alleged membership.....	53
4.4 Principle of proportionality.....	54
4.4.1 Precision of drones.....	56
4.6 Principle of military necessity.....	61
4.7 Principle of precaution.....	62
4.8 Criminal responsibility of crimes emanating from drone operations.....	63
5. Conclusions.....	64
6. Recommendations.....	65
7. Bibliography.....	67
8. Annexure .....	81

# Chapter One: Introduction

---

Equally discomfoting is the PlayStation mentality that surrounds drone killings. Young military personnel raised on a diet of video games now kill real people remotely using joysticks. Far removed from the human consequences of their actions, how will this generation of fighters value the right to life? How will commanders and policy makers keep themselves immune from the deceptively antiseptic nature of drone killings? Will killing be a more attractive option than capture? Will the standards of intelligence gathering justify a killing slip? Will the number of acceptable collateral civilian deaths increase?<sup>1</sup>

## 1.1 Background

In recent years terrorists have not only emerged on the international plane as powerful non-State actors, but as a menace to world peace and security.<sup>2</sup> Terrorism has been condemned by States as one of the most violent international crimes which target blameless civilians.<sup>3</sup> The fight against terrorism features amongst the priorities of many states. However, following the horrendous 11 September attacks in 2001, it is the U.S which has taken the most prominent role in articulating and implementing a global security policy to fight terrorism.<sup>4</sup> Prior to the 11 September attacks, terrorist were regarded as criminals to be dealt with by law enforcement mechanisms.<sup>5</sup>

After the September 11 attacks, the U.S declared the famous 'global war on terror' which saw a shift in counter terrorist measures.<sup>6</sup> The U.S began hunting terrorist using unmanned aerial vehicles popularly known as drones.<sup>7</sup> The drones are equipped with hellfire missiles and can fly in the sky for several hours in surveillance, waiting to 'smoke' anyone

---

<sup>1</sup> P Alston & H Shamsi 'A killer above the law' available at <http://www.guardian.co.uk/profile/philip-alston> (accessed 17 August 2011.)

<sup>2</sup> L May *Aggression and crimes against peace* (2008)297.

<sup>3</sup> As above.

<sup>4</sup> N Lubell *Extraterritorial use of force against non-state actors* (2010)169.

<sup>5</sup> As above.

<sup>6</sup> Alston(n 1 above).

<sup>7</sup> As above.



identified as a suspect terrorist.<sup>8</sup> Apparently, this is not the first time the U.S has used drones since they were actively in service in the Vietnam and Gulf wars.<sup>9</sup> However, back then drones were used for the sole purpose of scouting and surveillance.<sup>10</sup> After the September 11 attacks, drones were transformed from being mere surveillance aircraft to weapons of targeted killings.<sup>11</sup> The U.S has used drones for targeted killings in countries such as Afghanistan<sup>12</sup>, Pakistan<sup>13</sup>, Iraq<sup>14</sup>, Ethiopia and Somalia.<sup>15</sup>

There are various reasons why the U.S has resorted to drones in targeting and killing terrorists. In addition to being cheap and easily manufactured, they are efficient and do not cost lives of American soldiers who would otherwise have to carry these missions on the ground. O'Connell has summarised the perceived advantages of drones as follows;

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>16</sup>

Expectedly, other countries have also started purchasing drones.<sup>17</sup> Notwithstanding these 'lucrative' advantages from the U.S standpoint, targeted killings by drones have stirred heated debates amongst scholars. Specialists, experts and politicians have poured in great profusion questions on the lawfulness of drone targeted killings. So parotic has become the question; are drone targeted killings by the U.S within the confines of the law? Unfortunately, in many instances this question has been tainted by political or emotional overtones.

For different reasons, scholars have reached different conclusions on the legality of drone targeted killings. On one hand, it is argued that drones are unlawful whilst on the other, it is argued that drones actually minimise unintended casualties or damage to property. The present

---

<sup>8</sup> ME O'Connell '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> (accessed 12 August 2011).

<sup>9</sup> Alston (n 1 above).

<sup>10</sup> As above.

<sup>11</sup> Early October 2001. This saw the killing of notable Al-Qaida leaders such as Mohammed Atef in eastern Afghan city of Jalalabad.

<sup>12</sup> Against all Talibans, Al Qaeda and their suspected allies. See O'Connell(n 8 above).

<sup>13</sup> Starting from 2004 against suspected Talibans. See Alston (n 1 above).

<sup>14</sup> In its invasion of Iraq in 2003. See O'Connell(n 8 above).

<sup>15</sup> In 2006 helping to quell the disturbances in the country. Ethiopia has also started purchasing drones.

<sup>16</sup> O'Connell (n 8 above)6.

<sup>17</sup> China, Pakistan, Georgia, Brazil, Hamas, Iran, Israel only to mention a few. See O'Connell (n 8 above) 4.

study reviews U.S's policy of targeted killings using drones, the nature of drone operations, the criteria of identifying targets and the environment in which drones are operated. The research concludes that in as much as the fight against terrorism is legitimate in principle, U.S's policy of targeted killings using drones is largely inconsistent with general principles of international law, human rights norms and international humanitarian law principles.

## 1.2 Statement of the problem

There has been a dramatic increase in the use of drones against terrorist suspects by the U.S in various parts of the world, flashing out suspected terrorists and killing them.<sup>18</sup> Concerns have been raised about the legality of such targeted killings.<sup>19</sup> There have been repeated calls on the U.S by the international community to justify this approach.<sup>20</sup> The matter is worsened by the fact that there is no agreement as to the applicable law under which the targeted killings by drones should be assessed.<sup>21</sup>

The U.S argues that it is the law of armed conflict since it considers itself to be at war with terrorists.<sup>22</sup> On the other hand, some scholars argue that the applicable regime is international human rights law as there is no armed conflict between terrorists and the U.S.<sup>23</sup> Where there is uncertainty as to which law is applicable; civilians who are caught in the maelstrom of conflict lose protection. What is fatal is that despite the questions raised on its drone targeted killings, the U.S continues to rely on drones probably capitalising on the current inconclusive debates about their legality. The graph bellow shows U.S's increased reliance on drones over the past few years and how it has dramatically increased in recent years.

---

<sup>18</sup> W O'Hara 'Drone attacks and just war theory' (2010)2 *Small Wars Journal* 4; See also Annexure 1.

<sup>19</sup> O'Connell (n 8 above)3-5; K Watkin 'Controlling the use of force: A role of human rights norms in contemporary armed conflict' (2004)98 *The American Journal of International Law* 2-8; 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 September 2011)

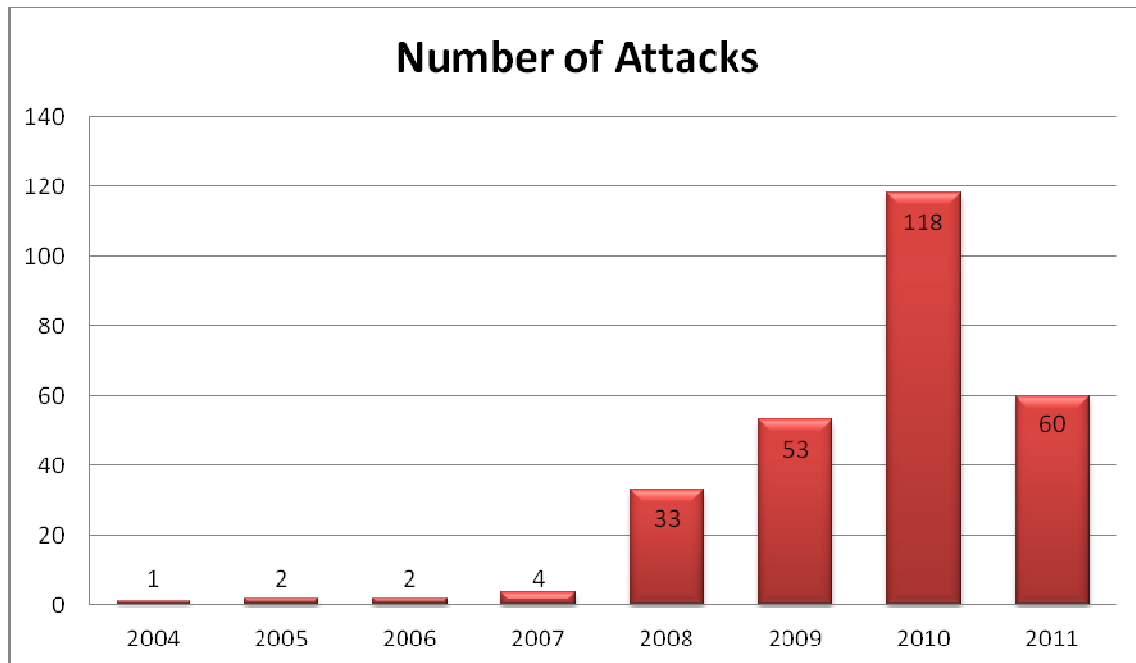
<sup>20</sup> AN Khan 'Legality of targeted killings by drone attacks in Pakistan' (2011)6 available at <http://www.san-pips.com/download.php?f=76.pdf> (accessed 13 October 2011).

<sup>21</sup> S Estreicher 'Privileging Asymmetric warfare?: defender duties under international humanitarian law'(2010)2 *Chicago Journal of International Law* 2.

<sup>22</sup> H Koh 'Keynote address at the American Society for International Law Annual Meeting (2010): The Obama Administration and International Law' (March 25,2010), available at <http://www.state.gov/s/l/releases/remarks/139119.htm> (accessed 18 September 2011). H Koh is Legal Advisor to the U.S Department of State.

<sup>23</sup> Estreicher (n 21 above)2.

## U.S's continued (increasing) reliance on drones in fight against terrorism<sup>24</sup>



Therefore, the primary objective of this research is to contribute to the existing literature in evaluating the legality of U.S's drone targeted killings. This is important not only to those who are targeted but to the international community as a whole to which the adherence to human rights is also owed.<sup>25</sup>

### 1.3 Research questions and objectives

The author intends to ascertain the legality of drones by addressing the following research questions;

- i) What is the nature of the conflict in which drones are employed?
- ii) Under which law should the legality of U.S targeted drone killings be determined?
- iii) Are U.S targeted drone killings consistent with general principles of international law?
- iv) Are U.S drone targeted killings consistent with international human rights norms?

<sup>24</sup> Statistics used for this graph were taken from New America Foundation website. Available at <http://counterterrorism.newamerica.net/drones> (accessed 13 August 2011).

<sup>25</sup> *Barcelona Traction Light and Power Company Limited case (Belgium v Spain)* ICJ (10 May 1970) (1970) ICJ Reports 33-34.

- v) Are U.S targeted drone killings consistent with principles of international humanitarian law?
- vi) Who bears criminal responsibility where a drone operation results in the violation of IHL or IHRL?

The general objectives of the research are;

- To ascertain the legality of U.S drone targeted killings by examining both the law and facts.
- To identify the reasons why scholars have reached different conclusions in their assessment of the legality of drone targeted killings.
- To identify the shortcomings of the regulatory framework on the use of force in view of contemporary armed conflicts and weaponry.
- To explore and restate the complementary nature of international human rights norms and international humanitarian law.
- To make recommendations for safeguarding the rights of targeted individuals and civilians caught up in the maelstrom of drone warfare.

#### **1.4 Significance of the research**

The significance of the research lies in its contribution to the assessment of the legality of drone targeted killings. The research gives an analysis of possible applicable laws and concludes that the issue of legality of drone targeted killings should not be determined by one particular regime of law to the exclusion of others. Further, there is no much literature on whether drones as weapons are inherently unlawful. Most of the questions focus on the nature of the armed conflict in which drones are employed rather than the drone technology itself and its mode of operation. The research delves into this issue in detail.

#### **1.5 Limitations**

This study is limited to information which has been made public. The U.S has not been forthcoming with information concerning its drone operations apart from some bald assertions that they are conducted consistent with international law. Information relating to details of drone strikes remains 'classified' and is not divulged to the public.

## 1.6 Definition of terms

### 1.6.1 Drones

A drone is 'an unmanned aerial vehicle that does not carry a human operator [but] flies autonomously or piloted remotely and can carry a lethal or non-lethal payload.'<sup>26</sup> Apparently, in appearance drones look similar to conventional planes as the photo below shows.<sup>27</sup> However, the difference is that they are unmanned as the pilot use a remote to control it whilst seated thousand of miles away.<sup>28</sup> There are various types of drones which are used by the U.S. and there are sometimes called Unmanned Aerial Vehicle (UAV) or Unmanned Air System (UAS).<sup>29</sup> In this paper, however, there are all referred to as drones. Nevertheless, despite their types, most of the drones are armed with hell-fire missiles and fly for long hours in the air waiting to detect their 'prey' and strike.<sup>30</sup> At the present time there are numerous merchants of drones both inside and outside the U.S who continue to produce them in numbers.<sup>31</sup>

#### Photo of an MQ-1 Predator Drone



---

<sup>26</sup> U.S Department of Defence *Dictionary of military and associated terms* (2001)579.

<sup>27</sup> Khan (n 20 above).

<sup>28</sup> Many US drones are operated from places such as Creech AFB, Las Vegas; Beale AFB, NM Maryville; David Monthan AFB, Arizona; Ellington Field, TX, Texas Mexico etc. From these places drones are flown to countries like Pakistan, Yemen, and Afghanistan. See 'Drone: resisting sanitised remote control death- a publication of Creech 14' available at <http://vcnv.org/drone-resisting-sanitized-remote-control-death> (accessed 11 August 2011) (Creech).

<sup>29</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. See Creech (n 28 above).

<sup>30</sup> Creech (n 28 above).

<sup>31</sup> For example Aero Vironment, Monrovia, CA; Aurora Flight Sciences, Manassas, VA; AAI Corp. Hint Valley, MD; General Atomics Aeronautical Systems etc. See Creech (n 28 above).

### 1.6.2 Targeted killing

The term 'targeted killing' has not been legally defined in any human rights instrument.<sup>32</sup> It is a term which came into use in 2000 when 'Israel made public a policy of 'targeted killings' of alleged terrorists in the Occupied Palestinian Territories'.<sup>33</sup> The term later began to be used to describe U.S's drone strikes in countries like Afghanistan and Pakistan.<sup>34</sup> However, targeted killing can be technically defined as 'the intentional and deliberate use of lethal force, with a degree of pre-meditation, against an individual or individuals specifically identified in advance by the perpetrator' for the purposes of depriving life.<sup>35</sup>

Thus, the term denotes premeditation and identification of a 'target' for the sole purpose of killing.<sup>36</sup> Some scholars have equated targeted killings to assassinations.<sup>37</sup> Targeted killings can occur both in times of armed conflict and peace.<sup>38</sup> This makes targeted killings subject to international humanitarian law and international human rights law which share common core humanitarian principles applicable in peace and war times.<sup>39</sup>

## 1.7 Methodology

The research is primarily based on literature review obtained mainly from desk research. The researcher also had in depth interviews with experts in international humanitarian law based at the International Criminal Court.

## 1.8 Literature review

Scholars and experts have sharply differed each other on the legality of drone targeted killings. This is primarily because they reach different conclusions on the qualification and classification

---

<sup>32</sup> OB Naftali & K Michaeli 'We must not make a scarecrow of the law: legal analysis of the Israeli policy of targeted Killings'(2003) 36 *Cornell International Law Journal* 234.

<sup>33</sup> UN Special Rapportuer on extrajudicial executions handbook (2010)71 available at <http://www.extrajudicialexecutions.org/LegalObservations> (accessed 13 August 2011).

<sup>34</sup> UN Special Rapportuer on extrajudicial executions handbook (n 33 above) 71.

<sup>35</sup> 'Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions' (2011) UN/A/66/330 para 66.

<sup>36</sup> Special Rapportuer 2011 Report (n 35 above).

<sup>37</sup> O' Connell (n 8 above)1-2; T Ruys 'License to kill? State sponsored assassination under international law' (2003) *Working Paper 76 K.U. Leuven Institute for International Law* 7.

<sup>38</sup> UN Special Rapportuer on extrajudicial executions handbook (n 33 above) 71.

<sup>39</sup> Watkin (n 18 above)9; A Orakhelashvili 'The interaction between human rights and humanitarian law: Fragmentation, conflict, parallelism, or convergence?'(2008)19 *European Journal of International Law* 161.

of the conflict in which drones are operated.<sup>40</sup> There is a string of scholars who argue that the global war on terror is an armed conflict.<sup>41</sup> The argument is primarily based on the fact that terrorist attacks and casualties thereof are of sufficient intensity to constitute an armed conflict.<sup>42</sup> Further, it has also been argued that since both the U.S and the terrorists consider themselves to be at war then there is an armed conflict.<sup>43</sup>

Scholars who classify the global war on terror as an armed conflict argue that international humanitarian law applies to the exclusion of human rights laws.<sup>44</sup> Consequently, they reach the conclusion that U.S drone targeted killings are legal and justifiable under doctrines of 'military necessity' and 'self defence'.<sup>45</sup> For such scholars, the determinative question on legality is who may be targeted. Since terrorists continue to menace the security of U.S citizens, drone targeted killings in a 'state of war' are found justified.<sup>46</sup> However, it is worth noting that there is a difference between who may be targeted and who has actually been targeted and in what circumstances.

On the other hand, for scholars who believe the global war on terror is not an armed conflict, drone targeted killings are inconsistent with the right to life.<sup>47</sup> The primary argument is that the global war on terror does not meet the defined parameters of armed conflict. Therefore, drone targeted killings in a non armed conflict scenario are subject to international human rights law.<sup>48</sup> To some degree, this camp of scholars turns a blind eye to the realities raised by contemporary conflicts. The global war on terror may not fit in the traditional

---

<sup>40</sup> Lubell (n 4 above)258; A Duffy *The war on terror and the framework of international law* (2005)230; M Lehto 'War on terror: armed conflict with Al-Qaida?'(2009)78 *Nordic Journal of International Law* 499-51.

<sup>41</sup> RJ Vogel 'Drone warfare and the law of armed conflict' (2010)39 *Denver Journal of International Law and Policy* 110.

<sup>42</sup> C Jenks 'Law from above: unmanned aerial systems, use of force, and the law of armed conflict' (2009)85 *North Dakota Law Review* 656.

<sup>43</sup> Vogel (n 41 above) 107.

<sup>44</sup> Vogel (n 41 above)107; Koh (n 22 above); Lehto (n 40 above); Thahzib-lie & S Goldman 'Determining the Threshold' in Lijnzaad et al (eds) *Making the Voice of Humanity Heard* (2004) 248.

<sup>45</sup> Vogel (n 41 above)115.

<sup>46</sup> R Chesney 'Who may be killed? Anwar Al-Awlaki as a case study in the international legal regulation of lethal force' (2011) *Yearbook of International Humanitarian Law* 26.

<sup>47</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, 111<sup>th</sup> 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 21<sup>st</sup> century conflicts* (2005)53.

<sup>48</sup> J Fitzpatrick 'Speaking law to power: The war against terrorism and human rights' (2003) 14 *European Journal on International Law* 241.

boundaries of armed conflict but international human rights alone may not adequately address all the complex issues which arise.

There are also scholars who are in the middle who argue that determination of the legality of drone targeted killings is impossible since there is limited information concerning their operation.<sup>49</sup> Therefore, they call for further clarification by demanding transparency and more information from the U.S on its drone targeted killings.<sup>50</sup> But the question is; when potential innocent people are dying on account of the U.S drone program, why should the U.S be afforded the benefit of doubt with respect to its non disclosure of information? Needless to say, from the available figures and information, it is possible to reach an informed judgment on the legality or otherwise of drone targeted killings.

Finally, there is not much literature on the question of how to impute criminal responsibility where either human rights norms or international humanitarian law principles are violated. The manner in which drones are operated raises difficult questions on the imputation of criminal responsibility. This issue will be further explored in Chapter Four.

### **1.9 Chapter outline**

Chapter One introduces this research by setting the stage through a background on the problem of terrorism and the recent response of the U.S with drone targeted killings. It also highlights key questions on the legality of drone targeted killings and how other scholars have responded to them. Further, it gives definitions on key terms; i.e. drones and what is meant by targeted killings. In Chapter Two the focus is on the determination of applicable law for ascertaining the legality of drone targeted killings. The prime argument in Chapter Two is that no one framework should apply to the exclusion of the other. Chapter Three focuses on whether drones are consistent with international human rights norms. Chapter Four is an analysis of whether the use of drones is consistent with the principles of international humanitarian law. This Chapter also contains the final conclusions and recommendations.

---

<sup>49</sup> Columbia Law School Human Rights Institute 'Targeting operations with drone technology: Humanitarian law implications' (2011) *A Background Note for the American Society of International Law Annual Meeting* 18 available at [http://www.law.columbia.edu/ipimages/Human\\_Rights\\_Institute/BackgroundNoteASILColumbia.pdf](http://www.law.columbia.edu/ipimages/Human_Rights_Institute/BackgroundNoteASILColumbia.pdf) (accessed 20 September 2011).

<sup>50</sup> As above.



## Chapter Two: Determining the applicable law

---

### 2.1 Introduction

Determination of the legality of U.S's drone targeted killings demands that one ascertain the applicable sources of law.<sup>51</sup> Is it international human rights law (IHRL) or international humanitarian law (IHL)? IHRL applies in times of peace<sup>52</sup> whilst IHL is the *lex specialis* of armed conflict?<sup>53</sup> Inevitably, the determination of legality of drone targeted killings requires one to assess whether the 'global war on terror' is an armed conflict. There is no agreement as to legal qualification of the global war on terror.<sup>54</sup> The U.S and a number of scholars maintain that there is an armed conflict between U.S and terrorist groups such as the Taliban and the Al Qaeda scattered all over the world.<sup>55</sup>

However, other scholars argue that the global war on terror is just rhetoric like any other rhetorical 'wars'.<sup>56</sup> The 'global war on terror', it is argued, does not meet the requirements of an armed conflict and therefore IHRL is the applicable law.<sup>57</sup> The reasons why the U.S is desirous for the 'global war on terror' being termed an 'armed conflict' are obvious. In an armed conflict, the U.S soldier is licensed to kill as long as he abides by rules of armed conflict. Where there is no armed conflict, drone targeted killings are unlawful except in very strict exceptional circumstances. The following paragraphs examine in detail the debate on the nature of the global war on terror. It concludes that U.S drone targeted killings occur in a situation which lays across the law enforcement and armed conflict paradigms. For that reason, the author suggests the simultaneous application of IHRL and IHL.

---

<sup>51</sup> O'Connell 'The choice of law against terrorism' (2010) *Journal of National Security Law and Policy* 348

<sup>52</sup> Lubell (n 4 above) 236; However, that IHRL continues to apply even in times of armed conflict. See D Stephens 'Human rights and armed conflict: the advisory opinion of the International Court of Justice in the Nuclear Weapons case' (2001) *Yale Human Rights & Development Law Journal* 6-7.

<sup>53</sup> Orakelashvili (n 39 above) 161.

<sup>54</sup> E Holland 'The qualification framework of international humanitarian law: too rigid to accommodate contemporary conflicts?' (2011) 34 *Suffolk Transnational Law Review* 345; C Greenwood 'International law and the 'war against terrorism' (2002) 78 *International Law Affairs* 301; W Reisman & J Silk 'Which law applies to the Afghan conflict?' (1998) 82 *American Journal of International Law* 465.

<sup>55</sup> Koh (n 22 above); Vogel (n 41 above); Lehto (n 40 above); LR Blank & BR Farley 'Characterizing US operations in Pakistan: is the United States engaged in an armed conflict?' (2011) 34 *Fordham International Law Journal* 158.

<sup>56</sup> P Gallahue 'Mexico's war on drugs: real or rhetorical armed conflict?' (2011) 24 *Journal of International Law of Peace and Armed Conflict* 39-45. However, note that Lehto argues that war on terror is not merely a political slogan but has vivid elements of a real armed conflict. See generally Lehto (n 40 above) 499-511.

<sup>57</sup> O'Connell (n 8 above); Dworkin (n 47 above) 53.

## 2.2 Qualification of the 'global war on terror'

IHL is the branch of public international law which regulates armed conflict by protecting those who are not directly taking part in hostilities and limits the method and means of warfare.<sup>58</sup> The fundamental question then is what constitutes an armed conflict?

An armed conflict occurs when there is resort to armed force between States or there is intense protracted violence between governmental authorities and organised armed groups.<sup>59</sup> Therefore, IHL does not apply to any form of violence but to intense and protracted armed violence.<sup>60</sup> The U.S government<sup>61</sup>, congress<sup>62</sup> and courts<sup>63</sup> consider the global war on terror an armed conflict. In order to agree or disagree, the first port of call is determination of whether terrorist attacks and drone targeted killings reach the threshold of an armed conflict.

### 2.2.1 Threshold of violence

In order to distinguish an armed conflict from less serious forms of violence such as internal disturbances and tensions, riots or acts of banditry, the situation must reach a certain threshold of confrontation.<sup>64</sup> Apparently, the intensity of violence in an armed conflict is higher than that of internal disturbances and tensions.<sup>65</sup> Therefore, for violence to qualify as an armed conflict, attacks should not be sporadic or isolated<sup>66</sup> but protracted.<sup>67</sup> It has been held, however, that duration and intensity is an issue which is determined on a case by case basis.<sup>68</sup> Now that the intensity is assessed on a case by case basis the question can be asked; whose scales weigh the

---

<sup>58</sup> Fleck *Humanitarian law of armed conflicts* (1995) 40; P Balendra 'Defining armed conflict' (2008) 11 *Cordoba Law Review* 2468.

<sup>59</sup> *Prosecutor v Tadic* Case No: IT-94-1-A 70; Balendra (as above).

<sup>60</sup> Blank (n 55 above); M Shaw *International Law* (2008) 1195.

<sup>61</sup> Koh (n 22 above).

<sup>62</sup> Executive Order No. 13234, 66 Fed. Reg. 221 (Nov. 9, 2001); Executive Order No. 13239, 66 Fed. Reg. 241 (Dec. 12, 2001); Military Order, 66 Fed. Reg. 222 (Nov. 13, 2001).

<sup>63</sup> *Boumediene v Bush* 553 US 723 (2008); *Hamdan v Rumsfeld* 548 US 557 (2006); *Hamdan v Rumsfeld* 542 US 507 (2004); *Gherebi v Obama* 609 US 55 (2009).

<sup>64</sup> A Cassese *International Humanitarian Law* (2005) 34.

<sup>65</sup> *Juan Carlos Abella v Argentina*, Inter-American Commission of Human Rights, IAm Comm HR (13 July 1997), 55/97OEA/SerL/II28/Doc7 27 Rev 53.

<sup>66</sup> Blank (n 55 above); Holland (n 54 above); D Jinks 'September 11 and the laws of war' (2003) 28 *Yale Journal of International Law* 1.

<sup>67</sup> *Abella v Argentina*, Inter-American Commission of Human Rights, IAm Comm HR (20 May 1998) OEA/SerL/V/II 98 Rev 155.

<sup>68</sup> *Prosecutor v Musema ICTR-96-13-A* (11 April 1996) 251.

intensity?<sup>69</sup>

There are suggestions that the term 'protracted' violence 'refer more to the intensity of the armed violence than its duration.'<sup>70</sup> Thus, where violence has caused significant number of deaths it may qualify as an armed conflict even when it is short lived.<sup>71</sup> Nevertheless, it has also been argued that 'there are situations where a much lower level of violence that is not protracted can [also be] seen as an armed conflict.'<sup>72</sup>

As far as the global war on terror is concerned, scholars are divided into two camps<sup>73</sup> as 'there are disagreements about the level of intensity'.<sup>74</sup> It is noted that drone strikes outside Afghanistan in response to terrorist attacks are too short termed and sporadic to meet the requirement of protractedness.<sup>75</sup> For that reason, it is argued that drone targeted killings are law enforcement operations.<sup>76</sup> Therefore, it has been concluded that U.S's categorisation of the fight against terrorism as an armed conflict is an attempt to justify its drone targeted killings and 'displace human rights norms as the primary legal constraint on counter-terrorist tactics.'<sup>77</sup> To that end, O'Connell maintains that drone targeted killings in response to 'isolated terrorist attacks regardless of how serious the consequences' do not meet the level of intensity required for an armed conflict.<sup>78</sup>

---

<sup>69</sup> The disagreements on the aspect of intensity concerns non international armed conflict since in international armed conflict there is an assumption of an armed conflict whenever armed forces of states clash. See *Prosecutor v Tadic* IT-94-1-A 70 (13 November 1994).

<sup>70</sup> *Prosecutor v Hardinaj and ors* Judgment (Trial Chamber) IT-04-84-T ICTY (3 April 2008)49; *Prosecutor v Limaj* Judgment (Trial Chamber) IT-03-66-T ICTY (30 November 2005)90.

<sup>71</sup> As above.

<sup>72</sup> A Paulus & M Vashakmadze 'Asymmetrical war and the notion of armed conflict – A tentative conceptualisation' (2009)91 *International Review of the Red Cross* 102.

<sup>73</sup> M Sassoli et al *How does law protect in war?* (2011)2514-15.

<sup>74</sup> Columbia Law School Human Rights Institute (n 49 above) 11.

<sup>75</sup> Lubell (n 4 above) 105; K Thynne 'Targeting the terrorist enemy: The boundaries of an armed conflict against transnational Terrorists' (2009)16 *Australia International Law Journal* 168.

<sup>76</sup> Blank (n 55 above); A Dworkin 'Revising the law of war to account for terrorism: The case against updating the Geneva Conventions on the ground that changes are likely only to damage human rights' (2003) available at [http://writ.news.findlaw.com/commentary/20030204\\_dworkin.html](http://writ.news.findlaw.com/commentary/20030204_dworkin.html) (accessed 13 July 2011); Gill & Fleck *The law of military operations* (2010) 35; D Guilfoyle 'The laws of war and the fight against Somali: combatants or criminals?' (2010) *Melbourne Journal of International Law* 12-13.

<sup>77</sup> J Fitzpatrick 'Speaking law to power: The war against terrorism and human rights' (2003) 14 *European Journal on International Law* 241; O'Connell (n 51 above) 348.

<sup>78</sup> ME O'Connell 'Lawful use of combat drones: Hearing before the Sub-Committee on National Security and Foreign Affairs, 111<sup>th</sup> Congress' (2010)4.

Nevertheless, other scholars believe that the 'global war on terror' meets the threshold of an armed conflict because it has been extended over a long period of time, the terrorist attacks are frequent and thousands of people have been killed.<sup>79</sup> It is also notable that U.S.'s drone targeted killings have been conducted 'over a period of time [and] carried out in a systematic way' to constitute an armed conflict.<sup>80</sup> In addition, Murphy argues that the fact that terrorists attacks are similar to military attacks, that the U.S considers the attacks to be military in nature and the acceptance by other states of U.S.'s categorisation of the terrorist attacks as armed conflict shows that the threshold of intensity is met.<sup>81</sup>

Sadat augments this as he postulates that the UN Security Council's categorisation of the September 11 attacks as a 'threat to peace' is a clear indication that the global war on terror is intense and qualifies as an armed conflict therefore justifying U.S drone targeted killings.<sup>82</sup> Nevertheless, the fact that an attack is deemed a threat to peace is neither conclusive that there is an armed conflict or that there is none.<sup>83</sup>

Amongst these arguments one thing is undisputable, drone targeted killings and terrorist attacks are highly grave. In the *Nicaragua case*, the ICJ held that only the most grave attacks can constitute an armed attack whilst 'less grave' attacks do not.<sup>84</sup> However, assessment of gravity is on a case by case basis.<sup>85</sup>

Apparently, one thing which most scholars seem to ignore is that the nature of the contemporary armed conflict has changed and one should be careful when construing intensity.<sup>86</sup> In actual fact, the qualification criteria might be no longer suitable or practicable to

---

<sup>79</sup> Chesney (n 46 above) 31.

<sup>80</sup> Thynne (n 75 above) 168.

<sup>81</sup> D Murphy 'Terrorism and the concept of "armed attack" in Article 51 of the UN Charter' (2002) 41 *Harvard International Law Journal* 47-50.

<sup>82</sup> LN Sadat 'Terrorism and the Rule of Law' (2004) 3 *Washington University Global Studies Law Review* 135; See also Cassese (n 64 above).

<sup>83</sup> Greenwood (n 54 above) 307.

<sup>84</sup> *Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v US)* (27 June 1986) (1986) ICJ Reports 14.

<sup>85</sup> Tadic (n 69 above).

<sup>86</sup> A Cassese 'Terrorism is also disrupting some crucial legal categories of international law' (2001) 12 *European Journal of International Law* 999; I Oesterdahl 'Dangerous liason?: the disappearing dichotomy between jus ad bellum and in bello' (2009) 78 *Nordic Journal of International Law* 553-566; Guilfoyle (n 76 above) 12-13.

deal with contemporary armed conflicts.<sup>87</sup> One therefore argues that construing of intensity of the global war on terror must neither be too 'narrow and unduly formalistic' to the extent of encouraging 'aggression of a low-key kind'<sup>88</sup> to the U.S nor should it be too wide to justify drone targeted killings outside armed conflict situations.<sup>89</sup>

Assuming but without concluding that the 'global war on terror' meets the threshold of an armed conflict therefore calling for the assessment of drone targeted killings under IHL, there is also the question as to under which body of IHL should drones be assessed. IHL has two different set of rules the applicability of which is determined by the classification of an armed conflict as either an international armed conflict (IAC) or non international armed conflict (NIAC).<sup>90</sup> The following section considers yet another controversy concerning the classification of the conflict wherein drone targeted killings are conducted.

### 2.3 Classification of the conflict

If a conflict reaches the required threshold of an armed conflict IHL becomes applicable. However, the next question is; which body of IHL rules is applicable? Such a determination depends on the classification of the conflict as either IAC or NIAC.<sup>91</sup> Likewise, the classification of the global war on terror is litigious which further complicates the assessment of the legality of drone targeted killings.<sup>92</sup>

Under the Bush Administration, the U.S considered the conflict to be IAC holding that the Al Qaeda and the Taliban have *de facto* control of Afghanistan.<sup>93</sup> However, goal posts were shifted under the Obama administration which now considers the conflict to be NIAC. The Obama administration's position is supported by the U.S Courts. In the appeal of the *Hamdan case*, the

---

<sup>87</sup> Holland (n 54 above) 345.

<sup>88</sup> Watkin (n 18 above) 5.

<sup>89</sup> As above, see also C Gray *International law and the use of force* (2000)141-142.

<sup>90</sup> A Bianchi & Y Naqvi *International humanitarian law and terrorism* (2011) 103.

<sup>91</sup> As above.

<sup>92</sup> Columbia Law School Human Rights Institute (n 49 above) 4-15.

<sup>93</sup> R Falk *The great terror war* (2003)101; D Brown 'Use of force against terrorism after September 11<sup>th</sup>: State responsibility, self-defence and other responses' (2003) 11 *Cardozo Journal of International & Comp Law* 6; Cassese (n 86 above); Greenwood (n 54 above) 301.

court of appeal rejected the lower court's decision and held that the global war on terror is NIAC.<sup>94</sup>

Classification of armed conflict is primarily based on parties involved and the geography of the battle field.<sup>95</sup> In terms of Article 2 common to the Geneva Conventions the existence of IAC is assumed 'when parts of armed forces of *two states* clash with each other.'<sup>96</sup> To that effect, 'any use of armed force *by one state against the territory of another* trigger the applicability of the Geneva Conventions.'<sup>97</sup> Although there are arguments that IAC can be between a state and non state actor, in principle IAC involves two or more states.<sup>98</sup> More so, the 'widening of the concept of international armed conflict beyond that recognised in treaties, and which is based upon conflict between states' is not supported by state practice.<sup>99</sup>

NIAC is defined as an armed conflict 'not of an international character'<sup>100</sup> 'between governmental authorities and organised armed groups'.<sup>101</sup> The conflict occurs in 'the territory of one of the High contracting parties.'<sup>102</sup> Further, the armed groups involved in the conflict must be considered as parties to the conflict and have to be under a certain command structure and have the capacity to sustain military operations.<sup>103</sup> Once again, even for scholars who consider the U.S to be in an armed conflict, there is no consensus as to whether drone targeted killings are conducted within the parameters of NIAC or IAC.<sup>104</sup> This is so because there is 'significant ambiguity about where [exactly] the armed conflict exists and what armed groups are

---

<sup>94</sup> However, the US Supreme Court is criticized for taking a superficial and 'haphazard' approach in interpreting IHL. See D Weissbrodt & NH Nesbitt 'The role of the United States Supreme Court in interpreting and developing humanitarian law' (2011) 95 *Minnesota Law Review* 1339-1423.

<sup>95</sup> Blank (n 55 above) 153; N Lubell 'What's in a name? : the categorisation of individuals under the laws of armed conflict' (2011)4 *Journal of International Peace and Organization* 83; L Arimatsu 'Territory, boundaries and the law of armed conflict' (2009)12 *Yearbook of International Humanitarian Law* 161; Y Sandoz et al 'Armed conflicts and parties to armed conflicts under IHL: confronting legal categories to contemporary realities: proceedings of the 10<sup>th</sup> Bruges Colloquium, 22-23 October 2009' (2010) CICR Collège d'Europe 148.

<sup>96</sup> D Schindler 'International humanitarian law and the challenges of contemporary armed conflicts' *ICRC, Geneva, October 2007 30IC/07/8.4*

<sup>97</sup> As above.

<sup>98</sup> *Tadic* (n 69 above) 35.

<sup>99</sup> Lubell (n 4 above) 96.

<sup>100</sup> Common Article 3 to the Geneva Conventions.

<sup>101</sup> *Tadic* (n 69 above); Balendra (n 58 above) 2468.

<sup>102</sup> Common Article 3 to the Geneva Conventions.

<sup>103</sup> As above.

<sup>104</sup> LR Blank 'Defining the battlefield in contemporary conflict and counterterrorism: understanding the parameters of the zone of combat' (2010) 39 *Georgia Journal of International and Comparative Law* 7.

considered to be parties to it.<sup>105</sup> The first question which is therefore considered is who are the parties to the global war on terror?

### 2.3.1 Parties to the conflict

#### *U.S as a belligerent*

As stated above, 'traditional' armed conflicts are either between armed forces of states, armed groups against armed groups or armed groups against armed forces of a state. In its response to the horrific September 11 attacks, the U.S considers its armed forces to be 'in an armed conflict with al-Qaeda, as well as the Taliban and associated forces'<sup>106</sup> in Afghanistan and elsewhere.<sup>107</sup> Apparently, not only the U.S's armed forces are involved in drone targeted killings but also the CIA. There are suggestions that the U.S runs two drone programs; one which is run by the U.S armed forces and the other one by the CIA.<sup>108</sup> However, O'Connell argues that the two programmes are not distinct but joint programs<sup>109</sup> with the CIA agents dominantly operating them both in Afghanistan and elsewhere in the world.<sup>110</sup>

The crucial question is what is the place of the CIA in this global war on terror? Are they part of U.S's armed forces? There have been mixed responses to these questions. Armed forces of a belligerent are inclusive of 'all organised armed forces, groups and units which are under a command responsible to that Party for the conduct of its subordinates, even if that Party is represented by a government or an authority not recognized by an adverse Party.'<sup>111</sup>

It is possible to argue that the CIA agents are civilians because they have not been any notification by the U.S that they are now incorporated into the U.S armed forces.<sup>112</sup> The

---

<sup>105</sup> Columbia Law School Human Rights Institute (n 49 above) 4.

<sup>106</sup> Koh (n 22 above).

<sup>107</sup> As above.

<sup>108</sup> O'Connell (n 8 above) 6 quoting J Mayer 'The predator war, what are the risks of the CIA's covert drone program?' *The New Yorker* 26 October 2009 36.

<sup>109</sup> As above.

<sup>110</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 September 2011); 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 3 October 2011); Vogel, (n 41 above) 109.

<sup>111</sup> Art 43(1) of API; Rule 4 of the ICRC Study on customary international humanitarian law available at <http://www.icrc.org/customary-ihl/eng/docs/home> (accessed 9 October 2011); see also Columbia Law School Human Rights Institute (n 49 above) 28.

<sup>112</sup> M Schmitt 'Humanitarian law and direct participation in hostilities by private contractors or civilian Employees'

argument is more fully epitomized by the fact that the CIA agents neither wear uniforms nor carry arms openly.<sup>113</sup> Agreeing for a while that the CIA are not part of the U.S armed forces, how is the global war on terror to be classified where a CIA agent, situate in 'Kabul and identifies a group of Jaish-e- Muhammad fighters (known al Qaeda affiliates) in a Waziristan "safe house"'<sup>114</sup> or where the CIA drone operator somewhere within the heart of 'Djibouti identifies al-Shabaab leaders (loosely aligned with al Qaeda) in Somalia' and launches an attack?<sup>115</sup> On the basis of the civilian status of the CIA, it can be argued that the global war on terror can neither be NIAC or IAC. Is it, therefore, a law enforcement scenario wherein the U.S attempts to circumvent the limitations of human rights norms by generalising all the drone targeted killings as part of the 'global war on terror'?<sup>116</sup>

Agreeably, the heavy involvement of the CIA complicates both the qualification and classification of the conflict. However, not being part to the U.S armed forces does not mean the CIA can not be part to the armed conflict,<sup>117</sup> they nevertheless do so as unlawful combatants.<sup>118</sup> Since the CIA are the major operators of the drone strikes, an interesting question is whether it is an armed conflict involving two armed groups? Likewise, terrorists who are considered as parties to the 'global war on terror' and subject to targeted killings raise complex questions.

### ***Terrorists as a belligerent***

As stated above the Taliban, Al Qaeda and 'associated forces' are identified as parties to the conflict against the U.S armed forces.<sup>119</sup> It is for that reason that the U.S finds it legitimate to

---

(2005) 379 *Chicago Journal of International Law* 511; P Alston & H Shamsi 'A killer above the law' available at <http://www.guardian.co.uk/profile/philip-alston> (accessed 17 August 2011); Murphy (n 110 above); Thynne (n 75 above) 164.

<sup>113</sup> ME O'Connell 'To kill or capture suspects in the global war on terror' (2003) 35 *Case Western Reserve Journal of International Law* 325.

<sup>114</sup> Vogel (n 41 above) 106.

<sup>115</sup> Vogel (n 41 above) 107.

<sup>116</sup> T Haidon 'The CIA's Yemen operation: a legal critique'(2002) available at <http://www.counterpunch.org/haidon/119.html> (accessed 03 October 2011); Gill & Fleck *The Law of Military Operations* (2010) 35; O'Connell (n 113 above).

<sup>117</sup> ICRC *Interpretive guidance on the notion of direct participation in hostilities under international humanitarian law* (2009)1011.

<sup>118</sup> O'Connell (n 113 above)328.

<sup>119</sup> Joint Resolution to Authorize the use of United States Armed Forces against those responsible for the recent attacks launched against the United States (2001) 115 Stat. 224 and 225.



target them using drones and kill them.<sup>120</sup> Two issues arise from the identification of terrorists as belligerents in this instant.

Firstly, it can be argued that the phrase 'associated forces' is imbued with 'definitional ambiguity'<sup>121</sup> to the extent that the parties involved in this global war on terror are not clear. Secondly, there have been questions as to whether Al Qaeda and the Taliban against whom drones are operated qualify as an organised 'armed group' in an armed conflict.<sup>122</sup> The term organized armed group has been used to describe a party with an organized military force, with an official joint command structure and the ability to procure, transport, and distribute arms'.<sup>123</sup> In assessing the level of organization of an armed group, emphasis is placed on the role and existence of a main governing body.<sup>124</sup> Thus, the question is whether terrorist are armed organised groups<sup>125</sup> operating under a unified command.<sup>126</sup>

From the word go, the tagging of Al Qaeda, Taliban and associated forces as 'terrorists' 'creates a destructing smokescreen'<sup>127</sup> which complicates their qualification as an armed group.<sup>128</sup> This is so because there is no agreed legal definition of terrorism<sup>129</sup> since 'one man's terrorist can be another man's freedom fighter.'<sup>130</sup> Further, the term 'terrorist' is understood to be limited to the criminal sphere<sup>131</sup> although terrorist acts are also prohibited in armed conflicts.<sup>132</sup>

Arguably, some terrorists who operate outside Afghanistan do not have a visible command structure.<sup>133</sup> The fact that many terrorists across the globe express ant-America ideologies do

---

<sup>120</sup> Joint Resolution to Authorize the use of United States Armed Forces against those responsible for the recent attacks launched against the United States (2001) 115 Stat. 224 and 225.

<sup>121</sup> Columbia Law School Human Rights Institute (n 49 above)14.

<sup>122</sup> Bianchi (n 90 above) 103.

<sup>123</sup> *Prosecutor v Slobodan Milošević* Case No. IT-02-54-T,23

<sup>124</sup> Thahzib-lie (n 44 above) 248.

<sup>125</sup> Art 3 Common to the Geneva Conventions.

<sup>126</sup> *Prosecutor v Haradinaj et al* ICTY-04-84-T 87.

<sup>127</sup> Lubell (n 95 above) 83.

<sup>128</sup> Watkin (n 18 above) 6.

<sup>129</sup> Cassese (n 86 above) 994.

<sup>130</sup> B Canor 'Defining terrorism: Is one man's terrorist another man's freedom fighter' (2002)1 available at <http://www.maeganandjoe.info> (accessed 17 August 2011).

<sup>131</sup> P B Heymann *Terrorism and America* (1998)5.

<sup>132</sup> Art 23 of the Fourth Geneva Conventions; Art 4(2) of Additional Protocol I; Art 51(2) of Additional Protocol II.

<sup>133</sup> Thynne (n 75 above) 171.

not make them members of armed groups in Afghanistan.<sup>134</sup> In essence, it is undesirable to accumulate 'all acts described as terrorism, and its supporters, into a single armed [group] on the basis of shared ideology.'<sup>135</sup>

Further, mere inspiration<sup>136</sup> or campaign for freedom<sup>137</sup> does not necessarily make one part of the group.<sup>138</sup> However, it can be observed that there are some terrorists who may not be in Afghanistan but are closely linked to terrorist militias in Afghanistan and coordinate to launch attacks.<sup>139</sup> In such instances, one wonders whether the fundamental consideration should be a question of where the terrorist is located or their contribution to the armed group?<sup>140</sup> This leads to the next consideration on the combat zone of the global war on terror.

### 2.3.2 Geographical delineations of the conflict

In this section the questions which are addressed are i) where is this global war on terror occurring? and ii) if it is all over the world as the word 'global' suggests, what are the implications on the rights of States wherein drone targeted killings are carried out? In answering the first question, the U.S government has argued that it has no obligation to define in precise terms the geography of the global war on terror.<sup>141</sup> These questions are critical in understanding the legality of drone targeted killings.<sup>142</sup> There are also disagreements amongst scholars as to the boundaries of the global war on terror. The issue can be exemplified through U.S's drone strike on the 3<sup>rd</sup> of November 2002 when a drone equipped with hell-fire missiles was fired at a passenger vehicle in Yemen by a CIA agent situated in Djibouti.<sup>143</sup> It is questioned

---

<sup>134</sup> Lubell (n 4 above) 118. Lubell finds that characterising terrorist scattered across the globe as an armed group is tantamount to 'claiming that not only could the Korean war, the Vietnam war and the Cuban Missile Crisis in the 1950s-1970s all be considered part of a single armed conflict but that anyone, or any group, suspected of holding Communist opinions, anywhere around the globe, would also be seen as party to the conflict' and member of the armed forces or groups.

<sup>135</sup> Lubell (n 4 above) 120.

<sup>136</sup> Marco Sassoli, "Transnational armed groups and international humanitarian law", (2006) *Program on humanitarian policy and conflict research Harvard University*, 10,11,14; *Prosecutor v Jean-Paul Akayesu* ICTR-96-4-T 626.

<sup>137</sup> *Prosecutor v Boskoski, Tarculovski* IT-04-82 185.

<sup>138</sup> As above.

<sup>139</sup> Duffy (n 40 above) 230; Inter-American Commission on Human Rights 'Third Report on the Situation of Human Rights in Colombia' OEA/Ser/L/I 102 Doc 9 Rev 1 (1999)55-56; Ruys (n 37 above).

<sup>140</sup> Blank (n 104 above).

<sup>141</sup> *Al-Aulaqi v Obama* 727 F. Supp. 2d 1 (D.D.C. 2010) (No. 10 Civ. 1469) 33-34 (State's Opposition to Plaintiff's Filing.)

<sup>142</sup> Blank (n 104 above); Arimatsu (n 95 above) 161.

<sup>143</sup> O'Connell (n above)4 quoting *L.A TIMES* 11 January 2003.

whether such drone targeted killing, occurring outside the 'zone of combat' and operated arguably by a civilian, should be considered as an act part to the armed conflict.

It can be argued that the term 'armed conflict occurring within the territory of one of the high contracting parties' does not allow an expanded notion of battle field.<sup>144</sup> As one scholar has noted, there cannot be 'a *carte blanche* [right] to strike any individual in any country'.<sup>145</sup> The reason why it is undesirable to take the 'entire globe as a theatre of war' is that such an approach 'undermines the very basis of the restraints on the use of force that international law seeks to maintain'.<sup>146</sup> Thus, in as much as the U.S might be engaged in an armed conflict in Afghanistan, 'elsewhere, the U.S is not engaged in an armed conflict at all'.<sup>147</sup> The gist of the argument is that that drone strikes outside the 'geographical battle field' do not constitute an armed conflict and cannot be regulated by IHL.<sup>148</sup>

Nevertheless, one may pose for a minute and ask; if drone targeted killings outside Afghanistan 'occur as a direct part of the armed conflict' in Afghanistan, why should they not be considered as acts in an armed conflict on an expanded battlefield?<sup>149</sup> It can be legitimately argued that where there is a clear link between drone targeted killings conducted elsewhere and the armed conflict in Afghanistan, IHL is the applicable regime.<sup>150</sup> The logic of the argument is that, 'if one accepts that the U.S. is in an armed conflict with al Qaeda in Afghanistan' then one should accept that IHL 'applies to any and all attacks [drone strikes] that the U.S. makes elsewhere'.<sup>151</sup> In other words the zone of combat follows where the combatant goes.

Apparently, the drafters of the Geneva Conventions did not envisage belligerents using 'lethal force against one another in new locations beyond their respective borders.'<sup>152</sup> However, where a prior recognised armed conflict significantly and clearly spill over borders and there is

---

<sup>144</sup> As above.

<sup>145</sup> Lubell (n 4 above)255.

<sup>146</sup> Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions' (2011) UN/A/66/330 para 80.

<sup>147</sup> ES Bates '*Terrorism and international law*' (2011) *Report of the IBA Task Force on Terrorism*.

<sup>148</sup> M E O'Connell 'Rise of drones II: Unmanned systems and the future of warfare: Hearing before the U.S. House Subcommittee on National Security and Foreign Affairs' (2010) *available at* [http://oversight.house.gov/images/stories/subcommittees/NS\\_Subcommittee/4.28.10\\_Drones\\_II/OConnell\\_Statement.pdf](http://oversight.house.gov/images/stories/subcommittees/NS_Subcommittee/4.28.10_Drones_II/OConnell_Statement.pdf) (accessed 26 September 2011).

<sup>149</sup> Thynne (n 75 above) 174.

<sup>150</sup> As above.

<sup>151</sup> Columbia Law School Human Rights Institute (n 49 above) 10.

<sup>152</sup> Chesney (n 46 above) 26.

extensive conduction of hostilities from the border to which hostilities have spilt it is not wise to insist that IHL is inapplicable.<sup>153</sup>

To exemplify this point, say a CIA drone operator is somewhere 'on a ship off the Horn of Africa [and] identifies a high-level [known] Al Qaeda target within Yemen'<sup>154</sup> and launches an attack; should it not be considered to be part of the armed conflict in Afghanistan simply because the events are outside the 'theatre of conflict'? Should the legality of drone targeted killings be determined on the basis of the location of the strike and the operator? The issue is; in as much as this might be outside the traditional 'theatre of armed conflict' as contemplated by the drafters of the Geneva conventions', it may still fall within the ambit of the armed conflict.<sup>155</sup> Agreeably, the terrorist against whom drones are employed are not concentrated in one state but despite them being scattered across the globe they are networked through strategic alliances to the extent that their armed attacks are a result of coordination and cooperation.<sup>156</sup>

However, with the same measure, if the same CIA drone operator in the same location identifies a 'suspected terrorist' as opposed to a known terrorist and target him; should that be considered to be part of the conflict in Afghanistan? Of course the argument of the U.S is that the CIA intelligence establishes that someone is linked to the conflict before targeting.<sup>157</sup> But why should the international community trust the U.S intelligence? In such circumstances, targeting of 'unknown' terrorists on the basis of 'suspicion' must be governed by human rights norms.<sup>158</sup> It is therefore argued that the legality of U.S's targeted killings is a question of fact and should not be an issue about the geographical location of the drone strike but of the status and factual circumstances of the victim.<sup>159</sup>

One now briefly turns to the implications of an unlimited battle field on other states. Questions have been raised about the legality of U.S launching drone strikes into countries where there is no armed conflict. Use of force against the territory of another State is generally

---

<sup>153</sup> Lubell (n 4 above) 255.

<sup>154</sup> Vogel(n 41 above)105.

<sup>155</sup> Blank( n 55 above) 158.

<sup>156</sup> MC Bassiouni 'Legal control of international terrorism: A policy-oriented assessment' (2002)43*Harvard International Law Journal* 88.

<sup>157</sup> Koh (n 22 above).

<sup>158</sup> Columbia Law School Human Rights Institute (n 49 above) 9.

<sup>159</sup> JC Dehn & KJ Heller 'Targeted killing: The case of Anwar Al-Aulaqi' (2011)159 *University of Pennsylvania Law Review* 90-191; O'Connell (n 113 above); Fitzpatrick (n 77 above); Thyne (n 75 above).

prohibited in terms of Article 2(4) of the UN Charter.<sup>160</sup> The only exceptions to the general rule are when a State acts in self defense or where such force is authorised by the Security Council.<sup>161</sup>

Citing this *jus cogens* prohibition on use of force,<sup>162</sup> scholars have argued that the use of drones across borders into nations where there is no state of war amounts to aggression on the part of the U.S. In response, the US argues that the use of drones in this manner is justifiable by plea of self-defense<sup>163</sup> since there was a prior armed attack by Taliban and Al Qaeda who are spread all over the world.<sup>164</sup> Further, the U.S justifies the launching of drones across borders on the grounds that it has the consent of the States in which drone targeted killings are conducted.<sup>165</sup> However, in the event that the involved State is unwilling or is failing to apprehend the terrorists, the U.S argues that it can still strike in the name of self defense.<sup>166</sup>

The author notes that in terms of law, a state may only invoke the right to self defense to use force against another state if; a) there is an armed attack of the most gravity<sup>167</sup> going beyond 'mere frontier incidents, such as sporadic rocket fire across a border'<sup>168</sup> and b) if the state against which force is used in terms of self defense is responsible for the 'aggressive attack.'<sup>169</sup> If the armed attack is by a non State actor, the State against which responsibility is imputed must be in complete control of the non-state actor.<sup>170</sup>

---

<sup>160</sup> Lubell (n 4 above) 25.

<sup>161</sup> Article 51 of UN Charter; Chapter VII of UN Charter. Where there is threat to peace, breaches of peace or an act of aggression the Security Council can authorise use of force.

<sup>162</sup> Art 2(4) United Nations Charter.

<sup>163</sup> Art 51 of the UN Charter; JJ Paust 'Self-defense targeting of non-state actors and permissibility of U.S. use of drones in Pakistan' (2010)19 *Journal of Transnational Law and Policy* 237.

<sup>164</sup> *Nicaragua* (n 84 above) 237.

<sup>165</sup> Khan (n 22 above); E Lieblich 'Intervention and consent: consensual forcible interventions in internal armed conflicts as international agreements' (2011)29 *Boston University International Law Journal* 337-382.

<sup>166</sup> Paust (n 163 above) 237; D Kretzmer 'Targeted killing of suspected terrorist: Extra judicial executions or legitimate means of self defence?'(2005)16 *European Journal of International Law* 185.

<sup>167</sup> *Nicaragua* (n 84 above) 230.

<sup>168</sup> O'Connell (n above) 14; See also Oil Platforms case Iran v US (6 November 2003)(2003) ICJ 161.

<sup>169</sup> *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion* (9 July 2004) (2004) ICJ Reports 136.

<sup>170</sup> *Bosnia & Herzegovina v Serbia & Montenegro* (Application of the Convention on the Prevention and Punishment of the Crime of Genocide) (10 May 2007) (2007) ICJ 391; *Nicaragua* (n 84 above) 114.

In the case of the U.S, the terrorist attacks are apparently of sufficient gravity but they do not emanate from another state as contemplated by law.<sup>171</sup> This makes one wonder whether the attacks by Taliban and Al Qaeda on the U.S are covered under Article 51 of UN Charter.<sup>172</sup> Nonetheless, assuming that a country allows parts of its territory to be used by terrorists as a base and establish close co-operation to launching of terrorist attacks against the U.S, the claim of self defense maybe justifiable to some degree.<sup>173</sup>

Sight must never be lost, however, that mere presence of terrorists in one State's territory is not 'willingly harboring'<sup>174</sup> so as to justify aggression at anytime. Further, failure to apprehend terrorists or assist the U.S in apprehending does not justify launching drone missiles into the territory of a State which is not at war.<sup>175</sup> If the U.S is allowed to target and kill any terrorist wherever they are located regardless of the other State's involvement, it may easily exposes many States to U.S aggression.<sup>176</sup> If it is necessary, there is need to seek approval from the UN Security Council.<sup>177</sup>

Apparently, debates can go on indefinitely whilst on the ground drone targeted killings continues and life is lost every day. One thing is certain, the U.S is drone targeting individuals and killing and there is no hope that it may stop anytime soon. Many countries, African countries too, will soon be using drones. It is time to come out of the traditional comfort zones of having clear cut situations of armed conflict and neatly packed applicable law regimes. It is time to face the reality of contemporary conflicts which demands a different approach in the application of international law.<sup>178</sup> As one scholar correctly observed;

---

<sup>171</sup> *Legal Consequences of the Construction of a Wall* (n 169 above) 139; Paust (n 163 above) 237.

<sup>172</sup> O'Connell (n above) 16; Lubell (n 4 above) 29.

<sup>173</sup> C Gray *International law and the use of force*, (2004)200.

<sup>174</sup> *Armed Activities on the Territory of the Congo (Congo v Uganda)* (19 December 2005)(2005)ICJ Reports 116.

<sup>175</sup> *Congo v Uganda* (n 175 above) 301. However, Lieblich argues that in terms of customary international law discernable from the Vienna Convention on the Law of Treaties, where a State consents to the intervention of another state into its territory it may not be able to claim that there is aggression. See generally Lieblich (n 165 above) 337-382.

<sup>176</sup> T Ruys "Crossing the thin blue line: an inquiry into Israel's recourse to self-defense against Hezbollah" (2007) *Stanford Journal of International Law* 283-84.

<sup>177</sup> As above.

<sup>178</sup> Sandoz (n 95 above) 148; E Creegan 'Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the treatment of terrorist combatants (Protocol IV): a proposal' (2011)41 *California western international law journal* 345-396. He actually argues that the law is seriously inadequate and proposes for an additional protocol in laws dealing with terrorism and the response thereto like the use of drones.

the law is not a set of neutral rules, elaborated and applied independently of context and historical background; that the human condition remains central; and that legal regulation cannot be oblivious to it.<sup>179</sup>

On account of the challenges which were discussed above, and possible conclusions which can be reached, the author suggests that in regulating U.S.'s drone targeted killings, no regime of law should apply to the exclusion of the other.

#### **2.4 Simultaneous application of IHRL norms and IHL principles**

In view of some of the challenges posed by new technology and the different nature of the contemporary conflicts, some scholars have concluded that the 'Geneva conventions are under assault.'<sup>180</sup> As aforementioned, it is difficult to qualify and classify the 'global war on terror' because it does not fit well in the traditional apparatus of qualifying and classifying conflicts.<sup>181</sup> To this end, the current framework of IHL in qualifying and classifying conflicts is found to be rusty and creaky machinery.<sup>182</sup>

The U.S.'s drone targeted killings apparently 'straddles the law enforcement and armed conflict paradigms.'<sup>183</sup> Drones are employed by the U.S military and the CIA in situations which are seemingly both law enforcement scenarios and armed conflict.<sup>184</sup> This overlapping makes it difficult to ascertain as to which regime of law is applicable whilst parties involved in the conflicts advocate for a regime which they suppose better serves their motives.

More so, since terrorists' *modus operendi* is subject to no limitation of law as it is intended to cause the most terrifying harm, it would be a fallacy to think that terrorist attacks and counter-terrorist measures can be properly regulated by one regime of law to the exclusion of the other.<sup>185</sup> Notwithstanding the fact that terrorist are law breakers, 'they have situated

---

<sup>179</sup> A Bianchi 'Terrorism and armed conflict: insights from a law and literature perspective' (2011)24 *Leiden Journal of International Law* 303.

<sup>180</sup> S Perrigo & J Whitman *The Geneva conventions under assault* (2010)77.

<sup>181</sup> Jinks (n 66 above) 1; N Quenivet & SS Davis *International law and armed conflict: Challenges in the 21<sup>st</sup> century* (2010)8.

<sup>182</sup> Sandoz (n 95 above) 148.

<sup>183</sup> Watkin (n 18 above) 5; WK Lietzau 'Combating terrorism: The consequences of moving from law enforcement to war' in D Wippman & M Evangelista (eds) *New wars, new laws? Applying the laws of war in the 21<sup>st</sup> century conflicts* (2005)31.

<sup>184</sup> Watkin (n 18 above) 2.

<sup>185</sup> JN Maogoto & G MacCarrick 'Typology of conflict: terrorism and the ambiguation of the laws of war' (2010)31 *Gujarat National Law University Law Review* 303.

themselves in an impossible place, located somewhere outside of the law'.<sup>186</sup> It is in view of the patent fact that terrorism and counter-terrorist measures 'pass over the parameters of warfare and into the realm of criminal conduct' that one suggest the simultaneous application of both IHRL and IHL in the determination of the legality of drone targeted killings.<sup>187</sup>

Of course the ICJ in the *Nuclear Weapons case* held that IHL is the *lex specialis* of armed conflict<sup>188</sup> but it also noted that human rights norms continue to apply.<sup>189</sup> Now is the time to understand that this 'interpretive principle of *lex specialis* is not a panacea';<sup>190</sup> it is impracticable in conflicts like the fight against terrorism.<sup>191</sup>

Therefore, there is a need to re-conceptualise the norms which should govern the use of force in contemporary conflicts.<sup>192</sup> In dealing with non-State actors and complicated contemporary conflicts, Colombia has adopted a 'novel and unique approach of combining IHL and IHRL in a hybrid model' in ascertaining the legality of employment of force.<sup>193</sup> This is not a bad example to follow in ascertaining the legality of drone targeted killings.<sup>194</sup> This is what the researcher is going to do.

## 2.5 Conclusion

In conclusion of this Chapter, three major points can be discerned from the various arguments which are proffered by scholars in trying to qualify and classify the conflict in which the U.S is using drones. Firstly, IHL framework is no longer adequate in its coverage of armed conflicts because some contemporary conflicts which may not clearly fit under the traditional threshold of armed conflict deserve to fall under IHL framework.

---

<sup>186</sup> JN Maogoto & G MacCarrick (n 185 above).

<sup>187</sup> JN Maogoto & G MacCarrick (n 185 above).

<sup>188</sup> *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion* ICJ (8 July 1996) (1996) ICJ Reports 226.

<sup>189</sup> *Nuclear Weapons case*(n 188 above) 25.

<sup>190</sup> AL Escorihuela 'Humanitarian law and human rights law: the politics of distinction' (2011)19 *Michigan State Journal of International Law* 299.

<sup>191</sup> M Milanovic 'Norm conflicts, international humanitarian law, and human rights law' in M Milanovic (eds) *Extraterritorial application of human rights treaties: law, principles, and policy* (2011)229.

<sup>192</sup> See K Okimoto *The distinction and relationship between jus ad bellum and jus in bello* (2011)3 holding that 'there should be concurrent application of jus ad bellum and jus in bello.'

<sup>193</sup> C Groeben 'The conflict in Colombia and the relationship between humanitarian law and human rights law in practice: analysis of the new operational law of the Colombian armed forces' (2011)16 *Journal of Conflict and Security Law* 141.

<sup>194</sup> However, the author agrees with Lubell that the simultaneous application of IHRL and IHL will not necessarily be a cure all of the problems currently faced. See Lubell (n 4 above) 247.



Secondly, the dichotomy between NIAC and IAC is no longer relevant as is epitomized by the touring of the distinguishing line by the global war on terror. In any event, principles which govern both IAC and IAC are the same as will be more fully explored in Chapter Four.

Thirdly, and most importantly, the disagreements amongst scholars as to the applicable law to drone targeted killings underline the underpinning principle of complementarity of IHRL and IHL. From the foregoing, it is apparent that the U.S's targeted killing in response to terrorism requires a different approach in its regulation.<sup>195</sup> It is for these reasons that in this research one has chosen a mechanical approach in assessment of the legality of drone targeted killings. Each drone targeted killing must be assessed in its factual context.<sup>196</sup> If the drone is used to target a known Al Qaeda or Taliban who has professed his membership to the armed group and directly participates in the hostilities, then IHL principles apply. On the other hand, where drones are operated to target low profile individuals who are 'suspected' to be terrorists, human rights norms should determine the legality of such strikes.

---

<sup>195</sup> Watkin (n 18 above) 1.

<sup>196</sup> Lubell (n 4 above) 259; Dworkin (n 47 above) 53.

## Chapter Three: Drone targeting and IHRL norms

---

### 3.1 Introduction

Prominent international media operators, journalists, human rights workers and academicians have given numerous credible independent reports on drone targeted killings of individuals 'suspected' to be terrorists.<sup>197</sup> In the first years of its inception, the U.S drone programme was meant only to target high ranking members of the Al Qaeda and Taliban, whose activities in terrorist attacks were known to the international community.<sup>198</sup> More importantly, the drone targeted killings were restricted to Afghanistan. Such targeting neither posed much problem nor raised questions of legality.<sup>199</sup>

Nevertheless, in recent years targeting has been extended to individuals who are neither known nor even listed amongst the wanted persons.<sup>200</sup> Such individuals are targeted on the basis of their 'suspected' membership to terrorist militias.<sup>201</sup> It is this kind of targeting which have stirred intense debate and discomfort in the human rights community.<sup>202</sup> This Chapter examines the lawfulness of drone targeted killings in light of international human rights norms. Of course one is alive to the debates on the extraterritorial applicability of IHRL norms outside the borders of a State.

However, this chapter does not intend to go into the intricacies of that debate. Suffice is it to say that there is sufficient support from scholars, international tribunal and human rights committees that extra territorial activities of a State, like drone targeted killings by the U.S

---

<sup>197</sup> See Annexure 1 attached; ZH Usmani 'Pakistan body count' (2010) available at <http://www.pakistanbodycount.org/drn.php> (accessed 11 October 2011).

<sup>198</sup> M Kantar 'International law: the first casualty of the drone war: a comprehensive legal analysis of U.S. drone strikes in Pakistan' (2009)18 available at <http://www.zcommunications.org/international-law-the-first-casualty-of-the-drone-war-by-max-kantar> (accessed 13 October 2011); 'Turning off autopilot: towards a sustainable drone policy' (2010) *Harvard National Security Journal Analysis* available at <http://www.harvardnsj.com/2010/03/nsj-analysis-turning-off-autopilot-towards-a-sustainable-dronepolicy/> (accessed 29 June 2011).

<sup>199</sup> As above.

<sup>200</sup> O' Connell(n 8 above)4-6.

<sup>201</sup> See Annexure 1 attached.

<sup>202</sup> Quénivet (n 188 above)155.

outside its borders, are subject to IHRL norms.<sup>203</sup> It is an obvious case that targeted killings interfere with the right to life. In order to determine the legality of drone targeted killings, there is therefore, the need to answer the question; do drone targeted killings violate the right to life?

### 3.2 The right to life

The right to life is protected at international<sup>204</sup>, regional<sup>205</sup> and national level.<sup>206</sup> It is one of IHRL norms that enjoy the status of customary international law.<sup>207</sup> The ICCPR, to which almost every State is a party, provides that '[e]very human being has the inherent right to life' for which no one shall be arbitrarily deprived.<sup>208</sup> The right to life is thus, a fundamental right and 'a deeply held [right] that is protected in times of both peace and war'.<sup>209</sup>

The reasons why this right is highly protected are obvious. When one's life is taken away, 'it is impossible to enjoy any fundamental freedom'.<sup>210</sup> After taking away someone's life you can never give them back their life even if you finally recognize it was a mistake to take their life.<sup>211</sup> It is for these reasons that arbitrary deprivation of the right to life is prohibited.<sup>212</sup> Arbitrariness does not merely mean 'against the law' but is expansively interpreted to 'include elements of inappropriateness, injustice and lack of predictability'.<sup>213</sup> At this juncture one poses the question: are U.S's drone targeted killings appropriate, just and predictable?

---

<sup>203</sup> Lubell (n 4 above) 193; *Legal consequences of the construction of a wall* (n 169 above)107-13; *Congo v Uganda* (n 175 above) 219-20; *Georgia v Russian Federation*(15 October 2008)para 109; *Delia Saldias de Lopez v Uruguay* Comm no 52/1979, UN Doc CCPR/C/OP/I 88; Human Rights Committee General Comment 31 UN Doc CCPR/C/21/Rev 1/Add 13(2004)10.

<sup>204</sup> Art 3 of Universal Declaration of Human's Rights; Art 6 of International Covenant on Civil and Political Rights.

<sup>205</sup> Art 4 of African Charter on Human and Peoples' Rights; Art 4 of American Charter on Human Rights; Art 2 of European Charter on Human Rights.

<sup>206</sup> Almost all constitution of every civilized nation protects the right to life.

<sup>207</sup> WP Gormley ' The right to life and the rule of non-derogability: Peremptory norms of jus cogens' in R Ramcharan (ed) *The right to life in international law* (1985)128; Kretzmer (n 166 above) 185.

<sup>208</sup> Art 6 (1) of International Covenant on Civil and Political Rights; Human Rights Committee General Comment 6, Right to Life (Article 6)CCPR General Comment 30/04/82 No.6 (1982)3.

<sup>209</sup> Watkin (n 18 above) 9.

<sup>210</sup> Inter-American Commission on Human Rights 'Report on terrorism and human Rights' OEA/SerL/V/II 116 Doc 5 Rev 1 81(22 October 2002) available at <http://www.cidh.oas.org/Terrorism/Eng/part.c.htm> (accessed 14 October 2011).

<sup>211</sup> Y Dinstein 'Terrorism as an international crime' (1987)55 *Israel Yearbook of Human Rights* 63.

<sup>212</sup> HRC, General Comment 6, Right to Life (Article 6)CCPR General Comment 30/04/82 No.6 (1982)3; Stephens 'Human rights and armed conflict: the advisory opinion of the International Court of Justice in the Nuclear Weapons case' (2001) *Yale Human Rights & Development Law Journal* 6-7; Human Rights Committee General Comment 29, States of Emergency UN Doc CCPR/C/21/Rev 1/Add 11 (2001)15.

<sup>213</sup> U.N Human Rights Committee Comment Number 305/1988 UN Doc CCPR/C/39/D/305/1998 (15 August 1990) para 5.8 *Van Alphen v Netherlands*.

Agreeably, the right to life is 'limited by the different societal demands' which should however be within the confines of both IHL and IHRL.<sup>214</sup> Thus, in as much as the right to life can be limited, it should not be done arbitrarily.<sup>215</sup> Life is taken arbitrarily when due process is not followed and when it is not done in terms sanctioned by law.<sup>216</sup>

### 3.3 Due process

It is in line with IHRL norms that an individual be allowed due process before his right to life is interfered with.<sup>217</sup> Foot prints of due process can be traced as far back as to the 13<sup>th</sup> Century where, in the Magna Carta it was inscribed;

No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any other way, nor will we proceed with force against him, or send others to do so, except by the lawful judgment of his equals or by the law of the land.<sup>218</sup>

As clearly stated by the U.N. Committee on Civil and Political Rights, there is no state of emergence which justifies arbitrary deprivation of life or violation of norms of *jus cogens*.<sup>219</sup> Killing is arbitrary where an individual is denied fair trial and the right to be presumed innocent until proven guilty.<sup>220</sup> Many constitutions; that of the US included, guarantee the right to due process.<sup>221</sup> Where someone is merely 'suspected' and they are targeted and killed by drones, it may result in the frustration of 'the interest of the individual, and of society, in judicial determination of their guilt and punishment.'<sup>222</sup> This will be more fully explored bellow in examination of the U.S drone targeted killings.

However, it is comprehensible that there might be situations when due process may not be possible. An example is that of law enforcement agents killing a terrorist who apparently is about to detonate a bomb in the midst of the crowd. The question is; to what extent can U.S's drone targeted killings be justified under this exception? As will be explained bellow, the

---

<sup>214</sup> Watkin (n 18 above) 9.

<sup>215</sup> As above.

<sup>216</sup> Art 6(1) of International Covenant on Civil and Political Rights; Art 2 of European Convention on Human Rights.

<sup>217</sup> Kretzmer 'Targeted killing of suspected terrorists' (2005) *European Journal of International Law* 178.

<sup>218</sup> Text of Magna Carta (1215)

<sup>219</sup> Human Rights Committee General Comment 29, States of Emergency UN Doc CCPR/C/21/Rev 1/Add11 (2001)15.

<sup>220</sup> As above.

<sup>221</sup> The New York Ratification Resolution 1788 provides that no 'person ought to be taken imprisoned or diseased of his freehold, or be exiled or deprived of his Privileges, Franchises, Life, Liberty or Property but by due process of Law.'

<sup>222</sup> *Tennessee v Garner* 471 US 1 (1985)9.

targeting and killing of an individual under this exception also needs to meet certain requirements for it to be lawful.

### 3.4 The parameters of taking life to protect life

There are circumstances where the right to life may be taken arbitrarily but still remain within the confines of the law. This is where state agents kill to preserve the life of others.<sup>223</sup> However, such actions are also strictly regulated by law. The starting point is found in the UN Guiding Principles in law enforcement;

Law enforcement officials shall not use firearms against persons except in self-defense or defense of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.<sup>224</sup>

Thus, State killing is also lawful when it is done with the aim of protecting life and in compliance with laid conditions.<sup>225</sup> Firstly, the individual who is targeted must pose immediate threat to the life of others therefore making his elimination an absolute necessity.<sup>226</sup> For the requirement of necessity to be met, the threat should be 'instant, overwhelming, and leaving no choice of means, and no moment of deliberation.'<sup>227</sup>

The case of *McCann v UK* is a good example on the immediacy requirement.<sup>228</sup> In that case the authorities had to make a split-second decision to kill the terrorists who were about to detonate a bomb.<sup>229</sup> In this light, it has been suggested that 'the final decision to shoot [the target] should be taken as near in time as is possible to the actual shot being fired' so as to ascertain that the individual targeted does not desist 'from the conduct that poses a threat to

---

<sup>223</sup> Basic Principles on the Use of Force and Firearms by Law Enforcement Officials UN Doc A/CONF 144/28/Rev 1 112 para 9 (1990) available at <[http://193.194.138.190/html/menu3/b/h\\_comp43.htm](http://193.194.138.190/html/menu3/b/h_comp43.htm)> (accessed 11 August 2011).

<sup>224</sup> As above.

<sup>225</sup> U.N Human Rights Committee General Comment Number 6 HRI/GEN/1/Rev 6 (1982) para 3; Inter-American Commission of Human Rights, Report on Terrorism and Human Rights OEA/Ser L/V/II 116.

<sup>226</sup> *Nachova v Bulgaria* ECHR( 16 June 2005) Ser A 42; *McCann v the United Kingdom*, 21 ECHR Ser B 148-150; *Barboeram-Adhin and Others v Suriname* Communication Number 146/1983 and 148 to 154/1983 UN Doc Supp No 40 (A/40/40) at 187 (1985)14.3; *Husband of Maria Fanny Suarez de Guerrero v Columbia* Communication Number R 11/45 UN Doc Supp No 40 (A/37/40) at 137 (1982)13.1-13.3.

<sup>227</sup> RY Jennings 'The Caroline and McLeod cases' (1938) 32 *American Journal of International Law* 92.

<sup>228</sup> *McCann v the United Kingdom* (n 226 above) 187.

<sup>229</sup> As above.

the life of another or others.<sup>230</sup> Secondly, other means like effecting arrest must be impossible leaving killing as the only option and measure of last resort.<sup>231</sup> Thirdly, the measure used to neutralize the threat (drone targeting) must be proportionate.<sup>232</sup>

Thus, drone targeted killing can only be permissible if it is absolutely necessary, proportionate and strictly unavoidable to prevent loss of life.<sup>233</sup> In as much as all the U.S drone targeting activities may not well fit in the realm of law enforcement, it have been concluded that the above standards apply to state agents who may not necessarily be police or law enforcement agents.<sup>234</sup> It has been observed that for drone strikes which are conducted outside the situations of clear armed conflict, it is almost next to impossibility for the above requirements to be met.<sup>235</sup> It is also fundamentally important to understand that the mere existence of ‘a state of war or threat of war, internal political instability or any other public emergency may not be invoked as a justification of such [targeted] executions.’<sup>236</sup>

Therefore, it is clear that the main purpose of the IHRL framework is to strictly monitor and review any use of force whose sole purpose is to deprive life and make sure it is within the confines of the law.<sup>237</sup> The question then is; are U.S drone targeted killings consistent with these strict standards? The following paragraphs address the questions which have been asked so far.

### **3.5 U.S drone targeted killings**

Since October 2001 the U.S has been engaged in targeting killings of ‘*suspected terrorists*’, a fact which is confirmed by U.S government officials.<sup>238</sup> It is beyond doubt that drones are deadly weapons<sup>239</sup> and use significant firepower of a military nature.<sup>240</sup> In many instances it has been observed that U.S drone targeted killings are indiscriminate when used where the target is in

---

<sup>230</sup> Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions’ (2011) UN/A/66/330 para 73.

<sup>231</sup> *McCann v the United Kingdom*( n 226 above)203.

<sup>232</sup> Human Rights Committee, General Comment Number 6(n 225 above).

<sup>233</sup> Lubell (n 4 above) 173.

<sup>234</sup> UN Special Rapporteur on extrajudicial executions handbook (n 33 above)71.

<sup>235</sup> UN Special Rapportuer on Extrajudicial Executions Handbook’ (n 33 above) 57.

<sup>236</sup> Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions

<sup>237</sup> *McCann* (n 226 above) 148.

<sup>238</sup> UN Special Rapportuer on extrajudicial executions handbook’ (n 33 above) 58.

<sup>240</sup> O’Connell (n 8 above) 13.

the vicinity of civilians.<sup>241</sup> Scholars worldwide have called for 'a stricter and more compelling test of necessity'<sup>242</sup> for individuals who are targeted by the U.S. Some scholars have concluded that U.S drone targeted killings are unlawful extra-judicial killings.<sup>243</sup>

It cannot go unnoticed that the U.S used to capture 'suspect terrorists' and detain them at Guantanamo Bay.<sup>244</sup> However, with a lot of outcry about torture activities in Guantanamo Bay, it is speculated that the U.S has found targeted killings of 'suspected terrorists' a more lucrative option. Some U.S officials have publicly praised drone targeted killings as 'the only game in town.'<sup>245</sup> Thus, drone targeted killing is found by the U.S as much easier and to some degree efficient.<sup>246</sup>

Patently, there is no incentive whatsoever for the U.S administration to grant terrorist due process. It has been observed that the absence of such incentive has resulted in the U.S killing 'terrorist with seeming impunity just as the terrorist themselves kill with near impunity.'<sup>247</sup> At some point, one poses and ponder whether the U.S is attempting to do what one would term a 'terrorist genocide', to wipe in whole everyone associated or suspected to be in association with the terrorists.

When asked by the Special Rapporteur to justify its drone targeted killings, the U.S's government's response was that its 'actions against al-Qaeda constitute a world-wide armed conflict to which international humanitarian law applies to the exclusion of human rights law', that IHL 'falls outside the mandate of the Special Rapporteur and of the Human Rights Council' and that the U.S can 'determine for itself whether an individual incident is governed by humanitarian law or human rights law'.<sup>248</sup>

---

<sup>241</sup> UN Special Rapporteur *Report on targeted killings* (A/HRC/14/24/Add 6) (28 May 2010)79.

<sup>242</sup> E Umansky 'Dull drone: Why unmanned U.S. Aerial Vehicles are a hazard to Afghan civilians' (2002) available at <http://www.slate.com/id/2063105/> (accessed 4 October 2011); 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 3 October 2011); *McCann* (n 226 above) 149.

<sup>243</sup> O'Connell (n 8 above).

<sup>244</sup> G S Corn et al 'America's longest held prisoner of war: lessons learned from the capture, prosecution, and extradition of General Manuel Noriega' (2011)71 *Louisiana Law Review* 1112.

<sup>245</sup> O'Connell (n 8 above) 1.

<sup>246</sup> May (n 2 above) 312.

<sup>247</sup> As above.

<sup>248</sup> UN Special Rapporteur on extrajudicial executions handbook (n 33 above) 58.

In criticism of the U.S's position, the Special Rapporteur noted that the U.S 'positions constitute a radical departure from past practice' and that if such erroneous and detrimental interpretation of the law was to be allowed it would completely eradicate public accountability 'to the detriment of the advances made by the international human rights and humanitarian law regimes over the past sixty years.'<sup>249</sup>

It can be observed that the reasons why the U.S may want IHRL framework excluded is the misconception that IHRL framework 'is incapable of meeting the threats posed by terrorists and, in particular, suicide bombers.'<sup>250</sup> It is however, argued that such is an erroneous notion because IHRL does not disable States from choosing 'between letting people be killed and letting their law enforcement officials use lethal force to prevent such killings.'<sup>251</sup> In actual fact, IHRL norms place a responsibility on States to diligently protect the rights of their citizens from threats posed by terrorists.<sup>252</sup> One scholar has correctly observed that IHRL norms 'were not drafted with peace and political stability in mind' but were actually crafted as tools to allow States 'to respond effectively to even the most serious of crises'.<sup>253</sup> *A fortiori*, the fight against terrorism should be done within the confines of the law. If the action to be taken is targeted killing, then there should be an imminent threat posed by the terrorist.<sup>254</sup> At this point one turns to examine U.S's targeting criteria in light of the standards outlined above.

### 3.6 Examining the US targeting criteria

On many occasions the U.S is targeting individuals on the basis of suspicion which is a clear denial of the right to due process.<sup>255</sup> By all angles of fairness and justice, it is not good enough to deprive an individual of their fundamental right to life on the basis of suspicion. Such targeting criteria is unscrupulously unpredictable for an 'individual cannot know whether their behaviour is likely to lead to a situation [they become suspect] in which they would lose their life'.<sup>256</sup>

---

<sup>249</sup> As above.

<sup>250</sup> UN Special Rapporteur on extrajudicial executions handbook (n 33 above) 72.

<sup>251</sup> UN Special Rapporteur on extrajudicial executions handbook (n 33 above) 71.

<sup>252</sup> Art (2)(1) of the International Covenant on Civil and Political Rights.

<sup>253</sup> International Commission of Jurists, *Assessing damage, urging action: report of the Eminent Jurists Panel on Terrorism, Counter-terrorism and Human Rights*, Geneva (2009) 18.

<sup>254</sup> Human Rights Committee General Comment Number 6 (n 225 above).

<sup>255</sup> See Annexure 1; O'Connell (n 113 above); Chesney (n 46 above); Thyne (n 75 above).

<sup>256</sup> Lubell (n 4 above) 171.



Where it is not clear about the activities of an individual in relation to the conflict, it is only proper that the individual be accorded his right to due process.

It is highly inappropriate, unjust and arbitrary to target and kill a '*suspected terrorist*' when 'allegations against him are not known', when there is no time by which he was ever 'proclaimed as wanted by law', when he has never been given an 'opportunity to vindicate his position', when there is no attempt whatsoever 'to arrest him with or without the help of surveillance by drones' and when 'neither lawful judgment is passed nor law of the land is followed.'<sup>257</sup> Yet, the '*suspected terrorist*' finds himself in form of ashes after the drone vomits hell fire missiles on him before he utters one word in his defense.<sup>258</sup> This is not to say that everyone who is targeted is not a terrorist, but some of those who have been targeted have turned out to be innocent civilians.

In this regard, drone targeting killings of persons 'without going through any transparent method of calling them '*suspect terrorists*' is inconsistent with human rights norms which clearly proscribe against extra judicial killing.<sup>259</sup> Of course one of the pricking questions which is asked is why should terrorists 'receive a full panoply of due process' when themselves are 'clearly unwilling to extend [the same] to their victims'?'<sup>260</sup>

However, it should be noted that 'there is a major counterweight to the failure to take the rights of suspect terrorist seriously'.<sup>261</sup> Failure to follow due process leads to the break down of rule of law.<sup>262</sup> Thus, regardless of how one regards terrorist, drone targeted killings are unacceptable for 'human beings are, at the minimum, not supposed to treat fellow human beings in these ways [targeted killing], no matter what these people have[or are suspected to]have done.'<sup>263</sup> One American scholar over several pages has asked several critical questions and they are collated bellow as follows;

---

<sup>257</sup> Khan (n 20 above) 7.

<sup>258</sup> Amnesty International 'Pakistan: US involvement in civilian deaths'.

<sup>259</sup> Art 6 of International Covenant on Civil and Political Rights; UN Special Rapporteur on extrajudicial executions handbook' (n 33 above) 58; Dworkin (n 47 above).

<sup>260</sup> May (n 20 above)312.

<sup>261</sup> As above.

<sup>262</sup> See generally M Drumbl 'Victimhood in our neighborhood: Terrorist crime, Taliban guilt, and the asymmetries of the international legal order' (2002)81 *North Carolina Law Review* 1-113.

<sup>263</sup> May (n 2 above) 313.

We have been led down the wrong path by the emotive meaning attached to the term ‘terrorist.’ Are suicide bombers that strike in cities so much worse than aerial bombers [drone operators too] that also strike in cities to make us think that one should be treated as outlaws and the others as full members of the international community?...Could we still talk about human rights meaningfully if there was one group of people, the members of non-State actors such as terrorist groups were excluded from the rule of law? And what rule if any, would they be subject to? Would it be the ‘rule of the jungle’? or the state of nature?<sup>264</sup>

Even as far back as the 17<sup>th</sup>-century, Grotius argued that it was an error to see pirates as *hostes humani generis*, mere enemies of all mankind deserving no rights. By the same measure terrorists should not be treated in the same manner for IHRL norms ‘afford protection for everyone regardless of what one has done and hence regardless of what one deserves’.<sup>265</sup> Labeling the entire groups of Al Qaeda and Taliban, consisting of thousands of members as ‘enemies of humanity’ and therefore subject to targeted killing is, by all angles, inconsistent with the core universal IHRL norm that ‘we are all much more alike than different and that all are subject to the same rule of law.’<sup>266</sup>

The argument proffered by the U.S is that it relies on intelligence information for selecting targets. Why should the U.S intelligence be trusted? In one interview, a U.S Drone Operator was asked about the veracity of the information upon which decision to target suspected terrorists are based.<sup>267</sup> The response was that U.S intelligence is never wrong.<sup>268</sup> However, it is well known that to date individuals have been targeted on the basis of wrong information. For example, on the 21<sup>st</sup> of February 2010, there was a drone strike on vehicles in Oruzgan which killed 23 civilians.<sup>269</sup> It was later discovered that the strike was based on inaccurate information. The U.S General McChrystal apologized for the incident noting that the news was heartbreaking.<sup>270</sup> However, this may not be an issue of apologies; it is about crafting security policies which are compatible with human rights norms.

---

<sup>264</sup> May (n 2 above) 298-318.

<sup>265</sup> May (n 2 above) 317; See also SG Jones & C Libicki ‘How terrorist group end: lessons for countering Al Qaida’ (2008) available at [http://www.rand.org/pubs/monographs/2008/RAND\\_MG741-1.pdf](http://www.rand.org/pubs/monographs/2008/RAND_MG741-1.pdf) (accessed 29 August 2011).

<sup>266</sup> May (n 2 above) 318.

<sup>267</sup> Creech (n 28 above); ‘Turning off autopilot: towards a sustainable drone policy’ (2010) *Harvard National Security Journal Analysis* available at <http://www.harvardnsj.com/2010/03/nsj-analysis-turning-off-autopilot-towards-a-sustainable-dronepolicy/> (accessed 29 June 2011).

<sup>268</sup> As above.

<sup>269</sup> As above.

<sup>270</sup> As above.

The above exemplifies the flaws of U.S drone targeted killings on the basis of 'suspicion'. On account of such targeting criteria, it is not surprising that in the past drone hell-fire missiles have been launched on wedding gatherings,<sup>271</sup> children gathering firewood<sup>272</sup> and innocent civilians in gardens.<sup>273</sup> One of the cases which drew the attention of the international community is when, on the 3<sup>rd</sup> of November 2002, the USA targeted a passenger vehicle in a populated region of Yemen and fired drone hell-fire missiles under the information that the vehicle was carrying a 'suspected Al Qaeda lieutenant.'<sup>274</sup> This resulted in the death of all six passengers in the vehicle amongst the dead, an American.

Apparently, in many instances the operating word in selection of target is 'suspicion.' This is to no wonder why the UN Special Rapporteur on extrajudicial killing classified the drone strike in Yemen referred above as a patent case of extrajudicial killing.<sup>275</sup> Pre-meditating to kill an individual on the basis of suspicion without giving them a chance of due process vitiates IHRL customary norms.<sup>276</sup> Could U.S's drone targeted killings without following due process be justified under principles of necessity?

### 3.7 The necessity of killing

It is understandable that terrorist in general pose a threat to the U.S citizens.<sup>277</sup> It is also comprehensible if the U.S drone target and kill a terrorist who poses an immediate threat to the life of its citizens. But, is the U.S targeting individuals who are posing an immediate threat? Are there no other feasible means to defuse the threat? It has been observed that in most instances

---

<sup>271</sup> In July 2002 a drone strike killed 48 Afghans at wedding amongst them women and children; In July 2008 a drone strike on a wedding party in eastern Afghanistan killed 47 civilians. See Creech (n 28 above).

<sup>272</sup> Creech refers to a drone strike on the 1<sup>st</sup> of March 2011 where, acting upon suspicion there was a drone strike on nine children gathering firewood on 'a hillside in the Nangalam District of Kunar Province.' 'Gen. Petraeus of the US apologized and said the accident should never have happened' whilst US Defense Secretary Robert M. Gates said the Nangalam accident was "a setback for our relationship with the Afghan people.'

<sup>273</sup> Haidon(n 116 above).

<sup>274</sup> O'Connell (n above)4.

<sup>275</sup> UN Doc E/CN 4/003/3 paras 37-39; see MJ Dennis 'Human rights in 2002: The annual sessions of the UN Commission on Human Rights and the Economics and Social Council' (2003) 97 *American Journal of International Law* 364, 367.

<sup>276</sup> P Alston 'Record AfPak drone attacks under Obama may violate international law'(2009)available at [http://www.democracynow.org/2009/10/28/un\\_special\\_rapporteur\\_on\\_extrajudicial\\_killings](http://www.democracynow.org/2009/10/28/un_special_rapporteur_on_extrajudicial_killings) (accessed 22 September 2011).

<sup>277</sup> Greenhood (n 54 above); Bianchi (n 90 above).

the U.S is aware of the locations of the suspects which, arguably, show that arrest would be feasible.<sup>278</sup>

Evidently, drones spend many hours giving surveillance on the movement of an individual before striking. In one incident in Yemen, the drone spent several hours monitoring the movements of Qaed Salim Sinan al-Harethi who was suspected of being instrumental in terrorist operations.<sup>279</sup> Nevertheless, when drone operators received the news that one of the individuals they suspected was working with Qaed had been arrested, they felt that Qaed may go into hiding and decided to kill him.<sup>280</sup> This is a clear example of where a suspect is deliberately killed 'in lieu of arrest, in circumstances in which [he] did not pose an immediate threat.'<sup>281</sup> Of course Qaed was implicated in past terrorist attacks but under IHRL, 'past actions cannot justify a killing outside the process of fair trial'.<sup>282</sup>

By the same measure, you can not target and kill an individual on the basis of suspicion that they may commit other crimes because under IHRL you can not lawfully execute someone for 'anticipated future action.'<sup>283</sup> It is argued therefore, that U.S's drone targeted killings when arrest is feasible constitutes an unlawful and flagrant violation of suspects' non-derogable right to life<sup>284</sup> and due process.<sup>285</sup> Worse still, the force which is used by U.S in targeting terrorist is disproportionate as it comes with it large numbers of civilian casualties.<sup>286</sup>

### 3.8 Disproportionate killings

The hunting out and flashing of 'suspected' terrorists by the U.S has caused a great deal of civilian casualties.<sup>287</sup> U.S drones are equipped with hell-fire missiles that most of the times when

---

<sup>278</sup> Kantar(n 198 above)18; O' Connell (n 113 above)24.

<sup>279</sup> Lubell (n 4 above) 177; Haidon (n 116 above) 255.

<sup>280</sup> As above.

<sup>281</sup> Haidon (n 116 above) 255; O' Connell (n 113 above)24.

<sup>282</sup> Lubell (n 4 above) 177.

<sup>283</sup> K Watkin 'Humans in the cross-hairs: Targeting and assassination in contemporary armed conflict in D Wippman & M Evangelista (eds) *New wars, new laws? Applying the laws of war in the 21<sup>st</sup> century conflicts* (2005)137.

<sup>284</sup> *McCann* (n 226 above) 212-13.

<sup>285</sup> Art 14 of International Covenant on Civil and Political Rights.

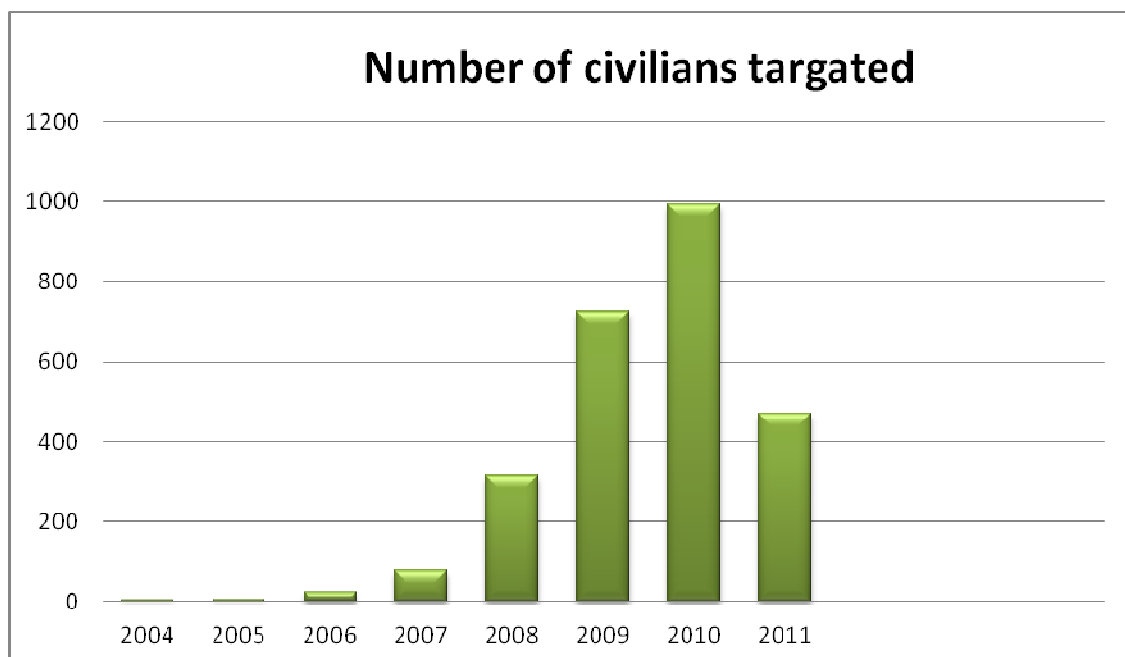
<sup>286</sup> ZH Usmani 'Pakistan body count' (2010) available at <http://www.pakistanbodycount.org/drn.php> (accessed 11 October 2011).

<sup>287</sup> Creech (n 28 above); Umansky(n 242 above); R Zakariya 'Drones and the law' (2010) available at <http://www.dawn.com/wps/wcm/connect/dawncontent-library/dawn/the-newspaper/columnists/19-rafia-zakaria-drones-and-the-law-710-hh-07> (accessed 29 September 2011).

an individual is targeted, many civilians in the vicinity of that target are deprived of their right to life as they die along with the target.<sup>288</sup>

The dramatic increase in the number of civilians who are killed whenever a ‘suspected’ terrorist is targeted is testimony to the fact that the force used is disproportionate.<sup>289</sup> In addition, not only are U.S drone targeted killings in violation of the right to life of innocent civilians, but they also inflict bodily harm as many people are injured whilst others suffer mental torture as they witness their beloved ones burnt to ashes.<sup>290</sup>

**Increase of civilian casualties in US drone targeted killings<sup>291</sup>**



To this end, a number of scholars have observed that U.S’s drone program itself is some sort of ‘terrorism’.<sup>292</sup> Innocent civilians especially in Arab nations live in constant fear even when there is no state of war.<sup>293</sup> Grossman has observed that;

<sup>288</sup> O’Connell (n 8 above) 13; AL Escorihuela Humanitarian law and human rights law: the politics of distinction (2011)19 *Michigan State Journal of International Law* 299.

<sup>289</sup> UN Special Rapporteur on extrajudicial executions handbook’ (n 33 above) 57.

<sup>290</sup> Usmani (n 286 above).

<sup>291</sup> Statistics used for this graph were taken from New America Foundation website. Available at <http://counterterrorism.newamerica.net/drones> (accessed 13 August 2011).

<sup>292</sup> D Grossman *On killing, the psychological cost of learning to kill in war and society* (1996)188-189.

Even without killing, drones terrify people. They fly for hours overhead, hovering, filming, threatening to strike at any time. Residents of the Occupied Palestinian Territories report on the terror and oppression inflicted by drones.<sup>294</sup>

In the same vein, O'Connell states that in as much as the civilian population may not support the terrorists, they equally hate the use of drones because it brings terror to them and threatens their security of person.

While violent extremists/terrorist may be unpopular, for a frightened population they seem less ominous than a faceless enemy(drone) that wages war from afar and often kills more civilians than militants.<sup>295</sup>

More succinctly, one scholar has concluded that 'U.S drone missile strikes on suspected terrorist targets [are] de facto acts of terrorism themselves.'<sup>296</sup> Now that in addition to them being disproportionate in terms of casualties, drones spread terror amongst the civilian population, it is argued that drone targeted killings are unlawful.<sup>297</sup>

### 3.9 Accountability

Further, what makes drone targeted killings more undesirable is the fact that there is no accountability. The CIA who dominantly operate drones are given 'leeway to operate in the shadows' which increases wide chances of arbitrary deprivation of the right to life.<sup>298</sup> Unfortunately, names of those who are targeted, the number of casualties involved and any other relevant information is not disclosed by the U.S government as it contends that the information is privileged and classified.<sup>299</sup>

Clearly, this obliterates accountability on the part of the U.S especially when no one knows the crime of the victim 'or their role in any terrorist plans even after the strikes.'<sup>300</sup> When States use force, it is their customary obligation to record the number of casualties and disclose

---

<sup>293</sup> As above.

<sup>294</sup> As above.

<sup>295</sup> O'Connell (n 8 above) 10.

<sup>296</sup> A Rodriguez '*Clinton's Pakistan visit reveals widespread distrust of U.S.*' (2009) available at [latimes.com/news/nationworld/world/la-fg-clinton-pakistan1-2009nov.01,0,1313175.story](http://latimes.com/news/nationworld/world/la-fg-clinton-pakistan1-2009nov.01,0,1313175.story) (accessed 03 October 2011).

<sup>297</sup> R Zakariya '*Drones and the law*' (2010) available at <http://www.dawn.com/wps/wcm/connect/dawncontent-library/dawn/the-newspaper/columnists/19-rafia-zakaria-drones-and-the-law-710-hh-07> (accessed 29 September 2011).

<sup>298</sup> Columbia Law School Human Rights Institute (n 49 above)32 quoting Afsheen John Radsan, former Assistant General Counsel at the CIA.

<sup>299</sup> Khan (n 20 above) 9.

<sup>300</sup> Dworkin (n 47 above); Khan (n 20 above) 9.

it.<sup>301</sup> In order to limit and control the use of force especially where it deprives life, there should be public disclosures of why a specific individual was targeted and killed.<sup>302</sup> One cannot see the rational why information should be kept secret especially after the target is already eliminated.

Worse still, where there are claims that there has been arbitrary deprivation of the right to life; for neither the U.S nor the country in which the victim was targeted to investigate the matter or publish the out comes of the investigations is contrary to IHRL norms.<sup>303</sup> IHRL norms demands that the contested drone strike by the CIA agents be investigated<sup>304</sup> for the purposes of accountability of the deaths which results from the strikes.<sup>305</sup>

Where the right to life is deprived in unclear circumstances which may amount to arbitrary deprivation, it is the duty of the state to investigate.<sup>306</sup> Both the U.S and countries in which drone targeted killings occur are reluctant to investigate the violations.<sup>307</sup> States have an obligation to protect the rights of individuals within their boundaries.<sup>308</sup> Where violations of rights 'are perpetrated by authorised agents of the State on foreign territory,'<sup>309</sup> 'whether with the acquiescence of the Government of [the foreign State] or in opposition to it,'<sup>310</sup> the State bears responsibility. What is unfortunate is that 'despite all the mystery and lack of transparency,'<sup>311</sup> the budget of CIA's drone attacks for coming year [2012] was increased by 40%.<sup>312</sup>

---

<sup>301</sup> See generally S Breau & R Joyce 'Drone attacks, international law, and the legal obligation to record civilian casualties of armed conflict' (2011) *Oxford Research Group*.

<sup>302</sup> Chesney (n 46 above); Watkin (n 18 above).

<sup>303</sup> *McKerr v United Kingdom* 34 ECHR (26 October 2001) Rep 553, 599 para 111.

<sup>304</sup> As above.

<sup>305</sup> As above.

<sup>306</sup> Breau & R Joyce (n 301 above).

<sup>307</sup> Khan (n 20 above)8.

<sup>308</sup> Art 2(1) of the International Covenant on Civil and Political rights; Lubell (n 4 above)219; *Pad and others v Turkey* 60167/00 (28 June 2007) 54; *Andreou v Turk* 45653/99 Admissibility decision (3 June 2008)25; *Issa v Turkey* 31821/96 16 (November 2004)71-72 (2004); *Solomou and other v Turkey* 36832/97 (24 June 2008) 50-51; Human Rights Committee *General Comment 31, Nature of the Legal Obligation Imposed on States Parties to the Covenant*, CCPR/C/21/ Rev. 1/Add/13 (2004)10; *Congo v Uganda* (n 175 above) 178-180; *Legal consequences of the construction of the wall* (n 169 above)111.

<sup>309</sup> UN Special Rapporteur on extrajudicial executions handbook (n 33 above) 58.

<sup>310</sup> *Lopez v Uruguay* Communication Number 52/1979 CCPR/C/OP/1 88 (1984) paras 12.1-12.3.

<sup>311</sup> P Alston 'Record AfPak drone attacks under Obama may violate international law' (2009) available at [http://www.democracynow.org/2009/10/28/un\\_special\\_rapporteur\\_on\\_extrajudicial\\_killings](http://www.democracynow.org/2009/10/28/un_special_rapporteur_on_extrajudicial_killings) (accessed 22 September 2011). Philip Alston is a UN Special Rapporteur on Extrajudicial Killings; R Cohen 'An eye for an eye' (2010) available at <http://www.nytimes.com/2010/02/26/opinion/26iht-edcohen.html> (accessed 10 October 2011).

<sup>312</sup> Khan (n 20 above).

### 3.10 Conclusion

In concluding this Chapter, it is noted that from time immemorial IHRL has been developing, individual rights have become important in the international law frame work.<sup>313</sup> This can even be seen with the ordaining of principles such as the ‘responsibility to protect’ whose aim is to protect the individual from the caprices of state use of force or rebel violence.<sup>314</sup> Unfortunately and frighteningly, the U.S’s drone programme moves against these principles and risks setting wrong precedents for the world.

From ‘the lens of ICCPR, the logic of drone attacks is undefendable’ for human rights have ‘no temporal limitations’ and should be protected notwithstanding disagreements on the qualification of the conflict.<sup>315</sup> Targeted killings which are not justifiable by necessity and couched with proportionality are contrary to IHRL norms. The ‘suspected terrorist’, no matter how demonized, remains an accused person, whose offense however serious, does not deprive him of his ‘right to be presumed innocent until proven guilty and to have [his] guilt or innocence established in a regular court of law in a fair trial.’<sup>316</sup> The criminal justice system must never be circumvented through targeted killings of potential defendants.<sup>317</sup> Targeted killings are thus by far ‘the most egregious violation of due process rights’.<sup>318</sup> One would want to end this Chapter with Kofi Annan’s statement as regard the methods of countering terrorism;

We should all be clear that there is no trade-off between effective action against terrorism and protection of human rights. On the contrary, I believe that in the long term, we shall find that human rights, along with democracy and social justice, are one of the best prophylactics against terrorism.<sup>319</sup>

---

<sup>313</sup> R Ehrenreich ‘War everywhere: rights, national security law, and the law of armed conflict in the age of terror’ (2004)153 *University of Pennsylvania Law Review* 675. 761

<sup>314</sup> Khan (n 20 above) 9.

<sup>315</sup> Khan (n 20 above) 8.

<sup>316</sup> M Kantar ‘International law: the first casualty of the drone war: a comprehensive legal analysis of U.S. drone strikes in Pakistan’ (2009)18 available at <http://www.zcommunications.org/international-law-the-first-casualty-of-the-drone-war-by-max-kantar> (accessed 13 October 2011).

<sup>317</sup> L May *Aggression and crimes against peace* (2008)313.

<sup>318</sup> L May *Aggression and crimes against peace* (2008)314.

<sup>319</sup> K Annan ‘Address to the UN Security Council meeting on counterterrorism measures’ (2002) available at <http://www.unis.unvienna.org/unis/pressrels/2002/sgsm8105.html> (accessed 11 October 2011). (Former UN Secretary General).



In order to put an end to 'unrestricted wars', powerful states too need to start respecting human rights norms.<sup>320</sup> In the wise words of one scholar, 'history shows that when societies trade human rights for security, most often they get neither'.<sup>321</sup>

---

<sup>320</sup> Q Liang & W Xiangsue *Unrestricted Warfare* (1999)13.

<sup>321</sup> AN Khan (n 22 above) 6.

## Chapter Four: Legality of drone strikes under IHL principles

---

### 4.1 Introduction

Following all the arguments of the U.S that IHL is the applicable law, one could be tempted to think that drone targeted killings are justifiable under this regime of law. But the question is; is it really so? This is what this Chapter seeks to find out through an assessment of drone operations in the territories of Afghanistan and Pakistan. In assessing the legality of drone operations in the mentioned territories, it is inevitable to refer to some of the arguments made in Chapter 2. The U.S now classifies the conflict against Al Qaeda and associates as NIAC. The implication of this is that the legality of drones must then be assessed only in terms of Article 3 Common to the Geneva Conventions.

However, under this section the legality of U.S drone targeted killings is assessed under IHL principles which are developed both in IAC and NIAC since the dichotomy between NIAC and IAC, to a large measure, is no longer relevant.<sup>322</sup> This is mainly because most of IHL principles which apply both in NIAC and IAC have acquired the status of customary international law and are of the same effect.<sup>323</sup> The following few paragraphs address this point but does not necessarily go deep into the intricacies of the argument as it is beyond the scope of this section.

#### 4.1.1 IAC/NIAC customary law principles applicable to drones

The major principles of IHL are humanity, distinction, military necessity and proportionality. With these principles developing into customary international law, the dichotomy between IAC and NIAC has become superfluous.<sup>324</sup> The principle of humanity which is the core of all has acquired the force of *jus cogens*.<sup>325</sup> From the principle of humanity flow the other principles of

---

<sup>322</sup> Y Sandoz et al 'Armed conflicts and parties to armed conflicts under IHL: confronting legal categories to contemporary realities: proceedings of the 10<sup>th</sup> Bruges Colloquium, 22-23 October 2009' (2010) CICR Collège d'Europe 148.

<sup>323</sup> N Lamp 'Conceptions of war and paradigms of compliance: the new war challenge to international humanitarian law' (2011)16 *Journal of Conflict and Security law* 225.

<sup>324</sup> Sandoz et al (n 322 above).

<sup>325</sup> Watkin (n 18 above); M Shaw *International law* (2002).

IHL.<sup>326</sup> For the purposes of according humane treatment it is therefore, immaterial how a conflict is classified.

Clearly, the dichotomy between IAC and NIAC was long back justified when parties in IAC were considered to be more human than those in a NIAC, but at the present moment, scholars have argued that in view of customary international law, it does not make sense for the law to enact certain bans against certain acts under IAC whilst the same bans do not exist for the same in NIAC.<sup>327</sup> International tribunals and courts such as the ICJ,<sup>328</sup> ICTY,<sup>329</sup> and the Inter-American Commission on Human Rights,<sup>330</sup> find that most of the IHL principles whether in IAC or NIAC are customary and should be observed in equal measure.

In the *Tadic case*, it was emphasized that IHL principles have acquired the status of customary international law and cover both aspects of IAC and NIAC as 'the protection of civilians from hostilities, in particular from indiscriminate attacks' is blind to the categorisation of the conflict.<sup>331</sup> Thus, U.S's categorisation of the conflict as NIAC will not *per se* justify the legality of drone targeted killing. In the words of one international lawyer, Bassiouni, referring to the States' desire of categorising conflicts as NIAC;

It is anachronistic that these different legal regimes and sub-regimes apply to the same socially protected interests and reflect the same human and social values, but differ in their applications depending on the legal characterization of the type of conflict. Governments maintain these distinctions for purely political reasons, namely, to avoid giving insurgents any claim or appearance of legal legitimacy.<sup>332</sup>

Thus, distinguishing between NIAC and IAC

is no longer factually tenable or compatible with the thrust of humanitarian law, as the contemporary law of armed conflict has become to be known. One of the consequences of the nuclear stalemate is that most international conflict now takes the guise of internal conflict, much of it conducted covertly or at a level of low intensity. Paying lip service to the alleged

---

<sup>326</sup> International Institute of Humanitarian Law *The manual on the law of non-international armed conflict* (2006)19.

<sup>327</sup> Sandoz et al (n 322 above).

<sup>328</sup> *Nuclear Weapons case* (n 188 above)434.

<sup>329</sup> *Tadic case* (n 69 above) 435; *Prosecutor v Marti* Review of the Indictment para 437 and 552.

<sup>330</sup> As above, see also Inter-American Commission on Human Rights, *Case 11.137 (Argentina)* in the case relative to the events at La Tablada in Argentina)810.

<sup>331</sup> *Tadic case* (n 69 above) para 127.

<sup>332</sup> MC Bassiouni 'New wars and the crisis of compliance with the law of armed conflict by non-state actors'731 available at <http://vlex.com/vidwars-crisis-compliance-armed-conflict-actors-57039419> (accessed 13 August 2011).

distinction simply frustrates the humanitarian purpose of the law of war in most of the instances in which war now occurs.<sup>333</sup>

*A fortiori*, in analysing the legality of drone targeted killings under IHL, one does not seek to draw lines between NIAC and IAC because ‘what is inhumane, and consequently proscribed, in international wars, cannot but be humane and admissible in civil strife.’<sup>334</sup> In this regard, it is the purpose of IHL that matters much more. The fundamental principle of humanity during an armed conflict is ‘to protect civilians within the bounds of lawful warfare and not to prevent an armed conflict, but to regulate it.’<sup>335</sup>

For what it is worth, most of the situations before the ICC to date concern crimes perpetrated within the conflicts which conflates the paradigm between NIAC and IAC.<sup>336</sup> The distinction between IAC and NIAC is thus severely blurred.<sup>337</sup> Therefore, there is nothing within justice that ought to prohibit the assessment of the legality of drone targeted killings with IHL principles developed both under NIAC and IAC. Having said that, one now turns to examine in detail how drone warfare ferries with IHL principles.

#### **4.2 Principle of humanity**

War is in no way a relationship of man with man... individuals are enemies only by accident; not as men, nor even as citizens, but as soldiers . . . since the object of war is to destroy the enemy State, it is legitimate to kill the latter’s defenders as long as they are carrying arms; but as soon as they lay them down and surrender, they cease to be enemies or agents of the enemy, and they again become mere men and it is not longer legitimate to take their lives.<sup>338</sup>

From this historic statement, what can be deduced is a clear guiding principle that in as much as belligerences maybe at war, every individual remains human. Henry Dunant, the god-father of humanity on the battlefield, sounded the same clarion notes after witnessing the excesses of war in the Battle of Solferino. People were massacred indiscriminately by every means and method, the wounded and sick became prey and humanity was a far away cry on the battle

---

<sup>333</sup> W Reisman & J Silk ‘Which law applies to the Afghan conflict?’(1998)82 *American Journal of International Law* 465.

<sup>334</sup> *Tadic case* (n 69 above)

<sup>335</sup> Sandoz (n 322 above).

<sup>336</sup> Referrals from Uganda, the DRC cases, cases from the Central African Republic and Security Council referrals in Darfur, Sudan.

<sup>337</sup> J Macák *Internationalization of armed conflicts* (2010)30.

<sup>338</sup> JJ Rousseau.

field.<sup>339</sup> With his advocacy and the coming of the Geneva Conventions, the world began to realize that although a soldier is authorised to kill, killing is not the ultimate objective and certainly inflicting unnecessary pain and suffering should be avoided.

Thus, notwithstanding the existence of an armed conflict, the international community and international law obliges belligerences to choose means and methods of warfare which are humane. It is on account of the principle of humanity that from time to time weapons that cause unnecessary suffering and indiscriminate deaths are prohibited. The principal question then is; does the U.S drone programme conform to the principle of humanity?

The major response of the U.S has been that IHL does not prohibit the use of advanced technology.<sup>340</sup> That is a correct position of the law. However, the said technology must be in line with IHL principles, the underlying being the principle of humanity. Concerns have been raised as to whether the spirit of humanity can touch a drone operator who is far removed from his victim. Psychologists have argued that the possibility of causing harm is greater where the victimiser is removed emotionally and physically from their victim.<sup>341</sup>

Because operators are based thousands of miles away from the battlefield, and undertake operations entirely through computer screens and remote audio feed, there is a risk of developing a “Playstation” mentality to killing.<sup>342</sup> This fear of a risk of developing ‘Playstation’ mentality to killing is not mere paranoia, it is a real risk. Further, it is humanity which obliges a belligerent to desist from killing a combatant who lays his weapons down and surrender. How can one ever surrender to a drone? Apparently, it is virtually impossible. This defies the ‘basic notions of humanity’ for an individual should be accorded ‘an opportunity to surrender’.<sup>343</sup> One may well ask whether the employment of drones makes the principles relating to *hors de combats* redundant. This is not a desirable state of affairs because a belligerent may ‘under no circumstances, follow an approach in terms of which

---

<sup>339</sup> HM Kinsella *The image before the weapon: a critical history of the distinction between combatant and civilian* (2011)244 stating that principle of humanity was greatly influenced with Christian concepts of mercy and charity.

<sup>340</sup> Koh (n 22 above).

<sup>341</sup> UN Special Rapporteur on extrajudicial executions handbook (n 33 above)57.

<sup>342</sup> As above.

<sup>343</sup> ICRC *Interpretive guidance on the notion of direct participation in hostilities under international humanitarian law* (2009)82.

an offer to surrender will not be accepted. Orders that 'no quarter be given' constitute war crimes.<sup>344</sup>

The impossibility of surrendering to a drone and the absence of humanity can be exemplified by the targeting of Baitullah Mehsud in August 2009.<sup>345</sup> Mehsud was on the U.S's wanted list for many years. When the US finally located him, he was diabetic and has been diagnosed of a kidney ailment.<sup>346</sup> At the very moment when he was targeted, he was receiving an intravenous transfusion.<sup>347</sup> There are two issues which can be noted from this incident. Firstly, it is possible that such sickness had placed him *hors de combat* and therefore immune from targeting.<sup>348</sup>

Secondly, bearing in mind his illness there were high chances of him surrendering yet he was not spared from hell-fire missiles. Alongside with other twelve unintended targets, amongst which included his old parents, Mehsud was wiped off the face of the earth.<sup>349</sup> It is from incidents like this that one can further note the dangers of combatants who are far removed from their victims. Chances are high that sentiments of humanity are obliterated. As aforementioned, from the principle of humanity flow other IHL principles.

### 4.3 Principle of distinction

It is heard from many quarters that whilst 'people were in the gardens to water their plantings, the plane without a pilot targeted them and they were killed.'<sup>350</sup> Most of the loud cries about U.S's drone programme concern the question of who is being targeted in the global war on terror. The principle of distinction entails that the parties to a conflict, whether NIAC or IAC, 'must at all times distinguish between civilians and combatants.'<sup>351</sup> The principle of distinction has acquired the force of *jus cogens*<sup>352</sup> and it prohibits belligerents from making civilians their

---

<sup>344</sup> Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions' (2011) UN/A/66/330 para 72; Article 8(2)(b)(xii) and article 8(2)(e)(x) of ICC Statute; Rules 46 to 48 of Customary International Humanitarian Law.

<sup>345</sup> Mayer (n 110 above).

<sup>346</sup> As above

<sup>347</sup> As above.

<sup>348</sup> Rule 47 of the 2005 ICRC study of customary international humanitarian law.

<sup>349</sup> O' Connell (n 8 above) 11.

<sup>350</sup> Creech (n 28 above) quoting Agha Jan, a resident of Lashkar Gah.

<sup>351</sup> ICRC study of customary international humanitarian law Rule 1; Article 43(2) of Additional Protocol I of 1977 to the 1949 Geneva Conventions.

<sup>352</sup> J Henckaerts & L Doswald-Beck *Customary international humanitarian law* (2005)3.

object of attack at any given time.<sup>353</sup> Thus, in its drone targeting policy the U.S is obliged to distinguish between military objectives and civilian objects. Military objectives refer to;

those objects which by their nature, location, purpose or use make an effective contribution to military action and those whose total or partial destruction, capture or neutralisation, in the circumstances ruling at the time, offers a definite military advantage.<sup>354</sup>

This definition of military objective is accepted as part of customary international law.<sup>355</sup> For that reason, for individuals who are targeted by the U.S's drones to be legitimate targets, they need to meet the threshold set in the definition of military objective.<sup>356</sup> The military advantage gained from targeting a military objective must be tangible and not something in abstract or general.<sup>357</sup> Thus, for a U.S drone targeted killing to be lawful, it need not offer only 'indirect contributions and possible advantages' to the U.S but tangible military advantage.<sup>358</sup> Along these lines, it should be understood that a target can either be a military objective or a civilian object, 'nothing fall between the two.'<sup>359</sup>

In determining the legality of U.S drone targeted killing under IHL, it is therefore of paramount importance to assess whether the U.S is targeting clear military objectives. The first question which can be asked is whether suspicion that an individual is a terrorist is enough to make one a legitimate military objective. When targeting, the principle of distinction demands certainty not suspicion.<sup>360</sup> For that reason, there is a presumption that 'someone who appears to be a civilian is in fact a civilian.'<sup>361</sup>

---

<sup>353</sup> Kinsella (n 339 above); Quenivet (n 181 above); *Nuclear Weapons case* (n 188 above) 257.

<sup>354</sup> Art 52(2) Additional Protocol I of 1977 to the 1949 Geneva Conventions; M Sassoli 'Targeting: The scope and utility of the concept of 'military objectives' for the protection of civilians in contemporary armed conflicts' (2005)184 in D Wippman & M Evangelista (eds) *New wars, new laws? Applying the laws of war in the 21<sup>st</sup> century conflicts* (2005)181.

<sup>355</sup> Henckaerts (n 339 above)29-32. However, there is debate as to whether certain actions like financial contribution to war effort can make one a military objective. This is approach is mainly discouraged because it would lead to the targeting of tax payers whose money in a war situation contribute to war effort. See HB Robertson 'The principle of the military objective in the law of armed conflict'(1997)8 *United States Air Force Academy Journal of Legal Studies* 35-70.

<sup>356</sup> F Hampson 'The principle of proportionality in the law of armed conflict' (2010)46 in S Perrigo & J Whitman (eds) *The Geneva conventions under assault* (2010)46.

<sup>357</sup> Hampson (n 356 above) 51.

<sup>358</sup> M Sassoli 'Legitimate targets of attacks under international humanitarian law' (2003)2 Background paper prepared for the Informal High Level Expert Meeting on the Reaffirmation and Development of International Humanitarian Law, Cambridge (27-29 January 2003).

<sup>359</sup> Hampson (n 356 above) 46.

<sup>360</sup> Hampson (n 356 above) 46.

<sup>361</sup> Hampson (n 356 above) 47; Art 50(1) of Additional Protocol I.

In this regard, the principle of distinction serves as ‘the corner stone of contemporary concepts of civilian protection’ to which U.S.’s drone programme should adhere.<sup>362</sup> This does not mean that one is blind to the fact that in contemporary conflicts like that of the U.S against the Taliban and Al Qaeda, there is ‘decivilianisation’ of civilians which makes the application of the principle of distinction very difficult.<sup>363</sup> There are cases where terrorist fledge into the civilians, or civilians flag terrorists either willingly or unwillingly.<sup>364</sup>

Apparently, this have seen many drone operations resulting in the killing of many civilians as the U.S considers itself without option but to manhunt terrorist amongst the civilian population. Nevertheless, it is more advisable to pluck out the ‘weeds’ amongst the ‘crop’ rather than burn the whole field. This is what the principle of distinction is all about. Thus, in as much as the nature of contemporary armed conflict like the fight against terrorism might be putting IHL to ‘test’, it must always be remembered that the law of armed conflict ‘was not drafted to rule on war, but rather to protect victims of war, in particular civilians.’<sup>365</sup>

However, such civilians only enjoy such protection in as much as they do not directly take part in hostilities. They are arguments that individuals who are targeted by the U.S.’s drones directly participate in hostilities and therefore have lost their protection. The question is how far does this go in justifying U.S.’s drone warfare under the principle of distinction.

#### **4.3.1 Targeting on the basis of direct participation in hostilities**

In any kind of armed conflict civilians shall not be targeted until such time they are ‘directly taking part in hostilities.’<sup>366</sup> Therefore, it is acceptable in terms of IHL that when a civilian directly participate in hostilities he/she lose protection<sup>367</sup> and can be lawfully targeted as a

---

<sup>362</sup> S Gordon ‘Civilian protection- what’s left of the norm’ (2010)77 in S Perrigo & J Whitman (eds) *The Geneva conventions under assault* (2010)77; M Sassoli (n 358 above)181.

<sup>363</sup> Gordon (n 362 above) 79.

<sup>364</sup> As above.

<sup>365</sup> A Engeland *Civilian or combatant? : a challenge for the twenty-first century* (2011)245; See also R Geiss & M Siegrist ‘Has the armed conflict in Afghanistan affected the rules on the conduct of hostilities?’ (2011)93 *International Review of the Red Cross* 11-46.

<sup>366</sup> Article 4 of GCIV ; Article 51(3) of Additional Protocol I to the Geneva Conventions.

<sup>367</sup> K Dörmann ‘The legal situation of unlawful/unprivileged combatants’ (2002)85 *International Law Review of the Red Cross* 46.



military objective.<sup>368</sup> There are however immense challenges in the application of rules under which a civilian loses protection in conflicts like the U.S's global war on terror.<sup>369</sup> In compounding the difficulties, the U.S in its drone programme has not clearly defined in what ways the individuals who are targeted are directly participating in hostilities.<sup>370</sup>

An act constitutes direct participation when it is specifically designed to cause direct substantial harm to one belligerent in support of the other.<sup>371</sup> As a matter of principle, targeting of an individual for direct participation in hostilities is also subject to time restrictions. It is only lawful to target terrorist 'for such time as' they directly participate in hostilities.<sup>372</sup> There is however, extensive disagreement amongst scholars as to what constitute direct participation to justify drone targeting.<sup>373</sup>

On one hand, there is a camp of scholars who agitate for the expansive interpretation of direct participation to give 'military actors [a] broad discretion to make targeting decisions.'<sup>374</sup> Sometimes the idea of a wide discretion is necessitated by the fact that in a conflict where the other belligerent uses hit and hide terrorist tactics it is difficult to distinguish who is participating and who is not.<sup>375</sup>

On the other hand, there are scholars who argue for a restrictive interpretation of what constitute direct participation arguing that a broad interpretation jeopardizes the protection of

---

<sup>368</sup> M Schmitt 'Deconstructing direct participation in hostilities: the constitutive elements' (2010) 42 *NYU Journal of International Law and Policy* 699.

<sup>369</sup> Hampson (n 356 above) 48.

<sup>370</sup> B Boothby 'And for such time as: the time dimension to direct participation in hostilities' (2010) 42 *NYU Journal of International Law and Policy* 758.

<sup>371</sup> ICRC *Interpretive guidance on the notion of direct participation in hostilities under international humanitarian law* (2009)1016.

<sup>372</sup> Hampson (n 356 above) 47.

<sup>373</sup> D Toorn 'Direct participation in hostilities: a legal and practical road test of the International Committee of the Red Cross's guidance through Afghanistan' (2010)17 *Australian international law journal* 21.

<sup>374</sup> Columbia Law School Human Rights Institute (n 49 above)19; see also R Goodman & D Jinks 'The ICRC interpretive guidance on the notion of direct participation in hostilities under international humanitarian law: an introduction to the forum'(2010) 42 *NYU Journal of International Law and Policy* 640; K Watkin 'Opportunity lost: organized armed groups and the ICRC "direct participation in hostilities" interpretive guidance' (2010)42 *Journal of International Law and Policy* 692.

<sup>375</sup> G Bartolini 'The civilianization of the contemporary armed conflicts' (2008)2 *Select Proceedings of the European Society of International law* 569.

civilians.<sup>376</sup> For the purposes of civilian protection, it is far much better to have ‘a restrictive interpretation of what constitutes direct participation.’<sup>377</sup>

The author takes the view that determination of direct participation in a conflict is subjective.<sup>378</sup> Given the uncertainties of the nature of conflict in which drones are used,<sup>379</sup> participation must be limited to an immediate and clear cut involvement in a military operation.<sup>380</sup> Where targeting is carried beyond an immediate involvement in a military operation, there should be at least a traceable record of involvement in hostilities. For that argument, in as much as a terrorist should not be allowed to be ‘a farmer by day and fighter by the night,’<sup>381</sup> drone targeted killings should not be entirely on the basis of suspicion that one is directly participating in hostilities by mere alleged membership to Taliban, Al Qaeda or associated groups.

Agreeably, in the fight against terrorisms it is difficult to determine whether a person is engaged in ‘whatever are agreed to be relevant activities’ amounting to direct participation.<sup>382</sup> Further, for terrorists who hit and hide, it means at every moment they legally stop participating in hostilities.<sup>383</sup> This presents a great challenge to the U.S which is then subjected to several terrorist attacks without being able to hunt terrorists down when they revert to their civilian status.<sup>384</sup>

---

<sup>376</sup> R Gehring ‘Loss of civilian protections under the Fourth Geneva Convention and Protocol I’ (1980) XIX-1-2 *Military Law and Law of War Review* 19.

<sup>377</sup> E Christensen ‘The dilemma of direct participation in hostilities’ (2010)19 *Journal of Transnational Law and Policy* 281.

<sup>378</sup> *Tadic case* (n 69 above) 616.

<sup>379</sup> Columbia Law School Human Rights Institute (n 49 above)18.

<sup>380</sup> N Melzer ‘Keeping the balance between military necessity and humanity: a response to four critiques on the ICRC’s Interpretive guidance on the notion of direct participation in hostilities’ (2010) 42 *NYU Journal of International Law and Policy* 831; K Watkin ‘Humans in the cross-hairs: Targeting and assassination in contemporary armed conflict (2005)156 in D Wippman & M Evangelista (eds) *New wars, new laws? Applying the laws of war in the 21<sup>st</sup> century conflicts* (2005)137. In as much as the ICRC Interpretive Guidance (at 1031) states that participation encompasses preparation of an attack, its actual operation and the return from the operation, it can not be acceptable that the US go on a man-hunt through its drone operations of anyone suspected to have been involved in the 11 September attacks.

<sup>381</sup> MN Schmitt ‘The interpretive guidance on the notion of direct participation in hostilities: a critical analysis’ (2010)1 *Harvard National Law and Security Journal* 37.

<sup>382</sup> Sassoli (n 358 above); Hampson (n 356 above)47; Schmit (n 368 above); Bootby (n 370 above).

<sup>383</sup> Hampson (n 356 above)47

<sup>384</sup> As above.

In response to this challenge, the U.S.'s designation of targets has not been based only on an individual's direct participation in hostilities but his/her membership to terrorist organisation. Many scholars are hyper-critical to this kind of criteria especially in view of the fact that in many instances the burden of proving the alleged membership is not met.<sup>385</sup> The U.S drone strikes on individuals who are clearly not engaged in a military operation at a time of their targeting<sup>386</sup> have thus been explained under the doctrine of continuous combatant function (CCF).<sup>387</sup>

#### 4.3.2 Targeting on the basis of continuous combatant function

The CCF doctrine emerged in recent years in a bid to counter what has been termed the 'raving door dilemma.'<sup>388</sup> This is when a difficult arises in an armed conflict when a civilian acrobatically changes from civilian to combatant and during the course of hostilities. In order to make sure that a civilian does not enjoy civilian protection when in actual fact he regularly engages himself in hostilities, he assumes what is termed continuous combatant function. This means that even when he does his 'gymnastics' and become a civilian once again, he is still subject to attack.

Many scholars disapprove the CCF doctrine on the basis that it diminishes civilian protection in armed conflicts and runs counter to the specific treaty language limiting direct participation to 'for such time'<sup>389</sup> as opposed to 'all the time.'<sup>390</sup> More so, CCF doctrine lacks state practice for uniform acceptance.<sup>391</sup> As such, the loss of civilian immunity for any individual who is targeted by the U.S should be restricted to commission of specific acts of direct participation.<sup>392</sup>

This is so because in an asymmetric scenarios like the one in which the U.S is dealing with terrorists, not only is it impracticable to designate CCF status on an individual, but also

---

<sup>385</sup> WJ Fenrick 'ICRC guidance on direct participation in hostilities' (2009)12 *Yearbook of international humanitarian law* 287.

<sup>386</sup> Vogel (n 41 above)122; M Schmitt 'Humanitarian law and direct participation in hostilities by private contractors or civilian employees' (2005) 379 *Chicago Journal of International Law* 511; Schmitt (n 368 above).

<sup>387</sup> The doctrine of continuous combat function posits that a civilian who is repeatedly involved in hostilities through persistent acts of direct participation maybe targeted even at the time he/she is not actively engaged. See Boothby (n above 758). However, scholars also disagree on what constitutes CCF.

<sup>388</sup> N Melzer "ICRC's interpretive guidance on the notion of direct participation in hostilities under international humanitarian Law" (*International Committee of the Red Cross*)1.

<sup>389</sup> Art 13(3) of Additional Protocol II of Geneva Conventions.

<sup>390</sup> Alston (n 1 above).

<sup>391</sup> *Public Committee against torture in Israel et al v Government of Israel et al* (2006) 23 A.J.I.L. 459 para 40.

<sup>392</sup> Boothby( n 370 above).

highly undesirable.<sup>393</sup> Correct identification of the actual individuals responsible for terrorist attacks is more than often, marred.<sup>394</sup> As a result, what exist is only a suspicion that so and so might have been responsible for an attack. How then can an individual assume CCF status when his responsibility to prior action is not definite? Unless and until an individual is irrefutably linked to previous terrorist acts it is untenable to designate them with CCF status.

Even if the CCF doctrine was to be accepted, the burden of showing that the targeted persons were assuming CCF is onerous.<sup>395</sup> The U.S has been reluctant in discharging this burden as information as to why a particular individual was targeted remains classified.<sup>396</sup> For what it is worthy, the law is favourable to the victim where a belligerent is not certain as to the status of an individual.

In case of doubt as to whether a specific civilian conduct qualifies as direct participation in hostilities, it must be presumed that the general rule of civilian protection applies and that his conduct does not amount to direct participation in hostilities.<sup>397</sup>

Apparently, most individuals are targeted because of their suspected membership to terrorist groups. This issue boils down to whether a terrorist group can be legally referred to as an armed group. In an armed conflict a member of an armed group is a legitimate military objective<sup>398</sup> who can be lawfully targeted.<sup>399</sup> However, several questions can be posed on U.S's targeting of individuals on the basis of alleged membership to terrorist groups.

#### **4.3.3 Targeting on the basis of alleged membership to Al Qaeda, Taliban and associated groups**

The U.S justifies drone targeted killings of suspected terrorists at anytime or place on the basis of their status rather than behaviour at the time of targeting.<sup>400</sup> This is more fully epitomised by the declaration of the global war on terror which in policy makes every member of the Taliban, Al Qaeda and associated forces enemies of the U.S and prone to targeting.<sup>401</sup>

---

<sup>393</sup> Schmitt (n 368 above)24; Christensen (n 377 above).

<sup>394</sup> As above.

<sup>395</sup> Toorn (n 373 above); Watkin (n 374 above).

<sup>396</sup> O'Connell(n 8 above).

<sup>397</sup> ICRC *Interpretative guidance on direct participation in hostilities* (n 371 above) 75-76.

<sup>398</sup> Schmitt (n 368 above).

<sup>399</sup> ICRC study of customary international humanitarian law Rule 1; Article 43(2) of Additional Protocol I of 1977 to the 1949 Geneva Conventions.

<sup>400</sup> Hampson (n 356 above) 48.

<sup>401</sup> Koh (n 22 above).

Clearly, such a policy in designation of targets is almost sweepingly inclusive of everyone.<sup>402</sup> U.S.'s targeting policy is on virtually *all people* supporting or having Taliban or Al Qaeda anti-American ideology.<sup>403</sup> This is too broad and prone to error<sup>404</sup> as it is based on abstract affiliation and not restricted to armed terrorists.<sup>405</sup> Thus, targeting of persons when no violence is taking place on the grounds of suspicion that they belong to a terrorist group and on the assumption that they are engaged in a continuous combat function is by all angles; ridiculous.<sup>406</sup> This is to no wonder why one scholar observed that in areas where the U.S is employing drones, civilians no longer

know what kind of conduct or relationships[with terrorists] could put them at risk [since] the US considers many people to be combatants, owing to their relationships to known militants, when they are legally civilians.<sup>407</sup>

It has been argued that targeting of a known terrorist whose membership to a certain terrorist group is legitimate until such time that the terrorist unequivocally revoke their membership from the same.<sup>408</sup>

However, one of the fundamental questions which one pose is that how will an individual in Pakistan for example, be able to notify the U.S or a drone operator somewhere in a location far from the target that he has revoked his membership? It is highly likely that once you are tagged as an individual belonging to a particular terrorist group you are black listed until you are dead. It is on these grounds and factors that targeting individuals on the basis of their *status* rather than *behaviour* has been condemned.<sup>409</sup>

#### 4.4 Principle of proportionality

After determining that a target is a military objective, the U.S is obliged by law to consider what will be the effect of a drone strike on civilians and civilian objects so as to ascertain

---

<sup>402</sup> Columbia Law School Human Rights Institute (n 49 above) 24.

<sup>403</sup> As above.

<sup>404</sup> ICRC *Interpretative guidance on direct participation in hostilities* (n 371 above) 33.

<sup>405</sup> As above.

<sup>406</sup> As above.

<sup>407</sup> C Rogers 'Civilians in armed conflict: civilian harm and conflict in northwest Pakistan: campaign for innocent victims in conflict' (2010) 20-22 available at <http://www.civicworldwide.org/storage/civicdev/documents/civic%20pakistan%202010%20final.pdf> (accessed 21 September 2011).

<sup>408</sup> Hampson (n 356 above) 48.

<sup>409</sup> Hampson (n 356 above) 48.

proportionality.<sup>410</sup> The principle of proportionality is also part of customary international law.<sup>411</sup> In line with this principle, attacks which cause excessive ‘incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof’ unjustifiable by the ‘concrete and direct military advantage anticipated’ or accrued are prohibited.<sup>412</sup> In this case, the principle of proportionality ‘is not a free-standing legal rule’ but is fundamental during the decision making on whether to target or not.<sup>413</sup>

It can be observed that the principle of proportionality plays much role not in the determination of ‘which things may be attacked’ but ‘how things may be attacked’.<sup>414</sup> In this regard, two issues arise on U.S’s drone targeting policy; firstly, where an individual is targeted on the basis of mere suspicion, it is arguable that such targeting is on an *unspecific target* which amounts to prohibited indiscriminate attacks.<sup>415</sup>

Secondly, where the individual is a real or known terrorist but located in an area where there are several civilians, the choice of drones equipped with hell-fire missiles is not the best means of how to attack. This is so because ‘the means chosen foreseeably results in the killing or injuring of a large number of civilians’ which amounts to an indiscriminate and disproportionate attack.<sup>416</sup> It has been argued that drones are preferable because they reach ‘difficult’ mountainous areas and also prevent the loss of life of U.S citizens.<sup>417</sup>

However, it is beyond doubt that most of the drone attacks have been in towns and villages and not mountains.<sup>418</sup> Secondly, in as much as it is legitimate to protect the life of the American citizen, it is also important to abide by the law. The targeted terrorists who are apparently not a battalion can be dealt with by snipers who can kill only the target in most of the cases.

---

<sup>410</sup> Hampson (n 356 above) 49.

<sup>411</sup> Henckaerts(n 352 above)Rule 11-14.

<sup>412</sup> Art 51(5) of Additional Protocol I; Art 8(2)(a)(iv) of Rome Statute; J Gardam ‘Proportionality and force in international law’ (1993) 87 *American Journal of International Law* 391.

<sup>413</sup> Sassoli (n 358 above)181; Hampson (n 356 above) 45.

<sup>414</sup> Y Dinstein ‘Collateral damage and the principle of proportionality’ in D Wippman & M Evangelista (eds) *New wars, new laws? Applying the laws of war in the 21<sup>st</sup> century conflicts* (2005)211; F Hampson ‘The principle of proportionality in the law of armed conflict’ (2010)46 in S Perrigo & J Whitman (eds) *The Geneva conventions under assault* (2010)46.

<sup>415</sup> Hampson (n 356 above) 49; Vogel (n 41 above)122.

<sup>416</sup> Hampson (n 356 above) 49.

<sup>417</sup> Vogel(n 41 above)127.

<sup>418</sup> O’Connell(n 8 above).

The point which is emphasised here is that the principle of proportionality prohibits the use of weapons or methods of warfare which are indiscriminate in nature and cause disproportionate casualties.<sup>419</sup> Conversely, the method and means which a belligerent chooses must be capable of some precision, the ability to distinguish between civilian and military objects so as to minimise casualties.<sup>420</sup>

The fact that the terrorists are located within the civilian population is not to say that the U.S is barred from targeting them, what is questioned is how they are targeting them.<sup>421</sup> In line with the principle of proportionality, the U.S is thus obliged to choose weapons with great precision or lesser explosive force when targets are located in civilian areas.<sup>422</sup>

Further, it has been argued that U.S's drones equipped with hellfire burns everyone in the vicinity which constitutes indiscriminate attacks when launched in a heavily populated area.<sup>423</sup> However, the U.S maintains that drones are precise to the extent that they are even better than most weaponry.<sup>424</sup>

#### 4.4.1 Precision of drones

To abide by the principle of proportionality, belligerences are supposed to consider the impact of the weapon to be used in a particular context.<sup>425</sup> Weapons which are inherently indiscriminate or by their nature involve highly unacceptable casualties are unlawful.<sup>426</sup> In general, weapons which are inherently indiscriminate are outlawed by treaties banning their use.<sup>427</sup> Where a weapon may be used indiscriminately it is regulated by IHL general principles.<sup>428</sup> However, there might be need of treaty regulation of a weapon which may not be inherently

---

<sup>419</sup> Customary international humanitarian law rules (n 399 above) 248; Vogel (n 8 above)124; J Gardam 'Proportionality and force in international law' (1993) 87 *American Journal of International Law* 391.

<sup>420</sup> F Kalshoven & L Zegveld *Constraints on the waging of war: an introduction to international humanitarian law* (2011).

<sup>421</sup> Hampson (n 356 above) 56; Gardam (n 419 above).

<sup>422</sup> *Commentary on the HPCR manual on international law applicable to air and missile warfare* (2010)127.

<sup>423</sup> Art 51 of Additional Protocol 1 to Geneva Conventions.

<sup>424</sup> Koh(n 22 above); Vogel(n 41 above)124.

<sup>425</sup> Sassoli (n 358 above) 181; Hampson (n 356 above) 61.

<sup>426</sup> As above.

<sup>427</sup> M Wells-Greco 'Operation Cast Lead: *jus in bello* proportionality' (2010)57 *Netherlands International Law Review* 397; MN Schmitt 'Precision attack and international humanitarian law' (2005) 87 *International Review of the Red Cross* 445.

<sup>428</sup> Quenivet (n 181 above).

indiscriminate but if used in certain context maybe indiscriminate.<sup>429</sup> It goes without saying that most of the treaties on weapons are for the protection of civilians.<sup>430</sup>

Agreeably, drones can enhance the ability to distinguish between civilians and combatants because through their surveillance they are able to ascertain an individual's 'pattern of life' and provide information that can enable 'their human operators to distinguish between peaceful civilians and those engaged in hostilities.'<sup>431</sup> However, it is important to understand that drones are made and programmed by human beings in the first instance. It would be a fallacy therefore, to think that because they are computerised there are not prone to mistakes.<sup>432</sup>

In addition, the precision and accuracy of drones heavily 'depends on the human intelligence upon which the targeting decision is based.'<sup>433</sup> The drone operator relies on the information given to him/her by the ground informant yet in countries like Pakistan and Afghanistan 'the local informants, who also serve as confirming witnesses for the air strikes, are notoriously unreliable.'<sup>434</sup>

Further, in as much as drone 'technology is improving,' it is still far away from perfection and raises higher risks for the innocent civilians.<sup>435</sup> As according to one U.S drone operator; 'looking through the predator's camera is somewhat like looking through a soda straw...your field of view tends to become distorted.'<sup>436</sup> This is to no wonder why they are numerous mistakes. For example it has been reported that;

---

<sup>429</sup> As above.

<sup>430</sup> See in general Convention on the Prohibition on the use of Certain Conventional Weapons 1980, UN Doc. A/Conf.95/15; Protocol on Prohibitions or Restrictions on the Use of Mines, Booby Traps and other devices (1980); 1980 Protocol III on the prohibition or restrictions on the use of Incendiary weapons; see also Hampson (n 356 above) 63.

<sup>431</sup> 'UN Special Rapporteur on extrajudicial executions handbook' (n 33 above)56; See also M Elliot 'Where precision is the aim: locating the targeted killing policies of the United States and Israel within international humanitarian law' (2009) 47 *The Canadian yearbook of international law* 100.

<sup>432</sup> Hampson (n 358 above) 52.

<sup>433</sup> UN Special Rapporteur on Extrajudicial Executions Handbook' (2010)56 available at <http://www.extrajudicialexecutions.org/LegalObservations> (accessed 13 August 2011).

<sup>434</sup> Mayer (n 19 above) 44.

<sup>435</sup> O'Connell (n 8 above) 7.

<sup>436</sup> E Umansky 'Dull drone: Why unmanned U.S. Aerial Vehicles are a hazard to Afghan civilians' (2002) available at <http://www.slate.com/id/2063105/> quoting a drone operator (accessed 4 October 2011).



the first two C.I.A. drone strikes of the Obama Administration took place on the morning of January 23rd—the President’s third day in office...in the second strike a drone targeted the wrong house, hitting the residence of a pro-government tribal leader six miles outside the town of Wana, in South Waziristan. The blast killed the tribal leader’s entire family, including three children, one of them five years old.<sup>437</sup>

It is these kinds of mistakes which have made some scholars to conclude that in place of drones, combatants who are physically present on the battlefield must be used to target terrorist who blend in with civilians.<sup>438</sup> This is so because a soldier who is physically present in the combat zone has better chances of verifying his targets than someone relying on intelligence whilst miles away.<sup>439</sup> Of course this is not to say that the soldier who is on the ground cannot make mistakes; it is just that chances are reduced.

Over and above, the precision of drones can be measured by consideration of drone casualties so far. By any measure, the statistics of civilian deaths following U.S drone strikes are unacceptable. It is conceivable that in as much as parties are bound to distinguish between civilians and military objects, on the battlefield it is inevitable to have some civilian casualties. However, such casualties must not be disproportionate for them to be acceptable.<sup>440</sup> The following graph represents the overall outcome of the drone strikes by the U.S so far in the territories of Pakistan and Afghanistan.<sup>441</sup>

---

<sup>437</sup> Mayer (n 19 above) 37.

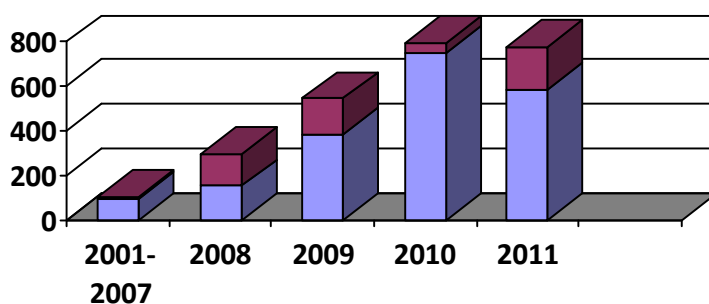
<sup>438</sup> Quéniévet (n 181 above) 155.

<sup>439</sup> UN Special Rapporteur on Extrajudicial Executions Handbook’ (2010)56 available at <http://www.extrajudicialexecutions.org/LegalObservations> (accessed 13 August 2011).

<sup>440</sup> Hampson (n 356 above) 52; RJ Barber ‘The proportionality equation: balancing military objectives with civilian lives in the armed conflict in Afghanistan’ (2010)15 *Journal of Conflict and Security Law* 467;

<sup>441</sup> Statistics used for this graph were taken from New America Foundation website. Available at <http://counterterrorism.newamerica.net/drones> (accessed 13 August 2011); ZH Usmani ‘Pakistan body count’ (2010) available at <http://www.pakistanbodycount.org/drn.php> (accessed 11 October 2011).

## Number of terrorists killed versus Civilian casualties [2001-2011]



■ Estimate # of civilians killed     
 ■ Estimate # of terrorists killed

To date the ratio between the civilian casualty and those who are suspected to be terrorists ‘has been about 20 leaders killed for 750-1000 unintended civilian victims.’<sup>442</sup> This large number of civilian casualties can also be explained by U.S.’s policy of targeting individuals on the basis of ‘suspicion of their status’ or ‘alleged links’ to terrorist groups rather than their actual behaviour in hostilities.<sup>443</sup> Thus, notwithstanding arguments that drone strikes are marked by somewhat precision,<sup>444</sup> there are numerous ‘reports of large-scale deaths of civilians’ killed in drone strikes.<sup>445</sup>

In view of the above statistics, can U.S.’s drone targeted killings be said to be consistent with the principle of distinction and proportionality? Understandably, a high civilian death toll does not necessarily mean IHL principles have been violated.<sup>446</sup> However, liability comes where a belligerent acts either in full knowledge or ought to have known at the time of action that an attack will result in a disproportionate impact on civilians and civilian objects.<sup>447</sup> Clearly, in the case of U.S, drone operators are in full knowledge that the strikes cause ‘deaths of hundreds of

<sup>442</sup> O’Connell (n 8 above).

<sup>443</sup> Hampson (n 356 above) 49.

<sup>444</sup> RJ Barber ‘The proportionality equation: balancing military objectives with civilian lives in the armed conflict in Afghanistan’ (2010)15 *Journal of Conflict and Security Law* 467.

<sup>445</sup> Columbia Law School Human Rights Institute (n 49 above) 32.

<sup>446</sup> Hampson (n 356 above) 44; Barber (n 444 above)467.

<sup>447</sup> As above.

unintended targets, including children<sup>448</sup> as often they launch hell-fire missiles into villages and towns densely populated by civilians.

On these grounds, it can be soundly argued that U.S's drone strikes tramp the customary principle of proportionality. By any measure, this cannot be proportional. The number of drone civilian casualty outweighs the military advantage gained.<sup>449</sup> However, the U.S maintains that these strikes are militarily necessary since by killing the leaders of the terrorists, the U.S accrue military advantage.<sup>450</sup> Questions have been asked as to whether the proportionality of the drone civilian casualties must be viewed from the status of militants who are killed.<sup>451</sup> Is it militarily necessary to kill one high ranking Al Qaeda leader alongside 40 or more civilians? It has been argued that 'higher numbers of civilian casualties' may be proportionate 'where the target is a very senior leader of the enemy'<sup>452</sup>

The above may not be entirely true because it all depends on whether the targeting of such a leader incapacitates the enemy from continuing with hostilities. Clearly, the targeting of terrorist leaders who die alongside large numbers of civilians has not taken the fight against terrorism closer to conclusion, in fact, it has fueled it up.<sup>453</sup> *A priori*, notwithstanding debates on what might be proportional or disproportional, it is a recognisable fact that U.S drone targeted killings of suspected terrorists cause large numbers of civilian casualties. One scholar has thus observed, 'proportionality could be like an elephant, difficult to define but easy to recognise'.<sup>454</sup> It is only that approach which is favourable to sparing of civilians which belligerents must adopt.<sup>455</sup> Can these large numbers of civilian casualties be justifiable under military necessity? This is what is addressed in the next paragraphs.

---

<sup>448</sup> O' Connell (n 8 above) 1.

<sup>449</sup> Nevertheless, on the question of proportionality there are different sentiments which are expressed. Whilst the U.S regards all members and associates of Al Qaeda and Taliban as legitimate military objectives many observers do not, as a result those who are killed simply on account of their membership or mere association are claimed to be civilians. This way the number of how many civilians were killed sometimes differ from sources. See F Hampson 'The principle of proportionality in the law of armed conflict' (2010)45 in S Perrigo & J Whitman (eds) *The Geneva conventions under assault* (2010)45.

<sup>450</sup> Koh (n 22 above).

<sup>451</sup> Vogel (n 41 above)127.

<sup>452</sup> Vogel (n 41 above)127.

<sup>453</sup> SG Jones & C Libicki 'How terrorist group end: lessons for countering Al Qaida' (2008) available at [http://www.rand.org/pubs/monographs/2008/RAND\\_MG741-1.pdf](http://www.rand.org/pubs/monographs/2008/RAND_MG741-1.pdf) (accessed 29 August 2011).

<sup>454</sup> Hampson (n 356 above) 54.

<sup>455</sup> M Wells-Greco 'Operation Cast Lead: *jus in bello* proportionality' (2010)57 *Netherlands International Law Review* 397.

#### 4.6 Principle of military necessity

Military necessity entails that a certain amount of force only be used; or certain actions only be taken 'if necessary to accomplish a reasonable military objective.'<sup>456</sup> Pursuant to this principle, the U.S in its fight against terrorism is obliged not to inflict 'harm greater than that unavoidable to achieve'<sup>457</sup> the military objective. Thus, the force which is used must be 'consistent with the principle of humanity'.<sup>458</sup> For that reason, 'there can be no appeal to military necessity outside rules. [IHL] is not aspirational, it represents rules which armed forces have agreed to be bound.'<sup>459</sup>

Vogel argues that drone targeting is militarily necessary because it offers a definite military advantage by killing terrorist leaders therefore neutralising terrorist attacks against the US.<sup>460</sup> However, a critical assessment of drone targeting and its effects reveals that drone targeting does not offer the required 'definite' military advantage.

On account of the imprecise nature of drone killings and the resultant civilian deaths, it has been observed that 'every civilian killed represents an alienated family, a new desire for revenge, and more recruits for a militant movement that has grown exponentially even as drone strikes have increased.'<sup>461</sup> It can therefore be argued that targeting terrorist leaders does not offer a 'reasonable military' advantage that can justify those high numbers of civilian casualties.

As aforementioned, the means and method of warfare is not unlimited.<sup>462</sup> Weapons which inflict unnecessary suffering are prohibited.<sup>463</sup> Arguably, the equipping of drones with hell-fire missiles is malicious and militarily unnecessary. Shooting the person is another thing,

---

<sup>456</sup> WM Reisman & D Stevick 'The applicability of international law standards to United Nations Economic Sanctions Programmes' (1998) 9 European Journal of International Law 94-95.

<sup>457</sup> *Nuclear Weapons case (n 188 above)*78.

<sup>458</sup> Art 1(2) of Additional Protocol I; Preamble to the Hague IV Regulations concerning the Laws and Customs of War on Land; Art 142 of Geneva Convention III; Article 158 of Geneva Convention IV; International Commission of Jurists, *Assessing damage, urging action: report of the Eminent Jurists Panel on Terrorism, Counter-terrorism and Human Rights*, Geneva (2009)18.

<sup>459</sup> Hampson (n 356 above) 43.

<sup>460</sup> Vogel (n 41 above)115.

<sup>461</sup> Jones ( n 453 above). The argument can also be supported by the continuing of terrorist movements even after the killing of Osama Bin Laden.

<sup>462</sup> Customary international humanitarian law rules (n 399 above) rule 70.

<sup>463</sup> Sandoz *et al Commentary on the additional protocols to the Geneva Convention* (1987)1389.

burning a live person to death is militarily unnecessary as it causes unnecessary suffering.<sup>464</sup> Back in history, the cross bow arrows were banned not because they were ineffective but because they cause unnecessary suffering. Assuming without agreeing that the targeting of the terrorist leaders amongst civilians is necessary, IHL demands that the U.S take precaution before striking.

#### 4.7 Principle of precaution

The principle of precaution entails that military operations must comply with the absolute duty of precaution to spare civilian population from harm.<sup>465</sup> Precaution can be in form of warning civilians of impending attack. However, scholars have argued that in an armed conflict scenario that option is more than often, unworkable.<sup>466</sup>

However, precaution also detects that a belligerent assess the choices at its disposal. It can be observed that drone 'surveillance capability enhances the ability of a State's forces to undertake precautions in attack.'<sup>467</sup> This means the U.S can be able to target an individual at the time there are no many civilians in the vicinity. Over and above, there is always the option to close in on the individual and shoot at close range. For suspected terrorists who are targeted whilst in their homes or at social gatherings, the U.S can not proffer any sound argument as to why drones are preferred.

Precaution also obliges the U.S to gather reliable information the basis on which it decides to target an individual.<sup>468</sup> This will go a long way in avoiding wrongful targeting and disproportionate impact of drone strikes.<sup>469</sup> Failure to do so is a violation of the principle of distinction<sup>470</sup> and proportionality.<sup>471</sup> Precaution demands utmost thoroughness when gathering information<sup>472</sup> concerning targets.<sup>473</sup> It has been observed that the U.S is not thorough in

---

<sup>464</sup> Art 22 of the Hague Convention IV on the laws and customs of war on land (1907)

<sup>465</sup> Art 57 of Additional Protocol I to the Geneva Conventions.

<sup>466</sup> Cassese (n 64 above).

<sup>467</sup> MN Schmitt 'Precision attack and international humanitarian law' (2005) 87 *International Review of the Red Cross* 445.

<sup>468</sup> Art 57(2)(a)(i) of Additional Protocol I to the Geneva Conventions.

<sup>469</sup> Art 57(2)(a)(iii) of Additional Protocol I to the Geneva Conventions.

<sup>470</sup> Customary international humanitarian law rules (n 399 above) rule 6.

<sup>471</sup> Art 51(5)(b) of Additional Protocol I to the Geneva Conventions.

<sup>472</sup> Henckaerts et al 363,367.

<sup>473</sup> ICTY *Final Report to the prosecutor by the Committee established to review the NATO bombing campaign against*

gathering of information because many individuals who are targeted are civilians not directly taking part in hostilities.<sup>474</sup>

Further, pursuant to the principle of precaution, the environment of the target must be assessed in good faith<sup>475</sup> and the target itself be verified to be a military target.<sup>476</sup> Where there are too many civilians in the area then belligerent must desist from attacking.<sup>477</sup> They have been arguments that what if the civilians intentionally shield the terrorists? This is an interesting question but it should be noted that in the context of the conflict in which the U.S finds itself in, how can one ever ascertain that a civilian is intentionally shielding a terrorist? For the civilians, how can they ever know that they are sitting next to a terrorist? Terrorist are not branded, they just look like civilians. For these reasons, the best approach is to assume the innocence of the civilians.<sup>478</sup>

Further, there are scholars who aver that much blame is with the terrorist who are always blending into the civilian population.<sup>479</sup> However, in as much as such arguments maybe sound, it is an accepted position of law that the existence of combatants among a civilian population does not strip it of its civilian nature.<sup>480</sup> From the foregoing, it can be argued that even under IHL, U.S's drone targeted killings are inconsistent with the law. Before giving the final conclusions, the author raises some of the difficult questions on criminal liability arising from drone operations.

#### **4.8 Criminal responsibility of crimes emanating from drone operations**

As one critique the drone targeted killings, several questions relating to criminal liability boggles one's mind; how do you impute criminal responsibility in the event that a war crime or human right norm is violated through a drone operation? This question resonates from the manner in which drones are operated. The drone operator only act upon information which he/she receives from informants on the ground and launches the attack.

---

*the Federal Republic of Yugoslavia* 8 June 2000, 39 ILM 1257 29.

<sup>474</sup> Alston (n 1 above) 82.

<sup>475</sup> As above.

<sup>476</sup> Customary international humanitarian law rules (n 399 above) rule 55.

<sup>477</sup> As above.

<sup>478</sup> Barber (n 444 above) 467; Lamp (n 323 above).

<sup>479</sup> As above.

<sup>480</sup> *Prosecutor v Galic* IT-98-29-T 61; Kinsella (n 339 above).

The veracity of such information lies with the informant. Is it the drone operator or the informant who is criminally liable? Is the whole drone operating team vicariously liable? How does one establish intention on the part of the drone operator whose action is entirely based on the information received? How do you know the attacker in the first instance? In Pakistan most of the informants are locals from Pakistan, is this yet another way to make the American soldier untouchable? Most drone operators are CIA agents who operate under cover; will the US ever allow access to its CIA records for the purposes of international prosecution or prosecution in other jurisdictions? How, if by any means, do you trace the conveyor of the information? Apparently, scholars have started to worry on effects of technology on prosecution of international crimes.<sup>481</sup> Of course answers to these questions may depend on the facts of each case. Not necessarily being a prophet of doom, the drone era may yet worsen impunity to never unprecedented standards.

## 5. Conclusions

Terrorism is not only a threat to the U.S but to every civilized State and to every human being in the world. For what it is worth, the U.S's fight against terrorism is more than welcome. However, in this fight against terrorism, it is prudent to make sure that the means used is within the boundaries of the law. U.S's drone programme appears to be efficient but it is not effectual. What is worse is that it falls foul with many legal principles. What is fatal is that the U.S does not want to divulge information on its CIA covert drone programme. This jeopardises any prospects of accountability. Expectedly, because of the manner in which terrorist operate and the response thereof, it is very difficult to decide which regime of law should be applied.

Notwithstanding the debates as to which legal principles are applicable, there are three questions which are critical in the determination of the legality of drone targeted killings whether under IHRL norms or IHL principles. The questions are; a) who is targeted? b) Why are they targeted? and c) how are they targeted? These questions are intertwined with central principles of humanity, distinction, necessity, proportionality and precaution which are common

---

<sup>481</sup> N Lamp 'Conceptions of war and paradigms of compliance: the new war challenge to international humanitarian law' (2011)16 *Journal of Conflict and Security law* 225.

to IHRL and IHL regimes.<sup>482</sup> Under IHRL, drone targeted killings can only be justifiable if they are conducted out of the necessity to preserve life and the force used is proportional. Likewise, drone targeted killings could be justifiable under IHL if they target individuals directly participating in hostilities and casualties caused are proportional.

However, what this research has shown is that the U.S drone targeted killings are largely inconsistent with 'common core fundamental standards which are applicable at all times, in all circumstances and to all parties, and from which no derogation is permitted.'<sup>483</sup> There is no reason to be malicious of technology if it can help in decreasing human suffering. But where technology is adding to the suffering of humanity, it should not be encouraged. It should be condemned. From the foregoing it is therefore concluded that no matter which scales of law one chooses to use, U.S drone targeted killings are largely in violation of the international principles of law on the prohibition of the use of force, IHRL norms and IHL principles.

## **6. Recommendations**

From the foregoing, the following recommendations are made;

### **6.1 In general**

- That the international community, specifically the UN and civil society continue to censure and discourage the manner in which the U.S is conducting its drone targeted killings.
- That the UN demand the U.S to be accountable to the international community by disclosing all information relating to its drone operations which in part remains undisclosed and covert.

### **6.2 Specifically to the U.S**

- That the U.S respect the sovereignty of other states by desisting from drone striking in territories of non-consenting states.
- That the US observe IHRL norms and IHL principles in its legitimate struggle against terrorism by;
- Being thorough in gathering information on which decisions to target are made.
- Targeting only individuals who are legitimate targets in terms of law.

---

<sup>482</sup> Watkin (n 18 above) 9.

<sup>483</sup> As above.



- Distinguish civilians from legitimate targets and making sure that any collateral damage is proportionally acceptable.
- Being accountable by disclosing information relating to drone operations.
- Investigating and prosecuting any alleged crimes committed through drone targeting.

### **6.3 Specifically to the States in which U.S drones are operated**

- Should diligently carry their obligation to protect individuals within their territories by taking appropriate steps.

**(Word Count: 17 890 [Excluding Cover page, plagiarism declaration, dedication, acknowledgments, table of contents, bibliography and Annexure 1])**

## BIBLIOGRAPHY

---

### Books

- Bianchi, A (2011) *International humanitarian law and terrorism*: Oxford, Hart Publishing.
- Cassese, A (2005) *International Humanitarian Law*: Oxford University Press.
- Duffy, H (2005) *The war on terror and the framework of international law*: Cambridge University Press.
- Engeland, A (2011) *Civilian or combatant? : A challenge for the twenty-first century*: Oxford University Press.
- Falk, R (2003) *The great terror war*: Interlink Publishing group.
- Fleck, D (1995) *Humanitarian Law of Armed Conflicts*: Oxford University Press.
- Gill, T & Fleck D (2010) *The law of military operations*: Oxford University Press.
- Gray, C (2000) *International law and the use of force*: Oxford University Press.
- Grossman, D (1996) *On killing, the psychological cost of learning to kill in war and society* : Back Bay Books.
- Henckaerts, J & Doswald-Beck, L (2005) *Customary international humanitarian law*: International Committee of the Red Cross.
- Heymann, PB (1998) *Terrorism and America*: Cambridge University Press.
- ICRC, (2009) *Intepretive guidance on the notion of direct participation in hostilities under international humanitarian law*: International Committee of the Red Cross.
- Kalshoven, F& Zegveld,L(2005) *Constraints on the waging of war: an introduction to international humanitarian law*: International Committee of the Red Cross.
- Kinsella, HM (2011) *The image before the weapon: a critical history of the distinction between combatant and civilian*: Cornell University Press.
- Lubell, N (2010) *Extraterritorial use of force against non-state actors*: Oxford University Press.
- May, L (2008) *Aggression and crimes against peace*: Cambridge University Press.
- Melzer, N (2009) *ICRC's interpretive guidance on the notion of direct participation in hostilities under international humanitarian law*: International Committee of the Red Cross.

- Okimoto, K (2011) *The distinction and relationship between jus ad bellum and jus in bello*: Hart Publishing.
- Perrigo, S & Whitman, J (2010) *The Geneva conventions under assault* : Pluto Press.
- Quenivet, N & Davis, SS (2010) *International law and armed conflict: Challenges in the 21<sup>st</sup> century*: T.M.C. Press.
- Sassoli, M et al (2011) *How does law protect in war?*: International Committee of the Red Cross.
- Shaw, M (2008) *International Law*: Cambridge University Press.
- U.S Department of Defence (2001) *Dictionary of military and associated terms*: U.S Department of Defense.

### Chapters in books

- Dinstein, Y 'Collateral damage and the principle of proportionality' in Wippman, D & M Evangelista (eds) (2005) *New wars, new laws? Applying the laws of war in the 21<sup>st</sup> century conflicts*: Transnational Publishers.
- Dworkin, A 'Military necessity and due process: The place of human rights in the war on terror' in Wippman, D & Evangelista, M (eds) (2005) *New wars, new laws? Applying the laws of war in the 21<sup>st</sup> century conflicts*: Transnational Publishers.
- Gordon, S 'Civilian protection- what's left of the norm' in Perrigo, S & Whitman J (eds) (2010) *The Geneva conventions under assault*: Pluto Press.
- Gormley, WP 'The right to life and the rule of non-derogability: Peremptory norms of jus cogens' in Ramcharan, R (eds) (1985) *The right to life in international law*: Martinus Nijhoff Publishers.
- Hampson, F 'The principle of proportionality in the law of armed conflict' in Perrigo, S & Whitman J (eds) (2010) *The Geneva conventions under assault*: Pluto Press.
- Lietzau, WK 'Combating terrorism: The consequences of moving from law enforcement to war' in Wippman, D & Evangelista, M (eds) (2005) *New wars, new laws? Applying the laws of war in the 21<sup>st</sup> century conflicts*: Transnational Publishers.
- Milanovic, M 'Norm conflicts, international humanitarian law, and human rights law' in M Milanovic (eds) (2011) *Extraterritorial application of human rights treaties: law, principles, and policy*: Oxford University Press.

- Sassoli, M 'Targeting: The scope and utility of the concept of 'military objectives' for the protection of civilians in contemporary armed conflicts' in Wippman, D & Evangelista, M (eds) (2005) *New wars, new laws? Applying the laws of war in the 21<sup>st</sup> century conflicts*: Transnational Publishers.
- Thahzib-lie 'Determining the threshold' in Lijnzaad, L et al (eds) (2004) *Making the voice of humanity heard*: Martinus Nijhoff Publishers.
- Watkin, K 'Humans in the cross-hairs: Targeting and assassination in contemporary armed conflict' in Wippman, D & Evangelista, M (eds) (2005) *New wars, new laws? Applying the laws of war in the 21<sup>st</sup> century conflicts*: Transnational Publishers.

### Journal Articles

- Arimatsu, L 'Territory, boundaries and the law of armed conflict' (2009)12 *Yearbook of International Humanitarian Law* 161.
- Balendra, P 'Defining Armed Conflict' (2008)11 *Cordoba Law Review* 2468.
- Barber, RJ 'The proportionality equation: balancing military objectives with civilian lives in the armed conflict in Afghanistan' (2010)15 *Journal of Conflict and Security Law* 467.
- Bartolini, G 'The civilianization of the contemporary armed conflicts' (2008)2 *Select Proceedings of the European Society of International law* 569.
- Bassiouni, MC 'Legal control of international terrorism: A policy-oriented assessment' (2002) 43 *Harvard International Law Journal* 88.
- Bianchi, A 'Terrorism and armed conflict: insights from a law and literature perspective' (2011)24 *Leiden Journal of International Law* 303.
- Blank, LR & Farley BR 'Characterizing US operations in Pakistan: is the United States engaged in an armed conflict?' (2011) 34 *Fordham International Law Journal* 153.
- Blank, LR 'Defining the battlefield in contemporary conflict and counterterrorism: understanding the parameters of the zone of combat'(2010) 39 *Georgia Journal of International and Comparative Law* 7.
- Boothby, B 'And for such time as: the time dimension to direct participation in hostilities' (2010) 42 *NYU Journal of International Law and Policy* 758.
- Brown, D 'Use of force against terrorism after September 11<sup>th</sup>: State responsibility, self-defence and other responses' (2003) 11 *Cardozo Journal of International & Comp Law* 6

- Cassese, A 'Terrorism is also disrupting some crucial legal categories of international law' (2001) 12 *European Journal of International Law* 999
- Chesney, R 'Who may be killed? Anwar Al-Awlaki as a case study in the international legal regulation of lethal force' (2011)26 *Yearbook of International Humanitarian Law* 26.
- Christensen, E 'The dilemma of direct participation in hostilities' (2010)19 *Journal of Transnational Law and Policy* 281.
- Corn, GS et al 'America's longest held prisoner of war: lessons learned from the capture, prosecution, and extradition of General Manuel Noriega' (2011)71 *Louisiana Law Review* 1112.
- Creegan, E 'Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the treatment of terrorist combatants (Protocol IV): a proposal' (2011)41 *California western international law journal* 345-396.
- Dehn, JC & Heller, K 'Targeted killing: The case of Anwar Al-Aulaqi' (2011)159 *University of Pennsylvania Law Review* 90-191.
- Dennis, MJ 'Human rights in 2002: The annual sessions of the UN Commission on Human Rights and the Economics and Social Council' (2003) 97 *American Journal of International Law* 364, 367.
- Dinstein, Y 'Terrorism as an international crime' (1987)55 *Israel Yearbook of Human Rights* 63.
- Dörmann, K 'The legal situation of unlawful/unprivileged combatants' (2002)85 *International Law Review of the Red Cross* 46.
- Drumbl, M 'Victimhood in our neighborhood: Terrorist crime, Taliban guilt, and the asymmetries of the international legal order' (2002)81 *North Carolina Law Review* 1-113.
- Ehrenreich, R 'War everywhere: rights, national security law, and the law of armed conflict in the age of terror' (2004)153 *University of Pennsylvania Law Review* 675. 761
- Elliot, M 'Where precision is the aim: locating the targeted killing policies of the United States and Israel within international humanitarian law' (2009) 47 *The Canadian yearbook of international law* 100.
- Escorihuela, AL Humanitarian law and human rights law: the politics of distinction (2011)19 *Michigan State Journal of International Law* 299.

- Estreicher, S 'Privileging Asymmetric warfare?: defender duties under international humanitarian law'(2010)2 *Chicago Journal of International Law* 2.
- Fenrick, WJ 'ICRC guidance on direct participation in hostilities' (2009)12 *Yearbook of international humanitarian law* 287.
- Fitzpatrick, J 'Speaking law to power: The war against terrorism and human rights' (2003) 14 *European Journal on International Law* 241
- Gallahue, P 'Mexico's war on drugs: real or rhetorical armed conflict?'(2011)24 *Journal of International law of Peace and Armed conflict* 39-45.
- Gardam, J 'Proportionality and force in international law' (1993) 87 *American Journal of International Law* 391.
- Gehring, R 'Loss of civilian protections under the Fourth Geneva Convention and Protocol I' (1980) XIX-1-2 *Military Law and Law of War Review* 19.
- Geiss, SR & Siegrist, M 'Has the armed conflict in Afghanistan affected the rules on the conduct of hostilities? (2011)93 *International Review of the Red Cross* 11-46.
- Goodman, R & Jinks, D 'The ICRC interpretive guidance on the notion of direct participation in hostilities under international humanitarian law: an introduction to the forum'(2010) 42 *NYU Journal of International Law and Policy* 640
- Greenwood, C 'International law and the 'war against terrorism' (2002) 78 *International law Affairs* 301.
- Groeben, C 'The conflict in Colombia and the relationship between humanitarian law and human rights law in practice: analysis of the new operational law of the Colombian armed forces' (2011)16 *Journal of Conflict and Security Law* 141.
- Guilfoyle, D 'The laws of war and the fight against Somali: combatants or criminals?' (2010) *Melbourne Journal of International Law* 12-13.
- Robertson, HB 'The principle of the military objective in the law of armed conflict' (1997)8 *United States Air Force Academy Journal of Legal Studies* 35-70.
- Holland, E 'The qualification framework of international humanitarian law: too rigid to accommodate contemporary conflicts?' (2011) 34 *Suffolk Transnational Law Review* 345.
- Jenks, C 'Law from above: unmanned aerial systems, use of force, and the law of armed conflict' (2009)85 *North Dakota Law Review* 656.
- Jennings, RY '*The Caroline and McLeod cases*' (1938) 32 *American Journal of*

*International Law 92.*

- Jinks, D 'September 11 and the laws of war' (2003) 28 *Yale Journal of International Law* 1.
- Kretzmer, D 'Targeted killing of suspected terrorist: Extra judicial executions or legitimate means of self defense?' (2005)16 *European Journal of International Law* 185.
- Lamp, N 'Conceptions of war and paradigms of compliance: the new war challenge to international humanitarian law' (2011)16 *Journal of Conflict and Security law* 225.
- Lehto, M 'War on terror: armed conflict with Al-Qaida?' (2009)78 *Nordic Journal of International Law* 499-51.
- Lieblich, E 'Intervention and consent: consensual forcible interventions in internal armed conflicts as international agreements' (2011)29 *Boston University International Law Journal* 337-382.
- Lubell, L 'What's in a name? : the categorisation of individuals under the laws of armed conflict' (2011)4 *Journal of International Peace and Organization* 83.
- Maogoto, JN & MacCarrick, G 'Typology of conflict: terrorism and the ambiguity of the laws of war' (2010)31 *Gujarat National Law University Law Review* 303.
- Melzer, N 'Keeping the balance between military necessity and humanity: a response to four critiques on the ICRC's Interpretive guidance on the notion of direct participation in hostilities' (2010) 42 *NYU Journal of International Law and Policy* 831
- Murphy, D 'Terrorism and the concept of "armed attack" in Article 51 of the UN Charter' (2002) 41 *Harvard International law Journal* 47-50.
- Naftali, OB & Michaeli, K 'We must not make a scarecrow of the law: legal analysis of the Israeli policy of targeted Killings.'(2003) 36 *Cornell International Law Journal* 234.
- O'Connell, ME 'Unlawful killing with combat drones: A case study of Pakistan 2004-2009' (2010) 09-43 *Notre Dame Law School Legal Studies Research Paper* 1.
- O'Connell, ME 'The choice of law against terrorism' (2010) *Journal of National Security Law and Policy* 348.
- O'Connell, ME 'To kill or capture suspects in the global war on terror' (2003) 35 *Case Western Reserve Journal of International Law* 328.
- O'Hara, W 'Drone attacks and just war theory' (2010) *Small Wars Journal* 4.
- Oesterdahl, I 'Dangerous liason?: the disappearing dichotomy between jus ad bellum and in bello' (2009)78 *Nordic Journal of International Law* 553-566.

- Orakhelashvili, A 'The interaction between human rights and humanitarian law: Fragmentation, conflict, parallelism, or convergence?' (2008)19(1) *European Journal of International Law* 161.
- Paulus, A & Vashakmadze M 'Asymmetrical war and the notion of armed conflict – A tentative Conceptualization' (2009)91 *International Review of the Red Cross* 102.
- Paust, JJ 'Self-defense targeting of non-state actors and permissibility of U.S. use of drones in Pakistan' (2010)19 *Journal of Transnational Law and Policy* 237.
- Quénivet, N 'The war on terror and the principle of distinction in international humanitarian law (2010)3 *Anuario Colombiano de derecho Internacional* 155.
- Reisman, W & Silk J 'Which law applies to the Afghan conflict?'(1998)82 *American Journal of International Law* 465.
- Reisman, WM & Stevick D 'The applicability of international law standards to United Nations Economic Sanctions Programmes' (1998) 9 *European Journal of International Law* 94-95.
- Ruys, T 'License to kill? State sponsored assassination under international law' (2003) *Working Paper 76 K.U. Leuven Institute for International Law*.
- Ruys, T "Crossing the thin blue line: an inquiry into Israel's recourse to self-defense against Hezbollah" (2007) *Stanford Journal of International Law* 283-84.
- Sadat, LN 'Terrorism and the Rule of Law' (2004) 3 *Washington University Global Studies Law Review* 135; See also Cassese (n above) 1000.
- Sassoli, M "Transnational armed groups and international humanitarian law",(2006) *Program on humanitarian policy and conflict research Harvard University* 14.
- Schmitt, M 'Deconstructing direct participation in hostilities: the constitutive elements' (2010) 42 *NYU Journal of International Law and Policy* 699.
- Schmitt, MN 'Precision attack and international humanitarian law' (2005) 87 *International Review of the Red Cross* 445.
- Schmitt, M 'Humanitarian law and direct participation in hostilities by private contractors or civilian Employees' (2005) 379 *Chicago Journal of International Law* 511
- Schmitt, MN 'The interpretive guidance on the notion of direct participation in hostilities: a critical analysis' (2010)1 *Harvard National Law and Security Journal* 37.



- Stephens, D 'Human rights and armed conflict: the advisory opinion of the International Court of Justice in the Nuclear Weapons case' (2001) *Yale Human Rights & Development Law Journal* 6-7.
- Thynne, K 'Targeting the terrorist enemy: The boundaries of an armed conflict against transnational Terrorists' (2009)16 *Australia International Law Journal* 174.
- Toorn, D 'Direct participation in hostilities: a legal and practical road test of the International Committee of the Red Cross's guidance through Afghanistan' (2010)17 *Australian international law journal* 21.
- Vogel, R 'Drone warfare and the law of armed conflict' (2010)39.1 *Denver Journal of International Law and Policy* 105.
- Watkin, K 'Controlling the use of force: A role of human rights norms in contemporary armed conflict' (2004)98 *The American Journal of International Law* 1.
- Watkin, K 'Opportunity lost: organized armed groups and the ICRC "direct participation in hostilities" interpretive guidance' (2010)42 *Journal of International Law and Policy* 692.
- Weissbrodt, D & Nesbitt NH 'The role of the United States Supreme Court in interpreting and developing humanitarian law' (2011) 95 *Minnesota Law Review* 1339-1423.
- Wells-Greco, M 'Operation Cast Lead: *jus in bello* proportionality' (2010)57 *Netherlands International Law Review* 397.

### Web Articles

- Alston, P & Shamsi, H 'A killer above the law' available at <<http://www.guardian.co.uk/profile/philip-alston>> (accessed 17 August 2011.)
- Alston, P 'Record AfPak drone attacks under Obama may violate international law' (2009) available at <[http://www.democracynow.org/2009/10/28/un\\_special\\_rapporteur\\_on\\_extrajudicial\\_killings](http://www.democracynow.org/2009/10/28/un_special_rapporteur_on_extrajudicial_killings)> (accessed 22 September 2011).
- Annan, K 'Address to the UN Security Council meeting on counterterrorism measures' (2002) available at <<http://www.unis.unvienna.org/unis/pressrels/2002/sgsm8105.html>> (accessed 11 October 2011)> .

- Canor, B 'Defining terrorism: Is one man's terrorist another man's freedom fighter' available at <<http://www.maeganandjoe.info>> (accessed 17 August 2011).
- Cohen, R. 'An eye for an eye' (2010) available at <<http://www.nytimes.com/2010/02/26/opinion/26iht-edcohen.html>> (accessed 10 October 2011).
- Columbia Law School Human Rights Institute 'Targeting operations with drone technology: Humanitarian law implications' (2011) *A Background Note for the American Society of International Law Annual Meeting* available at <[http://www.law.columbia.edu/ipimages/Human\\_Rights\\_Institute/BackgroundNoteASILColumbia.pdf](http://www.law.columbia.edu/ipimages/Human_Rights_Institute/BackgroundNoteASILColumbia.pdf)> (accessed 21 September 2011).
- Drone: resisting sanitized remote-control death' A publication of the Creech available at <<http://vcnv.org/files/DRONE%20.pdf>> (accessed 19 October 2011).
- Dworkin, A 'Revising the law of war to account for terrorism: The case against updating the Geneva Conventions on the ground that changes are likely only to damage human rights' (2003) available at <[http://writ.news.findlaw.com/commentary/20030204\\_dworkin.html](http://writ.news.findlaw.com/commentary/20030204_dworkin.html)> (accessed 13 July 2011).
- Haidon, T 'The CIA's Yemen operation: a legal critique'(2002) available at <<http://www.counterpunch.org/haidon119.html>> (accessed 03 October 2011).
- ICRC Study on customary international humanitarian law available at <<http://www.icrc.org/customary-ihl/eng/docs/home>> (accessed 9 October 2011).
- 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 September 2011).
- Jones, SG & Libicki, C 'How terrorist group end: lessons for countering Al Qaida' (2008) available at <[http://www.rand.org/pubs/monographs/2008/RAND\\_MG741-1.pdf](http://www.rand.org/pubs/monographs/2008/RAND_MG741-1.pdf)> (accessed 29 August 2011).
- Kantar, M 'International law: the first casualty of the drone war: a comprehensive legal analysis of U.S. drone strikes in Pakistan' (2009)<sup>18</sup> available at <<http://www.zcommunications.org/international-law-the-first-casualty-of-the-drone-war-by-max-kantar>> (accessed 13 October 2011).

- Khan, AN 'Legality of targeted killings by drone attacks in Pakistan' (2011)<sup>6</sup> available at <<http://www.san-pips.com/download.php?f=76.pdf>> (accessed 13 October 2011).
- Koh, H Legal Advisor, U.S Department of State, Keynote address at the American Society for International Law Annual Meeting (2010): The Obama Administration and International Law (March 25,2010), *available at* <<http://www.state.gov/s/l/releases/remarks/139119.htm>> (accessed 18 September 2011).
- Murphy, RW & Radsan, AJ '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 3 October 2011).
- O'Connell, ME 'Rise of drones II: Unmanned systems and the future of warfare: Hearing before the U.S. House Subcommittee on National Security and Foreign Affairs' (2010) *available at* <[http://oversight.house.gov/images/stories/subcommittees/NS\\_Subcommittee/4.28.10\\_Drones\\_II/OConnell\\_Statement.pdf](http://oversight.house.gov/images/stories/subcommittees/NS_Subcommittee/4.28.10_Drones_II/OConnell_Statement.pdf)> (accessed 26 September 2011).
- Rodriguez, A 'Clinton's Pakistan visit reveals widespread distrust of U.S.' (2009) available at <[latimes.com/news/nationworld/world/la-fg-clinton-pakistan1-2009nov.01,0,1313175.story](http://latimes.com/news/nationworld/world/la-fg-clinton-pakistan1-2009nov.01,0,1313175.story)> (accessed 03 October 2011).
- 'Turning off autopilot: towards a sustainable drone policy' (2010) *Harvard National Security Journal Analysis* available at <<http://www.harvardnsj.com/2010/03/nsj-analysis-turning-off-autopilot-towards-a-sustainable-dronepolicy/>> (accessed 29 June 2011).
- Umansky, E 'Dull drone: Why unmanned U.S. Aerial Vehicles are a hazard to Afghan civilians' (2002) *available at* <<http://www.slate.com/id/2063105/>> (accessed 4 October 2011).
- Usmani, ZH 'Pakistan body count' (2010) available at <<http://www.pakistanbodycount.org/drn.php>> (accessed 11 October 2011).
- 'UN Special Rapporteur on Extrajudicial Executions Handbook' (2010)<sup>56</sup> available at <<http://www.extrajudicialexecutions.org/LegalObservations>>(accessed 13 August 2011).
- Zakariya, R 'Drones and the law' (2010) available at <<http://www.dawn.com/wps/wcm/connect/dawncontent-library/dawn/the>>

newspaper/columnists/19-rafia-zakaria-drones-and-the-law-710-hh-07> (accessed 29 September 2011).

### **Treaties and Conventions**

- Additional Protocol I and II to the 1949 Geneva Conventions, 1977
- Convention on the Prohibition on the use of Certain Conventional Weapons 1980, UN Doc. A/Conf.95/15
- Protocol on Prohibitions or Restrictions on the Use of Mines, Booby Traps and other devices (1980)
- 1980 Protocol III on the prohibition or restrictions on the use of Incendiary weapons
- First Geneva Convention on the Amelioration of the Wounded and Sick on the Battle Field 1949
- Fourth Geneva Convention on the Protection of Civilians, 1949
- Rome Statute of the International Criminal Court
- Second Geneva Convention on the Amelioration of the Wounded, Sick and Shipwrecked on the Sea, 1949
- The International Convention on Civil and Political Rights
- The UN Charter
- Third Geneva Convention on the Protection of Prisoners of War, 1949
- Vienna Convention on the Law of Treaties

### **U.N Documents and Reports**

- Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (2011) UN/A/66/330
- Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, UN Doc. A/CONF.144/28/Rev.1, at 112, para. 9 (1990), available at <[http://193.194.138.190/html/menu3/b/h\\_comp43.htm](http://193.194.138.190/html/menu3/b/h_comp43.htm)> E/CN.4/2005/7, paras. 71-74.
- HRC General Comment 29, States of Emergency U.N.Doc. CCPR/C/21/Rev.1/Add.11 (2001)15.
- Human Rights Committee General Comment 6, Right to Life (Article 6)CCPR General Comment 30/04/82 No.6 (1982)3.

- Human Rights Committee General Comment 31, Nature of the Legal Obligation Imposed on States Parties to the Covenant, CCPR/C/21/ Rev. 1/Add/13 (2004)10.
- ICTY, Final Report to the prosecutor by the Committee established to review the NATO bombing campaign against the Federal Republic of Yugoslavia, *8 June 2000, 39 I.L.M. 1257, 29.*
- Inter-American Commission on Human Rights 'Report on terrorism and human Rights' OEA/Ser.L/V/II 116, doc. 5, rev. 1 corr., para. 81 (Oct. 22, 2002), available at <http://www.cidh.oas.org/Terrorism/Eng/part.c.htm>
- Inter-American Commission on Human Rights 'Third Report on the Situation of Human Rights in Colombia' OEA/ Ser.L./II. 102 Doc. 9 rev. 1 (1999)55-56.
- Report of Special Rapportuer on targeted killings (A/HRC/14/24/Add.6), 28 May 2010, para 79.
- U.N Human Rights Committee Comment Number 305/1988, UN Doc CCPR/C/39/D/305/1998, (15 August 1990)para 5.8

### **U.S Statute/Orders**

- Executive Order No. 13234, 66 Fed. Reg. 221 (Nov. 9, 2001).
- Executive Order No. 13239, 66 Fed. Reg. 241 (Dec. 12, 2001).
- Military Order, 66 Fed. Reg. 222 (Nov. 13, 2001).
- Joint Resolution to Authorise the use of United States Armed Forces against those responsible for the recent attacks launched against the United States (2001).
- U.S New York Ratification Resolution 1788.
- 

### **Websites**

- International Committee of the Red Cross .<[www.icrc.org](http://www.icrc.org)>
- New America Foundation website. Available at <<http://counterterrorism.newamerica.net/drones>>

### **Case Law**

#### **ICJ**

- *Armed Activities on the Territory of the Congo (Congo v Uganda)* (19 December 2005) (2005) ICJ Reports 301.

- *Barcelona Traction Light and Power Company Limited, (Belgium v Spain)* (13 January 1970) (1970) ICJ Reports 34.
- *Bosnia & Herzegovina v Serbia & Montenegro* (Application of the Convention on the Prevention and Punishment of the Crime of Genocide (10 May 2007) (2007) ICJ Reports 391.
- *Legal consequences of the construction of a wall in the occupied Palestinian territory, Advisory Opinion* (9 July 2004) (2004) ICJ Reports 107.
- *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion* (8 July 1996) (1996) ICJ Reports 226.
- *Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v U.S.)* (27 June 1986) (1986) ICJ Reports 14.
- *Oil Platforms case Iran v US* (6 November 2003) (2003) ICJ Reports 161.

#### **ICTY**

- *Prosecutor v Kupreškić case* Judgement 883.
- *Prosecutor v Galic* IT-98-29-T 61.
- *Prosecutor v Slobodan Milošević* IT-02-54-T 23.
- *Prosecutor v Limaj* Judgment (Trial Chamber) IT-03-66-T 90.
- *Prosecutor v Boskoski Tarculovski* IT-04-82 T 185.
- *Prosecutor v Hardinaj and ors* IT-04-84-T 49.
- *Prosecutor v Haradinaj et al* ICTY-04-84-T 16.
- *Prosecutor v Tadic* IT-94-1-A 70.

#### **ICTR**

- *Prosecutor v Jean-Paul Akayesu* ICTR-96-4-T 626.
- *Prosecutor v Musema* ICTR-96-13-A 251.

#### **European Court of Human Rights**

- *Andreou v Turkey* ECHR (23 December 2008) Ser A 45653/99 25.
- *Issa v Turkey* ECHR (30 May 2000) Ser A31821/96 16.
- *McCann and Others v United Kingdom* ECHR (24 May 1994) Ser A18984.
- *McKerr v United Kingdom* ECHR (04 May 2001) Ser A 95.
- *Nachova v Bulgaria* ECHR (06 July 2005) Ser A 98.

### **Inter –American Commission on Human Rights**

- *Abella v Argentina*, Inter-American Commission of Human Rights, Iam Comm of HR (13 June 1998), OEA/SerL/V/II98 Rev 155.
- *Juan Carlos Abella v Argentina*, Inter-American Commission of Human Rights, Iam Comm of HR (14 August 1997) OEA/Ser.L/II.28/Doc. 7 27, 53.

### **Israel**

- *Prosecutor v Abdallah Banda Abakaer Nouran and Saleh Mohammed Jerbo Jamus Public Committee against torture in Israel et al. v Government of Israel et al* (2006) 23 AJIL 459

### **U.S**

- *Al-Aulaqi v Obama* 727 US 34 (2010).
- *Boumediene v Bush* 553 US 723 (2008).
- *Gherebi v Obama* 609 F 2d 43 (2009).
- *Hamdan v Rumsfeld* 542 US 507 (2004).
- *Hamdan v Rumsfeld* 548 US 557 (2006).

## ANNEXURE 1: U.S DRONE STRIKES UPTO LATE 2011<sup>484</sup>

Year/Mon/Date of strike	Brief description of the strike and status of target	Est. Number of people killed
2011/10/13	U.S drone strikes at 'suspected terrorists' in Dande Darpa Khel and in the town of Angoor Adda village. The targets were suspected of launching rockets into Afghanistan Waziristan.	7
2011/09/30	U.S drone strikes at 'suspected terrorists' in Baghar Cheena, South Waziristan. Targets suspected of facilitating al-Qaeda cross-border attacks in Afghanistan.	3
2011/09/27	U.S drone strikes at 'suspected' terrorists in a house in Azam Warzak, South Waziristan. The strike kills civilians whilst the suspected militants escape.	3
2011/09/23	U.S drone strikes at 'suspected' terrorists in a house in North Waziristan. The targets, amongst which Asians, were suspected of being Haqqani network insurgents.	6
2011/09/12	U.S drone strike on a vehicle kills terrorists in Esokhel area of North Waziristan. Another strike on a house near Mir Ali kills only civilians.	7
2011/09/11	U.S drone strike in Hisokhel, Mir Ali, North Waziristan kills four terrorists amongst which Abu Hafs al Shari, Operational Chief of Al-Qaeda. Number of civilian casualties' unknown.	4 +
2011/09/4	U.S drone strike kills 'suspected' terrorists in North Waziristan.	7+
2011/08/22	U.S drone strikes in North Waziristan kills Atiyah Abd al-Rahman, an Al-Qaeda top leader along with 3 other 'suspected' terrorists. Number of civilian casualties unknown.	4+
2011/08/19	U.S drone strike kills 'suspected' terrorists in Sheen Warsik, South Waziristan.	2+
2011/08/16	U.S drone strike kills 'suspected' terrorists near Miranshah. The targets were burnt beyond recognition.	4+
2011/08/10	U.S drone strikes at a house 3km east of Miran Shah, North Waziristan, kills terrorists. Amongst the target were civilian Arabs and Uzbeks whose status not clearly known.	21+
2011/08/1	U.S drone strike at a vehicle near Azam Warsak, South Waziristan kills more than four 'suspected' terrorists	13+

<sup>484</sup> The statistics and events were taken from the New America Foundation website available at < <http://counterterrorism.newamerica.net/drones>> and [http://en.wikipedia.org/wiki/drone\\_attacks\\_in\\_Pakistan](http://en.wikipedia.org/wiki/drone_attacks_in_Pakistan).(Accessed 13 September 2011).



	along with civilians.	
2011/07/21	U.S drone strike in Khushali Toori Khel area of North Waziristan kills <b>civilians</b> .	4+
2011/07/12	U.S drone strike kills <b>'suspected' terrorists</b> in North Waziristan.	30+
2011/07/11	U.S drone strike Drone strikes in Gorvak village, North Waziristan kills <b>'suspected' terrorists</b> kill. The death toll spreads terror amongst the civilian population.	47+
2011/07/05	U.S drone strike Drone strikes on a militant hideout near Mir Ali in North Waziristan killing <b>'suspected' terrorists</b> amongst which Saif Ullah, an Australian Al Qaeda <b>supporter</b> .	4+
2011/06/27	U.S drones strikes on vehicles in Ghalmandi Panga and Manto in South Waziristan kills <b>'suspected' terrorists</b> .	21+
2011/06/20	U.S drone strikes at <b>'suspected terrorists'</b> in the Kurram tribal area.	9+
2011/06/15	U.S drone strikes kills <b>'suspected terrorists'</b> in South Waziristan. In other strikes near Wana, South Waziristan and Miranshah in North Waziristan, <b>terrorists</b> belonging to Mullah Nazir's leadership are killed.	15+
2011/06/08	U.S drone strike a militant compound in Zoi village, Shawal region, North Waziristan killing 15-23 <b>suspected militants</b> .	15+
2011/06/06	U.S drone strike kills more than sixteen individuals. Pakistani intelligence claim that targets were <b>'Punjabi Taliban militants'</b> whilst other witnesses say they were <b>"Arabs" and civilians</b> .	16-20
2011/06/03	U.S Drone strike in Ghwakhwa, South Waziristan kills <b>militants</b> amongst which top ranking Al Qaeda militant Ilyas Kashmiri.	9+
2011/05/23	U.S drone strikes at <b>'suspected terrorists'</b> on a vehicle on the outskirts of Mir Ali in North Waziristan.	9+
2011/05/20	U.S drone strikes in North Waziristan kills <b>civilians</b> .	6+
2011/05/16	U.S drone strikes at <b>'suspected terrorists'</b> in Mir Ali in North Waziristan.	10+
2011/05/03	U.S drone strikes on a vehicle in Doga Madakhel village, North Waziristan kill <b>civilians</b> .	5+
2011/05/12	U.S drone strikes at <b>'suspected terrorists'</b> in North Waziristan. The Long War Journal reported that it turned out that the targets were <b>"civilian foreigners"</b>	8
2011/05/10	U.S drone strikes at <b>'suspected terrorists'</b> in Angoor Adda village, South Waziristan. The Public Multimedia, reports that the targets turned out to be <b>civilian Arabs</b> .	4+
2011/05/06	U.S drone strikes hit a car and a compound belonging to Hafiz Gul Bahadar killing <b>militants</b> and <b>six civilians</b> .	15+
2011/04/21	U.S drone strikes hit a compound of houses belonging to the <b>Hafiz Gul Bahadur pro-army group</b> in Mir Ali, North	25+

	Waziristan killing several <b>civilians amongst which women and children</b> and wounding many.	
<b>2011/04/13</b>	U.S drone strikes at <b>'suspected terrorists'</b> in South Waziristan. It turned out that the deceased were <b>ordinary tribesmen</b> unaffiliated with terrorist groups. The Pakistan government heavily protested to the U.S ambassador Cameron Munter about the strike yet the CIA restated its intentions of not stopping the drone targeting as long as it supported the objective of protecting American citizens.	6+
<b>2011/03/17</b>	U.S drone strikes at in Datta Khel, North Waziristan kill <b>civilians</b> gathered for a dispute resolution council discussing a claim to a local chromite mine.	48+
<b>2011/03/16</b>	U.S Drone strike in Dattakhel, North Waziristan kills <b>militants</b> . Nevertheless, the identities of the targets are unknow.	5
<b>2011/03/14</b>	U.S drone strikes at <b>'suspected terrorists'</b> near Miranshah in North Waziristan and in Afghan border in Malik Jashdar, North Waziristan.	6+
<b>2011/03/13</b>	U.S drone strikes <b>militants</b> in Azam Warsak area of South Waziristan. Civilian casualties unknown.	6+
<b>2011/03/11</b>	U.S drone strikes at <b>'suspected terrorists'</b> in Ghorsaka area near Miranshah, North Waziristan.	5+
<b>2011/03/08</b>	U.S Drone strike in Landidog village, South Waziristan kills <b>militants</b> . Civilian casualties unknown.	5+
<b>2011/02/24</b>	U.S drone strikes at a militant compound in Mando Khel, 60 km south of Miram Shah near Razmak, North Waziristan allegedly inhabited by <b>'suspected terrorists'</b> . Another strike hit a vehicle and a house in Doga Mada Khel village, killing <b>civilians</b> . Another U.S drone strike hit two <b>civilians</b> riding a motorcycle in the same village.	10+
<b>2011/01/18</b>	U.S drone strike kills militants in North Waziristan	5
<b>2011/01/12</b>	U.S drone strikes at a compound in Haiderkhel village, Mir Ali, North Waziristan killing <b>civilians</b> .	6+
<b>2011/01/07</b>	U.S drone strikes at <b>'suspected terrorists'</b> in North Waziristan. Number of civilian casualties unknown.	5+
<b>2011/01/01</b>	First US drone strike on a vehicle and a <b>suspected militant compound</b> in Mandi Khel, Mir Ali, North Waziristan. Second drone strikes at <b>'alleged Taliban insurgents'</b> in the same area. The third strike a vehicle in Boya village, Datta Khel, North Waziristan killing <b>civilians</b> .	18
<b>2010/12/31</b>	U.S drone strikes at <b>'suspected terrorists'</b> in Ghulam Khan, North Waziristan.	8
<b>2010/12/28</b>	U.S drone strikes at <b>'suspected terrorists'</b> in a suspected militant hideout in Ghulam Khan and on a vehicle in the	17+

	same area, killing <b>civilians</b> .	
<b>2010/12/27</b>	U.S drone strikes in Mir Ali, North Waziristan kill <b>unknown people</b> suspected to be militants.	18+
<b>2010/12/17</b>	First U.S drone strikes at a compound in Speen Drang killing <b>pro-Taliban militants</b> from the Lashkar-e-Islam group. The second strike hit a compound in Nakai, Khyber. The last strike hit a compound in Sangana, Khyber killing <b>militants</b> from Lashkar-e-Islam and Tehreek-i-Taliban Pakistan along with <b>Taliban Commander</b> Ibn Amin.	60+
<b>2010/12/15</b>	U.S drone strike kills <b>'suspected militants'</b> in Spin Drand, Khyber.	7
<b>2010/12/14</b>	U.S drone strike target a vehicle and kills <b>'suspected militants'</b> in North Waziristan.	4
<b>2010/12/09</b>	US drone strike on a vehicle in Mir Ali, North Waziristan killing unknown <b>'suspected militants.'</b>	4
<b>2010/12/06</b>	U.S drone strike in Khushali village, North Waziristan, kills <b>civilians</b> .	5+
<b>2010/11/28</b>	US drone strikes in Hasan Khel village, 30 kilometers east of Miranshah killing at least 3 <b>militants</b> .	3+
<b>2010/11/26</b>	U.S drone strikes at <b>'suspected terrorists'</b> in North Waziristan.	4+
<b>2010/11/22</b>	U.S drone strike at a car and motorcycle in North Waziristan killing <b>'suspected terrorists'</b> .	5
<b>2010/11/21</b>	U.S drone strikes at <b>'suspected terrorists'</b> near Miran Shah, North Waziristan.	6
<b>2010/11/19</b>	U.S drone strikes at <b>'suspected terrorists'</b> in North Waziristan.	3
<b>2010/11/16</b>	U.S Drone hit a house and vehicle in Bangi Dar village, North Waziristan, killing various <b>civilians</b>	20+

<b>2010/11/13</b>	A US drone strike kills <b>civilians</b> in the village of Ahmad Khel in the Mir Ali area in North Waziristan. All the deceased ordinary citizens.	5+
<b>2010/11/11</b>	U.S drone strikes at <b>'suspected terrorists'</b> in North Waziristan. The targets were <b>suspected</b> of being Haqqani Network fighters returning from operations in Khost Province, Afghanistan.	6+
<b>2010/11/7</b>	U.S Drone strikes kill <b>militants</b> in the Miran Shah, North Waziristan. First strike hit a house and a vehicle in the town of Ghulam Khan, north of Miran. Second strike hit several vehicles in the neighboring town of Datta Khel.	13+
<b>2010/11/03</b>	U.S drone strikes kill <b>militants</b> . First strike hit a vehicle in the Qutab Khel, Miran Shah killing <b>Uzbek militants</b> . Second strike hit a house and a vehicle in Khaso Khel village, Mir Ali. Third strike hit a vehicle in Pai Khel	13+

	village, Datta Khel town	
2010/11/01	U.S drone strikes at 'suspected terrorists' in a house in the Mir Ali District of North Waziristan.	5+
2010/10/28	U.S drone strike in the Datta Khel kills militants	7
2010/10/27	U.S drone strikes a house belonging to militant Nasimullah Khan and on a vehicle in Datta Khel carrying militants.	7
2010/10/18	U.S drone strike in Datta Khel, North Waziristan kills militants along with 10-year-old son of Naeem Ullah, who lived nearer to the target.	6
2010/10/15	U.S drone strikes at 'suspected terrorists' in Machi Khel and Mir Ali, North Waziristan.	13+
2010/10/13	Drone attacks kill 11 militants in the Datta Khel area of North Waziristan.	11
2010/10/10	U.S Drone strikes kill fire militants in the Shewa District of North Waziristan.	8+
2010/10/08	U.S drone strikes in North Waziristan kills militants.	6
2010/10/07	U.S drone strike on a compound in North Waziristan killing militants amongst which an Al-Qaeda leader Atiyah Abd al-Rahman.	5
2010/10/06	U.S drone strikes in North Waziristan kill militants.	11
2010/10/04	U.S drone strikes at 'suspected terrorists' in a Mosque in Mirali, North Waziristan amongst which a German citizen.	8
2010/10/02	U.S drones hit a house and a convoy of vehicles in Datta Khel killing militants belonging to the Badar Mansur group a close affiliate of Al Qaeda. Number of civilian casualties unknown.	17+
2010/09/28	U.S drone hit a compound in Zeba village, Wana, South Waziristan killing militants. Number of civilian casualties unknown.	4+
2010/09/27	U.S drone strike in Miran Shah, North Waziristan, killing militants. Number of civilian casualties unknown.	6+
2010/09/26	U.S drones hit a house and vehicle in Lwara Mandi village in Datta Khel, killing militants. Number of civilian casualties unknown.	.7
2010/09/25	U.S drone hit a vehicle in Datta Khel village of North Waziristan killing terrorists amongst which included Al-Qaeda top leader Sheikh Fateh Al Misri. Number of civilian casualties unknown.	4+
2010/09/21	U.S drone strike in South-North Waziristan border region killing militants amongst which was Taliban commander Mullah Shamsullah.	16+
2010/09/20	U.S drones hit a vehicle and a house in Datakhel and Miran Shah, North Waziristan killing militants.	12
2010/09/19	U.S drones hit a house in Datta Khel, North Waziristan killing militants.	5

2010/09/16	U.S drones hit a house in Datakhel area, killing militants.	6
2010/09/15	U.S drones in North Waziristan kills militants amongst which Saifullah Haqqani right hand man of Haqqani Network leader of Sirajuddin Haqqani.	4
2010/09/14	U.S drone strike kills militants in Dargah Mandi, Miran Shah, North Waziristan. Number of civilian casualties not known.	12+
2010/09/13	U.S drone strikes at 'suspected terrorists' in Shawal, North Waziristan killing all people in the house of Hafiz Gul Bahadur.	5+
2010/09/08	U.S drone hit a house belonging to Maulvi Azizullah, a member of the Haqqani network, in Dande Darpa Khel, Miransha, killing militants. U.S drone hit a car along the border killing people associated with the Haqqani network. U.S drone hit a house in Miranshah killing militants. U.S drone hit a compound outside Miranshah killing and wounding militants. The targets were of Islamic Jihad Group, which was planning terrorist attacks in Europe. Qureshi an Islamic Jihad commander, who was training German operatives, was killed in these drone strikes. However, U.S drone also hit a noncombatant house owned by Din Mohammad an Afghan refugee. The strike killed his son, nephew and two daughters.	19
2010/09/06	U.S drone strikes at 'suspected terrorists' in North Waziristan.	6
2010/09/04	U.S drone hit a compound in Datta Khel village, North Waziristan killing militants.	.8
2010/09/03	U.S drone strikes at 'suspected terrorists' in North Waziristan. First strike hit near Miramshah, the second strike hit the home of Gul Adam in Data Khel.	12+
2010/08/27	U.S drone strikes at 'suspected terrorists' in Kurram Agency.	5+
2010/08/23	U.S drone strikes in North Waziristan kill militants and civilians. Civilian casualties included women and children.	13
2010/08/21	U.S drone strike in Miran Shah, North Waziristan, kills militants.	6
2010/08/23	US drones strikes in North Waziristan kill militants and civilians amongst them women and children.	20+
2010/08/21	U.S drone strike in Miran Shah, North Waziristan, kills militants.	.6
2010/08/14	U.S drone hit a compound in Mir Ali, North Waziristan, killing militants amongst which Amir Moaviya a Taliban commander.	<sup>13</sup>
2010/07/25	U.S drone strikes at 'suspected terrorists' who were in a	7

	house in Taipi village, Miran Shah, North Waziristan.	
2010/07/25	U.S drones hit in Landikhel village of Srarogha Tehsil in South Waziristan killing TTP <b>militants</b> who were having dinner.	4
2010/07/25	U.S drones hit a double-cabin pickup in Shaktoi village in South Waziristan killing <b>militants</b> belonging to the Hakimullah Mehsud-led Tehrik-i-Taliban Pakistan.	14
2010/07/24	U.S drones hit a militant compound in Nazai Narai area of South Waziristan killing <b>militants</b> .	16
2010/07/15	U.S drone strikes at ' <b>suspected terrorists</b> ' in North Waziristan.	14
2010/06/29	U.S drones hit a house near in Wana, South Waziristan killing <b>militants</b> including Hamza al-Jufi an Egyptian Al Qaeda militant.	8
2010/06/27	U.S drone strike in North Waziristan kills <b>militants</b> .	5
2010/06/26	U.S drone hit a house near Mir Ali in North Waziristan killing <b>militants</b> . Number of <b>civilian</b> casualties not known.	7+
2010/06/19	U.S drones hit a house in Haider Khel village, North Waziristan killing <b>militants</b> including Al Qaeda leader Abu Ahmed Tarkash.	16
2010/06/11	U.S drone strikes at ' <b>suspected terrorists</b> ' who were in a housing compound in Miran Shah, Afghanistan.	15
2010/06/10	U.S drone strikes in North Waziristan kills <b>civilians</b> . Another strike in Nazai Narai area of South Waziristan kills <b>militants</b> .	11+
2010/05/21	US drones hit a compound allegedly used by Afghan warlord Hafiz Gul Bahadur killing <b>suspected militants</b> and <b>civilians</b> amongst which women and children.	13+
2010/05/15	U.S drone strikes in Khyber Agency kills <b>civilians</b> .	15+
2010/05/11	U.S drone strikes hit cars, homes and tents in the Doga and Gorwek area of North Waziristan killing <b>militants</b> including Taliban commander, Maulvi Kalam. The strikes were also directed at <b>suspected insurgents</b> .	24+
2010/05/09	U.S drone strike in North Waziristan kills <b>militants</b> .	10+
2010/05/03	U.S drone strike in North Waziristan kills <b>militants</b> .	5
2010/04/26	U.S drones strike hit a compound in Khushali Toorkhel area, 25 km east of Miran Shah, North Waziristan killing <b>suspected militants</b> .	4+
2010/04/24	U.S drones strikes in Marsi Khel, Miramshah, North Waziristan kill <b>militants</b> .	7
2010/04/16	U.S drones hit two vehicles and a house in Toolkhel, Miramshah, North Waziristan killing and injuring only <b>civilians</b> .	6
2010/04/14	U.S drone strike hit a vehicle in Anbarshaga area of North Waziristan killing Arab <b>militants</b> .	.
2010/04/12	U.S drone strike in North Waziristan kills people. The status of the target not verified by any report.	5+

2010/03/30	U.S drone strike hit a compound belonging to Zamir Khan, a local tribesman, and allegedly used by terrorists in North Waziristan, killing <b>militants</b> .	6
2010/03/27	U.S Drone strike in Mir Ali in North Waziristan kills <b>militants</b> .	4
2010/03/23	U.S drones hit a militant vehicle in Miranshan, North Waziristan killing and wounding <b>militants</b> .	6
2010/03/21	U.S drone strikes in Datta Khel, North Waziristan kill <b>civilians</b> .	8
2010/03/17	U.S Drone hit a vehicle and a militant hide-out in Miranshan and Madakhel killing <b>militants</b> .	9
2010/03/16	U.S drone strike in North Waziristan's Datakhel area kills Al Qaeda <b>militants</b> but included also <b>two officials from Syria and Egypt</b> .	8-10
2010/03/10	U.S drone strikes hit a compound and three vehicles in the village of Mizar Madakhel, North Waziristan killing <b>militants</b> amongst them a local Taliban leader, Hafiz Gul Bahadar.	.21
2010/03/08	US drone strike in Miranshan kills <b>militants</b> amongst which Hussein al-Yemeni, an Al Qaeda terrorist involved in the masterminding of the Camp Chapman attack.	
2010/02/24	U.S drone strikes hit a compound and at a vehicle in t Dargah Mandi, North Waziristan killing <b>militants</b> amongst which included Bahadar Mansoor, leader of Badar Mansoor group, Rana Afzal, the master minder of the FIA HQ bombing in Lahore and Mohammed Qari Zafar, the leader of Lashkar-e-Jhangvi and the master minder of the 2002 and 2006 bombing of the U.S. consulate in Karachi.	13
2010/02/18	U.S drone strike hit a vehicle belonging to Siraj the leader of Haqqani network in Northwest Waziristan killing <b>militants</b> amongst which included Mohammed Haqqani, the brother of Siraj.	4
2010/02/17	U.S drone strikes in Tapi, Miramshah, North Waziristan kill <b>militants</b> amongst wich Sheikh Mansoor, a commander in the Lashkar al Zil.	3
2010/02/15	U.S drone strike in North Waziristan kills Abdul Haq al-Turkistani, <b>leader of the Turkistani Islamic Party</b> .	1
2010/02/14	U.S drone strike in Mir Ali in North Waziristan kills <b>civilians</b> .	5
2010/02/02	U.S drone strikes in four different villages of North Waziristan kill <b>civilians</b> .	29+
2010/01/29	U.S drones hit a compound belonging to Haqqani network in Muhammad Khel town in North Waziristan. Killing <b>civilians</b> .	15
2010/01/19	U.S drones hit a compound and vehicle in Booya village, Datakhel, Miranshan, North Waziristan killing <b>civilians</b> .	9

2010/01/17	U.S drone strike in Shaktoi area of South Waziristan injures Hakimullah Mehsud , leader of the Pakistani Taliban whilst the strikes kill several civilians.	20+
2010/01/15	U.S drone strike in Bichi village, North Waziristan kills civilians.	6
2010/01/15	U.S drone strike in Zannini village in Mir Ali, North Waziristan kills Abdul Basit Usman, an al-Qaeda terrorist along with several civilians.	15+
2010/01/13	U.S drone strike hit a compound used as a religious school in Pasalkot village, North Waziristan killing several civilians. Allegedly the target was supposed to be Hakimullah Mehsud, who apparently left the compound before the strike.	15+
2010/01/09	U.S drone strike hit a compound in village Ismail Khan, North Waziristan, killing militants amongst which included Mahmoud Mahdi Zeidan, bodyguard of al Qaeda leader Sayeed al-Masri, Jamal Saeed Abdul Rahim allegedly involved in hijacking of Pan Am Flight 73 in 1986.	4+
2010/01/08	U.S drone strike in Tappi village, North Waziristan kill militants led by Taliban Commander Hafiz Gul.	5
2010/01/06	U.S Drone strikes in Sanzalai village, North Waziristan kill civilians.	35+
2010/01/03	U.S Drone strikes in Mosakki village in North Waziristan kills civilians.	5
2010/01/01	U.S Drone strikes hit a vehicle near Ghundikala village, North Waziristan killing suspected terrorists.	3
2009/12/31	U.S Drone strikes in in Machikhel village, North Waziristan kill militants amongst which senior Taliban leader Haji Omar Khan.	4
2009/12/26	U.S drone strikes in Saidgai village, North Waziristan kills suspected terrorists.	13
2009/12/18	U.S drone strikes in Dattakhel region in North Waziristan kills suspected terrorists.	3
2009/12/17	U.S drone strikes hit a car near Dosali, hit two compounds in Ambarshaga, in North Waziristan targeting Sheikh Saeed al Saudi, Osama bin Laden's brother-in-law and a member of al Qaeda's executive council. However, the target was missed and the strike killed several civilians amongst which included foreigners.	22+
2009/12/09	U.S drone strikes in Tanga, Ladha, South Waziristan, kills Al Qaeda and Taliban militants.	6
2009/12/08	U.S drone strikes hit a car near Miranshah in North Waziristan killing Al Qaeda militants amongst which included Saleh al-Somali from Somalia.	3
2009/11/20	U.S drone strikes in Machikhel area near the town of Mir	8



	Ali kill <b>suspected terrorists.</b>	
2009/11/18	U.S drone strikes in Shanakhora village of North Waziristan, Miranshah kill <b>suspected terrorists.</b>	4
2009/11/05	U.S drone strikes in Miranshah town in North Waziristan kill <b>suspected terrorists.</b>	2
2009/10/24	U.S drone strike in Damadolla kills Taliban and Al Qaeda <b>suspected terrorists</b> allegedly engaged in a planning and strategy meeting.	27
2009/10/21	U.S drone strike in Spalaga, North Waziristan kills <b>alleged militants.</b>	2+
2009/10/15	US drone strike in North Waziristan kills <b>suspected terrorists.</b>	4
2009/09/30	U.S drones hit a Taliban compound and vehicle in Novak, North Waziristan killing <b>suspected terrorists.</b>	8
2009/09/29	U.S drone strikes hit a compound in Sararogha village, South Waziristan and a house in Dandey Darpakhel village, North Waziristan killing killed <b>Talibans, Uzbek fighters,</b> several insurgences amongst which included Taliban commander Irfan Mehsud.	13
2009/09/24	U.S drone strike in the village of Dande Darpa Khel near Mir Ali kills <b>suspected terrorists.</b>	12
2009/09/14	U.S drone hit a car 1.5 miles from Mir Ali in North Waziristan killing <b>suspected terrorists.</b>	4
2009/09/08	U.S drone strike in North Waziristan kills Punjabi and Taliban <b>militants</b> amongst which Al Qaeda leaders Ilyas Kashmiri and Mustafa al Jaziri.	10
2009/08/27	U.S drone strike in Tapar Ghai, Kanigram, South Waziristan kills <b>suspected terrorists</b> amongst which included Tohir Yo'ldosh leader of the Islamic Movement of Uzbekistan.	8
2009/08/21	U.S drone strike in Darpa Kheil, North Waziristan, targets Sirajuddin Haqqani but instead kills several <b>civilians.</b>	21
2009/08/11	U.S drone strike in Ladda village, South Waziristan, kills <b>suspected terrorists.</b>	10+
2009/08/05	U.S drone strike in South Waziristan kills several <b>civilians</b> amongst which was Baitullah Mehsud, his wife, and his wife's parents.	12+
2009/07/17	U.S drone strike hit a house in North Waziristan killing <b>suspected terrorists.</b>	4
2009/07/10	U.S drones hit a Taliban communication center in Painsa Khel, South Waziristan killing <b>militants.</b>	5+
2009/07/08	U.S drone strike hit a hideout in Karwan Manza area and on a vehicle convoy in South Waziristan killing <b>suspected terrorists.</b>	50+
2009/07/07	U.S drone strike in Zangarha, South Waziristan kills <b>suspected terrorists.</b>	12
2009/06/23	U.S drone strikes in the town of Makeen targeting	88

	Baitullah Mehsud but misses target and kills many <b>civilians</b> attending the funerals of people killed in prior drone strikes. Another strike the same day in Neej Narai in South Waziristan kills <b>civilians</b> .	
2009/06/18	U.S drone strikes in Shahalam village in South Waziristan kill <b>suspected terrorists</b> .	13
2009/06/14	U.S drone strike hit a vehicle in South Waziristan killing <b>suspected terrorists</b> .	5
2009/05/16	US drone strike in village of Sarkai Naki in North Waziristan kills <b>suspected terrorists</b> .	25
2009/05/12	U.S drone strike in Sra Khawra village in South Waziristan kills <b>suspected terrorists</b> .	8
2009/05/09	U.S drone strike in Sararogha in South Waziristan kills <b>suspected terrorists</b> .	6
2009/04/29	US drone strike in Kanni Garam village in South Waziristan kills <b>suspected terrorists</b> .	6
2009/04/19	U.S drone strikes in South Waziristan kills <b>suspected terrorists</b> .	3
2009/04/08	U.S drone hits a vehicle in Gangi Khel in South Waziristan killing <b>suspected terrorists</b> .	4
2009/04/04	U.S drone strikes in North Waziristan kills <b>suspected terrorists</b> .	13
2009/04/01	U.S drone strike in Orakzai Agency tribal area kills <b>suspected terrorists</b> .	14
2009/03/26	U.S drone strikes in Essokhel area in North Waziristan kills <b>suspected terrorists</b> .	4
2009/03/25	U.S drones hit 2 vehicles in Makin area of South Waziristan killing <b>suspected terrorists</b> .	7
2009/03/15	U.S drone strikes in Jani Khel in Bannu district in North-West Frontier Province kills <b>suspected terrorists</b> .	4
2009/03/12	U.S drone strikes in Berju in Kurram Agency kills <b>suspected terrorists</b> .	24
2009/03/01	U.S drone strike in Sararogha village in South Waziristan kills <b>suspected terrorists</b> .	7
2009/02/16	U.S drone strike hit a Taliban training camp in Kurram Valley killing <b>militants</b> preparing to combat coalition forces in Afghanistan.	30
2009/02/14	U.S drone strikes in the town of Makeen in South Waziristan kills <b>suspected terrorists</b> .	30+
2009/01/23	U.S drone strikes (the first under Obama Administration) in Waziristan kill <b>suspected terrorists</b> .	14+
2009/01/02	U.S drone strike in Ladha, South Waziristan kills <b>suspected terrorists</b> .	4
2009/01/01	U.S. drone strike kills 2 senior <b>Al-Qaeda leaders</b> Usama al-Kini and Sheikh Ahmed Salim Swedan.	2
2008/12/22	U.S drone strikes in South Waziristan kills <b>suspected terrorists</b> .	8

2008/12/15	U.S drone strike in Tapi Tool region near Miram Shah, North Waziristan kills <b>suspected terrorists</b> .	2
2008/12/11	U.S drone strike in Azam Warzak, South Waziristan, kills <b>militants</b> .	7
2008/11/29	U.S drone strike on Miranshah, North Waziristan kills <b>suspected terrorists</b> .	3
2008/11/22	U.S drone strike in North Waziristan kills <b>militants</b> amongst which included British Al-Qaeda operatives Rashid Rauf and Abu Zubair Al-Masri .	5
2008/11/19	U.S drone strikes in Bannu district kills <b>militants</b> amongst which included Abdullah Azam Al-Saudi.	5
2008/11/14	U.S drone strikes in Miranshah kills <b>suspected terrorists</b> .	12
2008/11/07	U.S drones in Kumsham, North Waziristan kills <b>militants</b> .	14
2008/10/31	U.S drone strikes in Waziristan kills <b>Al-Qaeda operatives</b> including Abu Akash and Mohammad Hasan Khalil al-Hakim.	20
2008/10/31	U.S drone strikes in Wana, South Waziristan kills <b>suspected terrorists</b> .	7
2008/10/26	U.S drone strikes in South Waziristan kill <b>suspected terrorists</b> .	20
2008/10/22	U.S drone strikes in a village near Miranshah kills <b>suspected terrorists</b> .	4
2008/10/16	U.S drone strike in Taparghai, South Waziristan, kills Senior Al-Qaeda leader Khalid Habib along with five other Al Qaeda or Taliban <b>militants</b> .	6
2008/10/11	U.S drone strike hit a <b>militant compound</b> in North Waziristan killing and wounding occupants.	5
2008/10/09	U.S drone strike in Tappi village near Miranshah, North Waziristan kills Arab <b>militants</b> .	6
2008/10/03	U.S drone strikes in Datta Khel region of North Waziristan kill <b>militants</b> amongst which included foreigners.	21
2008/09/30	U.S drone strike in Mir Ali, North Waziristan kills <b>suspected terrorists</b> .	6
2008/09/17	U.S drone strike in Baghar Cheena region of South Waziristan kills <b>militants</b> including Al Qaeda operative Abu Ubaydah Al Tunisi.	5
2008/09/12	U.S drone strike in Miranshah kills <b>civilians</b> amongst which women and children.	12
2008/09/08	U.S drone strikes in Daande Darpkhel, Miranshah, North Waziristan kills <b>suspected terrorists</b> .	23
2008/09/05	U.S drones hit a house allegedly hosting Arab foreign fighters, killing <b>suspected terrorists</b> .	6
2008/09/04	U.S drones strikes hit a house in Char Khel in North Waziristan killing <b>suspected terrorists</b> .	4
2008/08/31	U.S drones hit a house in Tappi village in Miranshah, killing <b>suspected terrorists</b> amongst which included	6

	women and children.	
2008/08/30	U.S drone strike hit an Al-Qaeda training camp in South Waziristan killing militants carrying Canadian passports.	2
2008/08/20	U.S drone strike hit a compound in South Waziristan, killing militants.	8
2008/08/13	US. Drone strike hit a compound owned by Gulbuddin Hekmatyar killing several militants amongst which included Taliban commander Abdul Rehman.	12
2008/08/12	U.S drone strikes in Angore Adda in South Waziristan killing militants at a meeting.	9
2008/07/28	U.S drone strikes in South Waziristan kills Al-Qaeda operatives including Midhat Mursi.	6
2008/06/14	U.S drone strikes hit a potential hideout of TTP leader Meshud, killing one person.	1
2008/05/14	U.S drone strike in a village of Damadola, Bajaur kills militants including Abu Sulayman Al-Jazairi. Number of civilian casualties not known.	12
2008/03/18	U.S drone strikes in South Waziristan kills suspected terrorists	16
2008/02/27	U.S drone strike in Kalosha village in South Waziristan kills suspected terrorists	12
2008/01/29	U.S drone strike in North Waziristan kills militants amongst which Al-Qaeda's Abu Laith al-Libi.	11
2007/11/02	U.S drone strike hit a madrasah in North Waziristan killing suspected terrorists.	5
2007/06/19	U.S drone strike in the village of Mami Rogha in North Waziristan killing suspected terrorists.	30
2007/04/26	U.S drone strikes in the village of Saidgi in North Waziristan kills suspected terrorists.	5
2007/01/16	U.S drone strike in Salamat Keley, Zamazola, South Waziristan kills Taliban militants.	30
2006/10/30	U.S drone strike in Chenagai allegedly targeting Ayman al-Zawahri hit a madrassa in Bajaur killing several civilians.	70+
2006/01/13	U.S drone strikes in Damadola targeting Ayman Al-Zawahri misses and kill several civilians in Bajaur.	18
2005/11/30	U.S drone strikes in Asoray, Miranshah, North Waziristan kill militants along with Al-Qaeda's 3rd in command, Abu Hamza Rabia.	5
2005/05/14	U.S drone strike near the Afghan border in North Waziristan kill militants amongst which included Haitham Al-Yemeni.	3+
2004/06/18	U.S drone strike in Wana, South Waziristan kills militants including Nek Muhammad Wazir.	5