

STUDENT CONTRIBUTION

“Leashing the Dogs of War”: Towards a Modification of the Laws of Armed Conflict for the Regulation of the US Drone Strikes in Pakistan

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Transnational terrorism in the twenty-first century is a unique threat that has sparked equally unique responses from nations at the receiving end of it, particularly the US. Some of these responses, however, have ignored both provisions of international law and the political realities prevailing in regions of Pakistan where the Drone strikes have been conducted. This poses various policy problems as the US has continuously used legal lacunae in international humanitarian law to carry on its “war on terror.” This paper addresses the problem by proposing a new form of armed conflict known as “transnational armed conflict,” which accounts for the unique nature of a conflict between a State and a non-State actor operating from the territory of another State. It allows for the setting of appropriate impact and assessment thresholds that could effectively bring such countermeasures in compliance with the accepted principles of international humanitarian law.

Keywords

Drones, International Humanitarian Law, Law of Armed Conflict, Transnational Armed Conflict, US Foreign Policy, Pakistan

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I. Introduction

Drone attacks have become ubiquitous in the “war on terror”¹ since 2004² when the Bush administration began targeting terrorist groups.³ Drones or unmanned aerial vehicles (“UAVs”) are powered aerial vehicles without human operator and can fly automatically or be piloted by remote control.⁴ Due to their ability to carry lethal payloads, they have been used for reconnaissance or bombings against suspected terrorists in Yemen, Somalia, Afghanistan and Pakistan.⁵ Since the commencement of these attacks, it is estimated that 386 drone strikes have been responsible for the death of over 2,000 militants and anywhere between 500 and 1,000 civilians.⁶ These attacks are carried out against members of terrorist organizations and Non-State-Actors (“NSAs”) operating from Pakistani territory without official consent of the Pakistani Government. Thus, unilateral use of force in this manner needs to be analyzed from a viewpoint of international law.

The primary purpose of this research is thus to explore such methods of drone attacks staged by the US in Pakistani territory under international law.⁷ ‘Pakistan’ is chosen as our focal point mainly because the status of non-state terrorist groups such as Al-Qaeda operating in Pakistan would raise many key questions of international law with regard to the legitimacy of the war on terror. These include the regulation of the use of force against the NSAs and the validity of self-defense claims without the consent of the sovereign host-State.⁸ In addition, the Pakistani government has

¹ G. Bush, Joint Session of Congress and American People in the aftermath of the 9/11 Bombing (Sept. 21, 2001), available at <http://archive.vod.umd.edu/warpeace/gwb2001int.htm> (last visited on Oct. 30, 2015)

² M. Sterio, *Use of Drones in the War on Terror*, 45 CASE WESTERN RESERVE J. INT’L L. (2012).

³ P. Bergen & K. Tiedemann, *Washington’s Phantom War: The effects of the U.S. drone in Pakistan*, FOREIGN AFF. July-Aug. 2011, available at <http://www.foreignaffairs.com/articles/67939/peter-bergen-and-katherine-tiedemann/washingtons-phantom-war> (last visited on Oct. 6, 2015).

⁴ C. Jenks, *Law from Above: Unmanned aerial systems, use of force and the law of armed conflict*, 85 N. D. L. REV. 653 (2009).

⁵ J. Serie & A. Ross, *January 2014 Update: US covert actions in Pakistan, Yemen and Somalia*, BUREAU OF INVESTIGATIVE JOURNALISM, Feb. 3, 2014, available at <https://www.thebureauinvestigates.com/2014/02/03/january-2014-update-us-covert-actions-in-pakistan-yemen-and-somalia> (last visited on Oct. 6, 2015).

⁶ For reports on an identification of the victims of drone strikes, see *Naming the Dead*, THE BUREAU OF INVESTIGATIVE JOURNALISM, available at <https://www.thebureauinvestigates.com/namingthedead/?lang=en> (last visited on Oct. 6, 2015).

⁷ For details, see J. Beard, *Law and War in the Virtual Era*, 103 AM. J. INT’L L. 422 (2009).

⁸ Qasim Nauman, *Pakistan condemns U.S. Drone Strikes*, REUTERS, June 4, 2012, available at <http://www.reuters.com/article/2012/06/04/us-pakistan-usa-drones-idUSBRE8530MS20120604> (last visited on Oct. 6, 2015). See also *Pakistan condemns U.S. drone strikes in North Waziristan*, SHANGHAI DAILY, July 11, 2014 available at http://www.shanghaidaily.com/article/article_xinhua.aspx?id=296430 (last visited on Oct. 6, 2015).