

Can International Humanitarian Law Regulate Recent Drone Strikes?: A Case Study

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The deployment of drones for targeted killings in recent years has sparked intense debates regarding the ethical and legal implications of their deployment in contemporary conflicts. Through an examination of the complexities surrounding the application of fundamental international humanitarian law (IHL) principles - such as differentiating targets and ensuring a proportionate response - and their deployment, the article aims to illuminate the potential legal ramifications of using drones in targeted killing. It also highlights challenges arising from the ambiguous distinction between combatants and non-combatants, compounded by the remote nature of drone missions. The inclusion of a few relevant case studies enhances the analysis, providing practical insights into the nuanced legal landscape and emphasising the pressing need for a comprehensive legal framework tailored to regulate drone usage. This paper stresses the immediate requirement for an effective regulatory structure to ensure adherence to IHL, thereby upholding humanistic principles and reducing the human toll of conflicts.

Keywords

Drones, Targeted Killing, International Humanitarian Law, Unmanned Aerial Vehicles, Remote Warfare, Drone Warfare

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I. Introduction

The deployment of drones for targeted killings in recent years has sparked intense debates surrounding the ethical and legal implications of their deployment in contemporary conflicts.¹ Due to their preciseness and efficient operation, drones, known as unmanned aerial vehicles (UAVs), have completely transformed modern warfare.² However, the use of drones in targeted killings raises critical questions about its adherence to international humanitarian law (IHL),³ i.e., the legal framework that safeguards human rights and regulates armed conflicts.⁴ Accordingly, understanding the legal implications of employing drones in targeted killings necessitates a comprehensive examination of the IHL principles and their role in effectively regulating the use of these advanced technologies on the battlefield.⁵

It denotes that a critical examination of the legal implications and case studies within the framework of the IHL is imperative.⁶ Therefore, this article explores fundamental IHL principles⁷ and then delves into recent drone strike cases to enhance an understanding of the legal framework surrounding drone warfare.⁸

The extensive use of drones in targeted killings highlights the urgent need to ascertain legal boundaries for these operations.⁹ A viable interpretation suggests that “targeted killings” involve the intentional elimination of a specific non-combatant who cannot be feasibly apprehended and is actively engaged in hostilities¹⁰ authorised by the state within the context of international or non-international armed conflict.¹¹ Apparently, the primary objective of targeted killing operations is to eliminate the

¹ DAVID CORTERIGHT ET AL., *DRONES & THE FUTURE OF ARMED CONFLICT: ETHICAL, LEGAL, AND STRATEGIC IMPLICATIONS* 1-3 (2017).

² Oren Gross, *The New Way of War: Is There A Duty to Use Drones?*, 67(1) FLA. L. REV. 16 (2015).

³ Christof Heyns et al., *The International Law Framework Regulating the Use of Armed Drones*, 65(4) INT'L & COMPAR. L. Q. 791-827 (2016).

⁴ OHCHR, *INTERNATIONAL LEGAL PROTECTION OF HUMAN RIGHTS IN ARMED CONFLICT* 2-3 (2011), https://www.ohchr.org/sites/default/files/Documents/Publications/HR_in_armed_conflict.pdf.

⁵ Heyns et al., *supra* note 3.

⁶ ICRC, *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts* (2003), at 38, https://www.icrc.org/en/doc/assets/files/other/ihlcontemp_armedconflicts_final_ang.pdf.

⁷ Heyns et al., *supra* note 3.

⁸ *Id.*

⁹ OHCHR, *supra* note 4.

¹⁰ Gary Solis, *Targeted Killing and the Law of Armed Conflict*, 60(2) NAVAL WAR COLL. REV. 127-46 (2007).

¹¹ *Id.* at 519-55.

individuals classified as non-combatant targets.¹² Therefore, the key principles outlined in IHL, such as distinction, proportionality, and the prohibition of unnecessary suffering, are pivotal in this context.

The principle of distinction, mandating strikes focused on valid military objectives while minimising injury to civilians,¹³ is challenged by drones' particular capabilities for remote surveillance and precision strikes. It raises concerns about accurate target identification and potential collateral damage. These challenges and the principle of proportionality¹⁴ integral to IHL are addressed in the upcoming discussion. The increased use of drones in targeted killings emphasises the need for proportionality due to the delicate balance between military necessity and civilian safety.¹⁵ Therefore, the regulatory role of IHL is indispensable in upholding humanity and minimising the humanitarian costs of armed conflicts.¹⁶ We further explore this role in the following discussion to address drones' deployment complexities while upholding international legal standards to mitigate the risks associated with their use in the evolving landscape of drone technology.¹⁷

For instance, Iran fortifies its air defence with combat drones armed with air-to-air missiles, including dozens of Karrar drones deployed along border regions. Presented at a televised ceremony in Tehran, these drones boast a substantial operational range of 1,000 kilometres (620 miles).¹⁸ Despite denials from Tehran, the western governments have imposed multiple rounds of sanctions over alleged arms sales,¹⁹ beginning with

¹² Nehaluddin Ahmad et al., *Unregulated Drones and an Emerging Threat to Right to Privacy: A Critical Overview*, 4(2) J. DATA PROT. & PRIV. 124-45 (2021).

¹³ Marco Sassòli, *Legitimate Targets of Attacks under International Humanitarian Law Harvard Program on Humanitarian Policy and Conflict Research* 9 (Harvard Program on Humanitarian Policy and Conflict Research, 2003), <https://www.hpcrresearch.org/sites/default/files/publications/Session1.pdf>.

¹⁴ This principle mandates that the anticipated civilian harm caused by an attack must not outweigh the anticipated military advantage gained. See Nehaluddin Ahmad et al., *Islamic Laws of War and Contemporary International Humanitarian Law: Discrimination and Proportionality*, 16(1) J. E. ASIA & INT'L L. 105-24 (2023); Judith Gardam, *Proportionality and Force in International Law*, 87(3) AM. J. INT'L L. 391 (1993).

¹⁵ Izabella Khachatryan, *The Accuracy Level of Targeted Killings by UAVs: Retrospective to NK War in 2020 Is the Usage of Drones Legal during Armed Conflicts, Considering the High Risk of Disproportionate Collateral Damage?*, Centre for Truth and Justice (Sept. 12, 2022), <https://www.cftjustice.org/the-accuracy-level-of-targeted-killings-by-uavs-retrospective-to-nk-war-in-2020-is-the-usage-of-drones-legal-during-armed-conflicts-considering-the-high-risk-of-disproportionate-collateral-damage>.

¹⁶ ANISSEH ENGELAND, *CIVILIAN OR COMBATANT: A CHALLENGE FOR THE 21ST CENTURY* 1-20 (2011).

¹⁷ Sassòli, *supra* note 13.

¹⁸ AFP, *Iran Unveils Drones Armed with Air-To-Air Missiles*, VOA NEWS (Dec.10, 2023), <https://www.voanews.com/a/iran-unveils-drones-armed-with-air-to-air-missiles/7392132.html>.

¹⁹ The United States has imposed several sanctions to target Iran's missile and drone procurement to increase pressure on Tehran. See Arshad Mohammed & Daphne Psadedakis, *US Imposes New Sanctions over Iranian Arms, Cyber Activity*, REUTERS (Feb. 3, 2024), <https://www.reuters.com/world/us-issues-new-iran-related-sanctions-cyber-arms-activity-2024-02-02>.

Iran's commencement of drone manufacturing in the 1980s during its war with Iraq.²⁰

In conclusion, this article aligns with the international legal response to recent drone attacks. It stresses the significance of practical insights from case studies while bridging theory and real-world applications.²¹ It also comprehensively examines current drone strikes and their legal repercussions within the IHL framework.²²

II. Legal and Ethical Complexities of Drone Strikes under IHL

Targeted killing may be defined as “the intentional use of lethal force against specified individuals posing a threat to a state’s security.”²³ It is often synonymous with extrajudicial killing²⁴ considering its contextual legality.²⁵ Despite stringent constraints, targeted killing may be deemed legitimate during armed conflicts under the modern law of war,²⁶ contingent upon adherence to the IHL principles such as proportionality and distinction.²⁷

In light of the escalating use of drones in targeted killings, concerns have emerged regarding their compliance with international law.²⁸ Drones, with their capacity for remote and precise strikes,²⁹ present intricate ethical, legal and strategic considerations

²⁰ AFP, *supra* note 18.

²¹ Heyns et al., *supra* note 3.

²² *Id.*

²³ Thomas Hunter, *Targeted Killing: Self-Defense, Preemption, and the War on Terrorism*, 2(2) J. STRATEGIC SEC. 1-52 (2010).

²⁴ SEUMAS MILLER, SHOOTING TO KILL: THE ETHICS OF POLICE AND MILITARY USE OF LETHAL FORCE 237-70 (2016); JEREMY WALDRON, DEBATING TARGETED KILLING: COUNTER-TERRORISM OR EXTRAJUDICIAL EXECUTION? C3-C3.N196 (2020).

²⁵ Monica Hakimi & A. Guiora, *A Legal Framework for Targeted Killing*, in PATRIOTS DEBATE: CONTEMPORARY ISSUES IN NATIONAL SECURITY LAW 161-77 (Harvey Rishikof et al. eds., 2012).

²⁶ Phillip Alston, United Nation Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions: Study on Targeted Killings, U.N. Doc. A/HRC/14/24/Add.6, at 1-27, <https://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/a.hrc.14.24.add6.pdf>.

²⁷ Celso Coracini, *Targeted Killing of Suspected Terrorists during Armed Conflicts: Compatibility with the Right to Life and to a Due Process?*, 2(III-2) BRAZ. Y.B. INT'L L. 34-46 (2008); Lynn Davis et al., *Clarifying the Rules for Targeted Killing: An Analytical Framework for Policies Involving Long-Range Armed Drones* 5-13 (RAND Corporation, 2016), https://www.rand.org/pubs/research_reports/RR1610.html.

²⁸ Peter Mauer, The Use of Armed Drones Must Comply with Laws, ICRC (May 10, 2013), <https://www.icrc.org/eng/resources/documents/interview/2013/05-10-drone-weapons-ihl.htm>.

²⁹ Peter Rudolf, *Killing by Drones: The Problematic Practice of U.S. Drone Warfare* (2014), (German Institute for International and Security Affairs, at 36-40, https://www.swp-berlin.org/assets/swp/Killing_by_Drones_-_The_Problematic_Practice_of_U.S._Drone_Warfare_-_Peter_Rudolf.pdf; Khachatryan, *supra* note 15).

akin to traditional weaponry. As with any weapon employed in conflicts, drone operations fall under the purview of *jus in bello* and IHL.³⁰ Consequently, a comprehensive approach is necessary to evaluate their legality within the international law framework.³¹

A. General Application of IHL Principles to Drone Strikes in Targeted Killing

IHL establishes crucial rules and principles to safeguard civilians and combatants within the context of armed conflicts. As drone utilisation in targeted killings has continued to rise, the central role of IHL has become increasingly evident.³² The first principle of IHL in regard to targeted killing by drone is “distinction.”³³ It emphasises parties engaged in armed conflicts differentiating between non-combatants and combatants, thereby directing attacks solely at legitimate military targets³⁴ to prevent unlawful civilian casualties.³⁵ In the context of targeted killing via drone strikes, accurate target identification is thus required to ensure compliance with this principle.³⁶ Under IHL rules, targeted killing is only lawful when the target is “combatant.” Such action is militarily necessary³⁷ and should safeguard civilian lives not directly involved in the armed conflict. Essentially, this principle serves to protect civilians and civilian objects from the effect of hostilities, thereby striving to minimise the impact of war-related harm.³⁸ The principle of distinction prohibits attacks that may cause excessive harm to civilians and civilian objects,³⁹ calling for a balance between military

³⁰ Heyns et al., *supra* note 3.

³¹ Vivek Sehrawat, *Autonomous Weapon System: Law of Armed Conflict (LOAC) and Other Legal Challenges*, 33(1) COMPUTER L. & SEC. REV 38-56 (2017).

³² MARCO SASSÒLI & PATRICK NAGLER, INTERNATIONAL HUMANITARIAN LAW: RULES, CONTROVERSIES, AND SOLUTIONS TO PROBLEMS ARISING IN WARFARE 190-200 (2019).

³³ Gary Lilienthal et al., *Drones: A Symptom of Regression in the Principle of Distinction?*, 20(2) FLINDERS L. J. 299-337 (2019); OHCHR, *supra* note 4, at 20-1.

³⁴ ICRC, Practice relating to Rule 1, The Principle of Distinction between Civilians and Combatants, <https://ihl-databases.icrc.org/en/customary-ihl/v2/rule1>.

³⁵ Matthew Mueller, *The Drone Question: Legality, Ethics, and the Need to Recognize Transnational Armed Conflict* 364 (Senior Honors Project 2010-2019, 2017), <https://commons.lib.jmu.edu/honors201019/364>.

³⁶ SASSÒLI & NAGLER, *supra* note 32.

³⁷ Alston, *supra* note 26, at 10.

³⁸ Mueller, *supra* note 35.

³⁹ According to Article 48 of Protocol I, the basic rule for the protection of civilians is that the parties to conflict shall at all times distinguish between civilian population and combatants between civilian objects and military objectives and shall direct their operations only against military objectives. See ABDUL HAMID, PUBLIC INTERNATIONAL LAW: A PRACTICAL APPROACH 453-7 (2007).

advantage and civilian protection.⁴⁰ While drones' precision capabilities can minimise collateral damage, ethical and legal concerns persist. Comprehensive assessments of the potential consequences of drone strikes are necessary to maintain this balance.⁴¹

The second principle is "precaution." It requires that parties take appropriate measures to minimise civilian casualties, which emphasises careful target selection and advanced intelligence.⁴² This principle is universally applicable to all weapons, including drones, intending to safeguard civilians from the ravages of war.⁴³

The third principle is "proportionality" as laid down in Article 51(5)(b) of Additional Protocol I to the Geneva Conventions.⁴⁴ It requires that strikes not inflict disproportionate harm on civilians relative to the anticipated military advantage. This principle regulates parties to consider potential injury and military gains before launching an attack.⁴⁵ Such assessments must examine aspects like the nature of the target, the nature of the attack, and the presence of civilians.⁴⁶

In this regard, the International Committee of Red Cross (ICRC) affirms that drones are not inherently prohibited under IHL, but must adhere to all relevant principles mentioned above.⁴⁷ The legality of drone strikes in targeted killing thus depends on conforming to IHL principles.⁴⁸ With the increasing reliance on drones in modern warfare, its ethical use is paramount in upholding humanitarian principles and minimising war-related casualties.⁴⁹ In practice, these IHL principles should be aligned with evolving drone technologies. Moreover, a robust regulatory framework is needed to prevent potential risks such as the misuse and abuse of these advanced technologies.⁵⁰

⁴⁰ OHCHR, *supra* note 4, at 12.

⁴¹ Lilienthal et al., *supra* note 33.

⁴² Mueller, *supra* note 35.

⁴³ Yunus Gul, *Drone Attacks and the Principle of Proportionality in the Law of Armed Conflict*, 70 ANNALES DE LA FACULTÉ DE DROIT D'ISTANBUL 122-37 (2021).

⁴⁴ *Id.*

⁴⁵ Emanuela-Chiara Gillard, *Proportionality in the Conduct of Hostilities: The Incidental Harm Side of the Assessment* 77 (Chatham House, the Royal Institute of International Affairs, International Law Programme, 2018), <https://www.chathamhouse.org/sites/default/files/publications/research/2018-12-10-proportionality-conduct-hostilities-incident-harm-gillard-final.pdf>.

⁴⁶ Ahmad et al., *supra* note 12.

⁴⁷ ICRC, *Ensuring the Use of Drones following International Law* (Sept. 22, 2014), <https://www.icrc.org/en/document/ensuring-use-remotely-piloted-aircraft-or-armed-drones-counterterrorism-and-military>.

⁴⁸ Alston, *supra* note 26, at 10. See also Anna Konert & Tomasz Balcerzak, *Military Autonomous Drones (UAVs) - from Fantasy to Reality. Legal and Ethical Implications*, 59 TRANSP. RES. PROCEDIA 292 (2021).

⁴⁹ Michael Walzer, *Just & Unjust Targeted Killing & Drone Warfare*, 145(4) DÆDALUS 12-24 (2016), https://www.amacad.org/sites/default/files/daedalus/downloads/Fa2016_Ethics-Technology-War.pdf. See also Sascha Bachmann, *Targeted Killings: Contemporary Challenges, Risks and Opportunities*, 18(2) J. CONFLICT & SEC. L. 259 (2013).

⁵⁰ NEHAL BHUTA ET AL., *AUTONOMOUS WEAPONS SYSTEMS: LAW, ETHICS, POLICY* 410 (2016); Elham Fakhraian et al., *Towards*

B. Challenges and Controversies

In recent years, the proliferation of UAVs equipped with advanced targeting capabilities has transformed the armed conflict landscape,⁵¹ raising questions about adherence to IHL principles, including distinction,⁵² proportionality, precaution, state sovereignty, and responsibility. This section will examine the multifaceted issues and concerns surrounding drone strikes in targeted killings under IHL.

1. Accountability and Transparency in Drone Strikes

Accountability and transparency are critical aspects of drone strikes for ensuring compliance with international law. Accountability involves the responsibility of states and individuals to justify their actions and face the violations of international law.⁵³ Transparency requires to disclose the information regarding drone strikes to relevant oversight bodies and the public.⁵⁴ In the context of drone strikes, these principles uphold the rule of law and foster public trust.⁵⁵

Accountability necessitates thorough, independent, and impartial investigations into violations of international law resulting from drone operations.⁵⁶ It determines the legality of the strikes, especially concerning civilian casualties, while providing reparation to victims.⁵⁷ In the US, for example, reparations has been an ongoing practice for decades. The US has ensured that payments are available for civilian harm. In practice, this compensation has not been strictly limited to civilian harm caused by the US only, but it has allowed for any harm caused by coalition actors.⁵⁸

Likewise, transparency is critical to drone strikes because it fosters democratic accountability and public trust.⁵⁹ It entails disclosing legal and policy frameworks

Safe and Efficient Unmanned Aircraft System Operations: Literature Review of Digital Twins' Applications and European Union Regulatory Compliance, 7(7) DRONES 478 (2023).

⁵¹ Nehaluddin Ahmad & Hanan Aziz, *Unmanned AirCraft System (UAS) and Right to Privacy: An Overview*, 26(6) COMPUTER & TELECOMM. L. REV. 153-60 (2020); Zhengxin Zhang & Lixue Zhu, *A Review on Unmanned Aerial Vehicle Remote Sensing: Platforms, Sensors, Data Processing Methods, and Applications*, 7(6) DRONES 398 (2023).

⁵² Lilienthal et al., *supra* note 33.

⁵³ Allen Buchanan & Robert Keohane, *Toward a Drone Accountability Regime*, 29(1) ETHICS & INT'L AFF. 15 (2015).

⁵⁴ Jessica Dorsey & Nilza Amaral, *Military drones in Europe: Ensuring Transparency and Accountability* 1-39 (Chatham House Research Paper, April 2021), <https://www.chathamhouse.org/sites/default/files/2021-04/2021-04-30-military-drones-europe-dorsey-amaral.pdf>.

⁵⁵ Rosa Brooks, *Drones and the International Rule of Law*, 28 J. ETHICS & INT'L AFF. 83-104 (2014).

⁵⁶ Buchanan & Keohane, *supra* note 53, at 24.

⁵⁷ Roseanne Burke & Mark Lattimer, *Reparations for Civilian Harm from Military Operations: Towards a UK Policy*, Ceasefire Centre for Civilian Rights (2021), at 57, https://www.ceasefire.org/wp-content/uploads/2021/12/CFR_Reparations_Nov21_Final.pdf.

⁵⁸ *Id.*

⁵⁹ Dorsey & Amaral, *supra* note 54, at 23.

governing operations,⁶⁰ such as target selection criteria and rules of engagement⁶¹ to uphold international law and human rights standards.⁶² As a result, civil society, human rights groups, and the UN⁶³ can independently examine the situation to evaluate the morality and legality of drone strikes.⁶⁴ In contrast, the absence of transparency raises concerns about accountability⁶⁵ and hampers oversight, complicating assessments of legality and effectiveness by the public and oversight bodies.⁶⁶

In this regard, states must proactively disclose information to address these challenges, conducting impartial investigations into alleged violations and engaging in open dialogue with the international community and NGOs.⁶⁷ By upholding accountability and transparency in drone strikes, states can ensure these operations in compliance with international law to protect the rights and safety of individuals affected by these actions.⁶⁸ Essentially, transparent mechanisms will promote accountability and investigate potential breaches of IHL in drone usage, while fostering trust between conflicting parties.⁶⁹ Since secrecy obstructs accountability, conducting thorough investigations and proactively disclosing information are essential. In this course, drone operations can be conducted under IHL considering human rights.⁷⁰

2. Extraterritoriality and Sovereignty Concerns

Drone strikes across borders would raise significant questions regarding extraterritoriality⁷¹ and sovereignty. As drones are remotely operated in the territory of another country without explicit permission or a formal declaration of war, their

⁶⁰ LARRY LEWIS & DIANE VAVRICHEK, *RETHINKING THE DRONE WAR: NATIONAL SECURITY, LEGITIMACY AND CIVILIAN CASUALTIES IN U.S. COUNTERTERRORISM OPERATIONS* 39 (2016).

⁶¹ Rules of Engagement are not law of armed conflict or IHL but rather they are simply military directives, heavy with acronyms. They are often mentioned when there are any violations in the IHL or the law of armed conflict. See GARY SOLIS, *THE LAW OF ARMED CONFLICT: INTERNATIONAL HUMANITARIAN LAW IN WAR* 490-518 (2010).

⁶² The commitment or obligation to respect the international law means that the states would and must refrain themselves from interfering with or curtailing the enjoyment of human rights.

⁶³ OHCHR, *Civil Society Space and the United Nations Human Rights System* (2014), at 6, https://www.ohchr.org/sites/default/files/CS_space_UNHRSysstem_Guide_0.pdf.

⁶⁴ Mueller, *supra* note 35.

⁶⁵ Buchanan & Keohane, *supra* note 53.

⁶⁶ *Id.*

⁶⁷ Edward Hainsworth, *The Drone Dialogues: New Challenges for States on Armed Drones Use and Proliferation*, UNODA (Oct. 21, 2016), <https://disarmament.unoda.org/update/the-drone-dialogues-new-challenges-for-states-on-armed-drones-use-and-proliferation>.

⁶⁸ *Id.*

⁶⁹ Dorsey & Amaral, *supra* note 54, at 31.

⁷⁰ *Id.* at 30.

⁷¹ It refers to the application of a nation's laws and regulations beyond its borders. See William Dodge, *A Primer on Extraterritoriality*, *Transnational Litigation Blog* (Mar. 25, 2022), <https://tlblog.org/a-primer-on-extraterritoriality>.

operations may be potential breaches of state sovereignty.⁷² These characteristics can lead to diplomatic tensions.⁷³ Notably, the consent to military operations crossing national borders is a core aspect of state sovereignty. Absent the consent, it violates the state sovereignty of another country.⁷⁴ This opacity further heightens sovereignty concerns. It limits state's right to protecting their territorial integrity and safeguarding their citizens, because a host state may not know actions taken within its borders, leading to potential political instability and public outcry when information surfaces.⁷⁵ Therefore, adherence to international legal principles,⁷⁶ such as prohibiting the use of force except for self-defence, consent from the host state, or authorisation from the UN Security Council,⁷⁷ is necessary to address these problems.⁷⁸

The US's drone strikes for targeted killings in Pakistan⁷⁹ serves as an illustrative example of these complexities. Those operations without formal Pakistani authorisation were condemned as violations of sovereignty causing serious diplomatic tension.⁸⁰ Concerns about accountability and oversight were further heightened by the lack of transparency surrounding these operations, raising ethical questions.⁸¹ In case of extraterritorial military actions, open communication is necessary between states to resolve conflicts. It underscores the need for a transparent and accountable framework while addressing legitimate security concerns.⁸² Here, clear guidelines should be

⁷² Ben Forsgren, *Death Star Drones: How Missile Defense Drone Technology Marks the Advent of Contingent Sovereignty*, 46(3) *BYU L. REV.* 847 (2021).

⁷³ *Id.*

⁷⁴ Joshua Cornthwaite, *Can We Shoot Down That Drone? An Examination of International Law Issues Associated with the Use of Territorially Intrusive Aerial and Maritime Surveillance Drones in Peacetime*, 52(3) *CORNELL INT'L L. J.* 475 (2019).

⁷⁵ *Id.* at 508-9.

⁷⁶ Brooks, *supra* note 55.

⁷⁷ This rule is conferred and codified in Article 2(4) of the United Nations Charter which provides that a UN member state cannot threaten or use force against the territorial integrity or political independence of another state, or in any way that diverges from the purposes of the UN. *See* UN, *Purposes and Principles of the UN* (Chapter I of UN Charter), <https://www.un.org/securitycouncil/content/purposes-and-principles-un-chapter-i-un-charter>.

⁷⁸ Brooks, *supra* note 55.

⁷⁹ Drone strikes in Pakistan that occurred between 18 June 2004 and 4 July 2018. A recent report reveals that 2,714 individuals have lost their lives in 409 US. drone strikes conducted in Pakistan since January 2004. The findings of this report underscore the notable repercussions of these strikes on civilian casualties within Pakistan. *See 2,714 people killed in 409 US drone attacks in Pakistan since January 2004: Report*, *ECON. TIMES* (Nov. 9, 2018), [utm_source=contentofinterest&utm_medium=text&utm_campaign=cppshttps://economictimes.indiatimes.com/news/defence/2714-people-killed-in-409-us-drone-attacks-in-pakistan-since-january-2004-report/articleshow/66554333.cms?from=mdr](https://economictimes.indiatimes.com/news/defence/2714-people-killed-in-409-us-drone-attacks-in-pakistan-since-january-2004-report/articleshow/66554333.cms?from=mdr).

⁸⁰ MICHAEL BOYLE, *THE DRONE AGE: HOW DRONE TECHNOLOGY WILL CHANGE WAR AND PEACE* 55–C3.P72 (2020).

⁸¹ Amnesty International, "Will I Be Next?": US Drones Strikes in Pakistan (2013), at 51, <https://www.amnesty.org/en/wp-content/uploads/2021/06/asa330132013en.pdf>.

⁸² Wali Aslam, *The US Drone Strikes and on-the-ground Consequences in Pakistan*, International Catalan Institute for

emphasized to respect the sovereignty and dignity of all nations involved.⁸³

C. Concerns about the Definition of Combatant and Civilians

The definition of combatants and civilians in the context of drone strikes raise complex ethical, legal, and humanitarian issues. The traditional distinction between combatants and civilians, as IHL outlines, is challenged in contemporary warfare, where non-state actors operate within civilian populations.⁸⁴ In traditional armed conflicts, distinguishing combatants from non-combatants was relatively straightforward due to the clear distinctions between uniformed military personnel and civilians.⁸⁵ However, contemporary armed conflicts often involve non-state actors embedded within civilian populations, making the identification of legitimate targets far more challenging.⁸⁶ Meanwhile, defining civilians becomes complicated when individuals are indirectly associated with armed groups, engaging in activities that may be deemed supportive but fall short of direct participation in hostilities.⁸⁷ Determining the threshold for classifying someone as a combatant or a civilian becomes a legal and moral challenge, as misjudgements can result in civilian casualties, violating the principle of discrimination that aims to protect non-combatants from harm.⁸⁸

In drone strikes, individuals with limited involvement with armed groups, such as low-level fighters or those providing minor logistical support, may be classified as combatants,⁸⁹ raising ethical questions about the proportional use of force. When individuals with marginal roles in armed groups are targeted, the principle of proportionality becomes risky. Hence, if the threshold for classifying someone as a combatant may be set too low, it will lead to potentially disproportionate use of force.⁹⁰

It is complex to determine when certain activities constitute direct participation in hostilities. For instance, a civilian providing shelter to armed individuals may be seen as directly participating in hostilities. However, the extent of involvement and

Peace (Feb. 19, 2014), <https://www.icip.cat/perlapau/en/article/the-us-drone-strikes-and-on-the-ground-consequences-in-pakistan>.

⁸³ *Id.*

⁸⁴ ICRC, *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts* (2007), at 41-7, <https://www.icrc.org/en/doc/assets/files/other/ihl-challenges-30th-international-conference-eng.pdf>.

⁸⁵ 1977 Additional Protocol I to the Geneva Conventions, art. 48. It states: "The Parties to the conflict shall at all times distinguish between the civilian population and combatants."

⁸⁶ ELIZABETH BATE, *TERRORISM AND INTERNATIONAL LAW: ACCOUNTABILITY, REMEDIES AND REFORM* 28 (2011).

⁸⁷ Solis, *supra* note 10.

⁸⁸ Coracini, *supra* note 27.

⁸⁹ Mueller, *supra* note 35.

⁹⁰ *Id.*

the immediacy of the threat can vary widely.⁹¹ This ambiguity raises ethical concerns about the accuracy of such classifications and the potential for misidentifying civilians as combatants.⁹²

Signature strikes⁹³ further complicate the ethical landscape since they target individuals based on patterns of behaviour associated with combatants rather than specific identities. While this approach aims to pre-empt threats, it raises ethical dilemmas due to the potential lack of precise information about the targeted individuals, increasing the risk of misjudgement and civilian casualties.⁹⁴ Targeting individuals based on behaviour patterns rather than specific identification alone also raises questions about the accuracy of categorising them as combatants.⁹⁵ The risk of misclassification becomes pronounced, leading to ethical quandaries in connection with the proportionality and distinction principles.⁹⁶ In some instances, such as reported cases in Yemen,⁹⁷ where second drone attacks targeted rescuers after an initial strike, these practices endanger humanitarian workers and civilian bystanders, undermining the principles of distinction and proportionality.⁹⁸ Hence, signature strikes risk misidentification by nature, leading to unintended civilian casualties.⁹⁹ The ethical implications become even more severe when coupled with double-tap strikes targeting rescuers.¹⁰⁰

In conclusion, transparency, accountability, and oversight are crucial to address these ethical concerns. Transparent decision-making processes and clear guidelines for target selection are necessary to ensure the ethical use of drone strikes.¹⁰¹ Independent oversight at the national and international levels can provide additional scrutiny,

⁹¹ Bate, *supra* note 86, at 28-9.

⁹² *Id.*

⁹³ A drone strike where the identity of the person or persons targeted is not known but their “pattern of life” indicates that they are involved in terrorist activity. See Bureau of Investigative Journalism, Glossary of Drone Warfare, <https://www.thebureauinvestigates.com/explainers/glossary-of-drone-warfare>.

⁹⁴ Coracini, *supra* note 27.

⁹⁵ LEWIS & VAVRICHEK, *supra* note 60.

⁹⁶ Edmund Byrne, *Making Drones to Kill Civilians: Is it Ethical?*, 147(1) J. BUS. ETHICS 81-93 (2018); Bachmann, *supra* note 49.

⁹⁷ In 2017 in Yemen, the United States was responsible for 127 air strikes, eighty-six more than the second most airstrikes in one year in Yemen. See Sami Aboudi, *Pace of airstrikes, clashes in Yemen sharply higher in 2017: report*, REUTERS (Aug. 16, 2017), <https://www.reuters.com/article/idUSKCN1AW1HI>.

⁹⁸ ICRC IHL Database, Rule 6. Civilians’ Loss of Protection from Attack, <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule6>.

⁹⁹ Center for Civilians in Conflict, *The Civilian Impact of Drones: Unexamined Costs, Unanswered Questions* (2012), <https://civiliansinconflict.org/publications/research/civilian-impact-drones-unexamined-costs-unanswered-questions>.

¹⁰⁰ *Id.*

¹⁰¹ Buchanan & Keohane, *supra* note 53.

promoting adherence to ethical standards. Moreover, robust intelligence gathering and accurate identification mechanisms are essential to minimise the risk of misclassifying individuals while upholding the moral imperative of protecting civilian lives in armed conflicts. Balancing security imperatives with ethical considerations remains an ongoing challenge, which requires a careful and nuanced approach to navigate the complexities of modern warfare.¹⁰²

III. Case Studies on Recent Targeted Killings Using Drones

In the past few decades, the use of drones for precise assassinations has sparked debates within the realm of international relations and law. Drone employment in various conflict regions globally has prompted significant inquiries into the legality and ethical consequences of targeted assassinations.¹⁰³ Therefore, this part looks into several case studies to evaluate the legal implications of using drones for targeted killings, including the assassination of Qasem Soleimani,¹⁰⁴ Israeli drone strikes in the Gaza Strip and further reference to the recent conflict between Iran and Israel, and Russian drone involvement in Ukraine and Afghanistan from a perspective of IHL.¹⁰⁵ By examining the following cases, we aim to grasp how the principles of proportionality, distinction, and adherence to IHL manifest in practice.¹⁰⁶ Essentially, this part enhances a more comprehensive evaluation of the topic by providing insights drawn from real-world events relating to drone warfare.¹⁰⁷

A. The Killing of Qasem Soleimani of Iran by a Drone Strike

On January 3, 2020, a US drone strike killed Qasem Soleimani close to the Baghdad International Airport.¹⁰⁸ It raised questions about the legitimacy and repercussions of

¹⁰² Walzer, *supra* note 49; Bachmann, *supra* note 49.

¹⁰³ STEVEN BARELA, LEGITIMACY AND DRONES: INVESTIGATING THE LEGALITY, MORALITY AND EFFICACY OF UCAVs 432 (2016).

¹⁰⁴ *Qasem Soleimani: US strike on Iran general was unlawful, UN expert says*, BBC NEWS (July 9, 2020), <https://www.bbc.com/news/world-middle-east-53345885>.

¹⁰⁵ Jeremy Shiffman & Stephanie Smith, *Generation of Political Priority for Global Health Initiatives: A Framework and Case Study of Maternal Mortality*, 370(9595) HEALTH POL'Y 1370-9 (2007).

¹⁰⁶ Martin Senn & Jodok Troy, *The Transformation of Targeted Killing and International Order*, 38(2) CONTEMP. SEC. POL. 175- 211 (2017).

¹⁰⁷ Shiffman & Smith, *supra* note 105.

¹⁰⁸ *Supra* note 104.

such strikes internationally.¹⁰⁹ The US asserted an imminent threat to American life and interests as justification for the strike.¹¹⁰

A question on the proportionality and self-defence under international law, in particular, emerged due to the incident, raising ethical and legal concerns.¹¹¹ The US insisted that the targeted killing should be justified as the right to self-defence because Soleimani constituted a significant threat.¹¹² A country may use force in self-defence when confronted with an ongoing or imminent armed attack, but the force must be appropriate and required.¹¹³ Whether Soleimani was constituting an immediate threat¹¹⁴ justifying the use of force may arise¹¹⁵ in this instance. In addition, evaluating possible effects on individuals and civilian infrastructure – considering collateral damage – is also necessary to determine the proportionality of the American drone strike. Actually, any military advantage must be commensurate with potential harm.¹¹⁶ When assessing the principle of proportionality,¹¹⁷ it should be urgent circumstance with immediate threat. Furthermore, alternatives to using force is crucial because the proportionality requires to look for those means before using a drone strike.¹¹⁸

How imminent and whether there is no other option than drone strike must be carefully considered in this case.¹¹⁹ Without precise data and transparency

¹⁰⁹ Boris Kondocho, *The Killing of General Quassem Soleimani: Legal and Policy Issues*, 13(2) J. E. ASIA & INT'L L. 419-34 (2020).

¹¹⁰ Stephen Jackson, *An Imperfect War: The Legality of the 'Soleimani Strike' and Why the Biden Administration Should Adopt Its Precedent for Future Operations in Iraq and Afghanistan*, 11(1) PENN ST. J. L. & INT'L AFFS. 34 (2023).

¹¹¹ Andrew Chung, *U.S. 'self-defense' argument for killing Soleimani meets skepticism*, REUTERS (Jan. 4, 2020), <https://www.reuters.com/article/idUSKBN1Z301Q>; Bence Kelemen & Mátyás Kiss, *The Targeted Killing of Qasem Soleimani: A Case Study through the Lens of Jus ad Bellum*, 63(3) HUNG. J. LEGAL STUD. 177-205 (2022).

¹¹² Jackson, *supra* note 110.

¹¹³ Michael Wood, *International Law and the Use of Force: What Happens In Practice?*, 53 INDIAN J. INT'L L. 345 (2013); Onder Bakircioglu, *The Right to Self-Defence in National and International Law: The Role of the Imminence Requirement*, 19 IND. INT'L & COMP. L. REV. 1-48 (2009).

¹¹⁴ The US Department of Defence declared that Soleimani was actively developing plans to attack US diplomats and service members in Iraq and throughout the region, the US chose to assassinate Soleimani based on both his prior activities and as a deterrent to his potential behaviour, to which they assert this action as an act of self-defence. See Jackson, *supra* note 110.

¹¹⁵ Bakircioglu, *supra* note 113. See also Matthew Waxman, *Did Soleimani Pose an Imminent Threat?*, Council on Foreign Relations (Jan. 15, 2020), <https://www.cfr.org/in-brief/did-soleimani-pose-imminent-threat>.

¹¹⁶ Valerie Epps, *Civilian Casualties in Modern Warfare: The Death of the Collateral Damage Rule*, 41(2) GA. J. INT'L & COMPAR. L. 307 (2013).

¹¹⁷ Bakircioglu, *supra* note 113.

¹¹⁸ Kirsten Andersen, *A Blast from the Past: Armed Drones, International Humanitarian Law, and Imperial Violence* 179-82 (PhD Dissertation, York University, 2022), <https://yorkspace.library.yorku.ca/server/api/core/bitstreams/fc8cbf3c-6906-4634-8b8f-f4b433601b33/content>.

¹¹⁹ Geoffrey Corn, *The Essential Link between Proportionality and Necessity in the Exercise of Self-Defence*, in NECESSITY AND PROPORTIONALITY IN INTERNATIONAL PEACE AND SECURITY LAW 80-8 (Claus Kreß & Robert Lawless eds., 2020).

around intelligence assessments, it is difficult to determine whether the strike was proportionate.¹²⁰ Rather, it might have been over the top.¹²¹ Indeed, it is imperative for the US to apply international legal standards reasonably if its drone strike on Soleimani adhered to the principle of proportionality.¹²²

This incident raises fundamental questions regarding the application of principles such as self-defence, proportionality, and necessity. From a legal standpoint, the absence of a formal declaration of war between the US and Iran challenges the invocation of the right to self-defence under Article 51 of the UN Charter.¹²³ Absent an imminent armed attack, the legality of the strike becomes contentious, as the principle of self-defence typically requires a clear and immediate threat to justify the use of force.¹²⁴ Moreover, the principle of distinction necessitates a clear delineation between combatants and civilians, with attacks directed solely at legitimate military targets.¹²⁵ While Soleimani held a significant position within the Iranian military hierarchy, his status alone did not automatically render him a lawful target under IHL.¹²⁶ Thus, the drone strike on Soleimani may raise concerns regarding compliance with the principle of distinction. Additionally, the principles of proportionality and necessity demand that the use of force be proportional to the anticipated military advantage and necessary to achieve legitimate military objectives. Without conclusive evidence demonstrating an imminent threat posed by Soleimani or the necessity of the drone strike to neutralize such a threat, the attack may be deemed disproportionate and unnecessary under international law.¹²⁷ Consequently, the killing of Soleimani underscores the imperative of upholding established legal norms and ethical standards in the conduct of state actions, particularly in matters of national security, to ensure adherence to international legal principles and safeguard global stability.¹²⁸

¹²⁰ Andersen, *supra* note 118.

¹²¹ Sheena Goodyear, *Downed Jet Victims were 'Collateral Damage' from U.S. Strike on Iranian General, says Democrat*, CBC NEWS (Jan. 14, 2020), <https://www.cbc.ca/radio/asithappens/as-it-happens-tuesday-edition-1.5426388/downed-jet-victims-were-collateral-damage-from-u-s-strike-on-iranian-general-says-democrat-1.5426397>.

¹²² Davis et al., *supra* note 27.

¹²³ Gul, *supra* note 43.

¹²⁴ Christian Enemark, *Armed Drones and Ethical Policing: Risk, Perception, and the Tele-Present Officer*, 40(2) CRIM. JUST. ETHICS 131-3 (2021).

¹²⁵ Lilienthal et al., *supra* note 33.

¹²⁶ Kondocho, *supra* note 109.

¹²⁷ Enemark, *supra* note 124.

¹²⁸ Kondocho, *supra* note 109.

B. Israeli Drone Operations

1. Israeli Drone Strikes in the Gaza Strip

Drone technology has become a key component of Israel's military strategy in the ongoing Israel-Hamas conflict, allowing for targeted killing operations in the Gaza Strip.¹²⁹ The Israeli Defence Forces have reportedly killed a large number of Palestinians using extremely accurate weaponry to fire missiles from a UAV. Actually, they have employed this technology since the early 1980s to conduct numerous operations within the area.¹³⁰ These strikes have prompted significant debates about their ethical implications, adherence to IHL, and the overall impact on civilian populations.¹³¹

Recently, the Hamas group deployed techniques rarely used previously such as Zouavi suicide drones.¹³² Moreover, numerous MQ-9 Reaper drones operated by the US have circled above Gaza amid ongoing Israeli strikes and military operations in the area. These flights are part of an initiative to assist in locating hostages, reportedly with ten American individuals among them.¹³³ The use of UAVs for unauthorised killings has raised ethical and legal concerns.¹³⁴ In 2014, for example, missiles launched from a drone by Israel killed four Palestinian children, raising numerous debates regarding human decision-making, morality, and adherence to IHL.¹³⁵

Although Israel maintains the right to self-defence per international law, critics have argued that several strikes have already violated the laws of warfare, resulting in the deaths of non-combatant civilians.¹³⁶ This debate reflects a complex and contentious issue surrounding the Israeli-Palestinian conflict. Israel justifies its military actions

¹²⁹ Elisabeth Gosselin-Malo, *Hamas Drones Helped Catch Israel off Guard, Experts Say*, C4ISRNET (Oct. 18, 2023), <https://www.c4isrmet.com/global/mideast-africa/2023/10/18/hamas-drones-helped-catch-israel-off-guard-experts-say>.

¹³⁰ Giordano Ronconi, *The Utilisation of Unmanned Aerial Vehicles (UAV) for Military Action in Foreign Airspace*, 2 MODEL U.N. J. 137 (2014).

¹³¹ UN Press, *Geopolitical Conflicts, Economic Uncertainty Darkening Sustainable Development Prospects*, Officials Warn, as Second Committee Takes up Regional Commissions (2023), <https://press.un.org/en/2023/gaef3592.doc.htm>.

¹³² Debanish Achom, *In Israel-Gaza War, Hamas' Off-The-Shelf Drones Destroy Million Dollar Hardware*, NDTV WORLD (Oct. 11, 2023), <https://www.ndtv.com/world-news/in-israel-gaza-war-hamas-off-the-shelf-drones-destroy-million-dollar-hardware-4471329>. See also Jack Daleo, *Deadly Siege Marks Hamas' Effective Use of Combat Drone Swarm*, FLYING MAG. (Oct. 10, 2023), <https://www.flyingmag.com/deadly-siege-marks-hamas-most-effective-use-of-combat-drone-swarm>.

¹³³ Chris Sanders et al., *Israel-Hamas War: What Are the US MQ-9 Reaper Drones That Have Been Flying over Gaza?*, REUTERS (Nov. 3, 2023), <https://www.reuters.com/world/what-are-us-mq-9-reaper-drones-that-have-been-flying-over-gaza-2023-11-03>.

¹³⁴ Ben Reiff, *Israel's Armed Drones Are heralding an Era of Automated Killing*, +972 MAG. (Sept. 19, 2023), <https://www.972mag.com/armed-drones-automated-killing-palestinians>.

¹³⁵ Robert Mackey, *Secret Israeli Report Reveals Armed Drone Killed Four Boys Playing on Gaza Beach in 2014*, INTERCEPT (Aug. 11, 2018), <https://theintercept.com/2018/08/11/israel-palestine-drone-strike-operation-protective-edge>.

¹³⁶ Natan Sharansky, *Now Comes the Test of Who Supports Israelis' Human Right to Self-Defense*, WASH. POST (Oct. 9, 2023), <https://www.washingtonpost.com/opinions/2023/10/09/israel-right-to-self-defense>.

as necessary to protect its citizens from threats and attacks from the Hamas group, particularly in Gaza. Proponents of Israeli actions emphasise the right to defend itself against rocket attacks, terrorism, and other forms of violence directed at its population centres. However, detractors, including human rights organisations and some international bodies, point to instances where Israeli military operations have resulted in disproportionate civilian casualties, the destruction of civilian infrastructure, and violations of IHL.¹³⁷

As previously stated, drones should be used only for self-defence when the anticipated military benefit must outweigh any potential risks to people and property.¹³⁸ If a drone assault adheres to the idea of proportionality, it should consider such conditions as the strike's expected military benefit, the likelihood of success, the possibility of harming people or civilian property, and the existence of other methods for achieving the military goal.¹³⁹ In self-defence scenarios, a state may employ drones against imminent threats essentially in accordance with the IHL principles.¹⁴⁰ This approach requires minimising civilian casualties and collateral damage¹⁴¹ via thorough intelligence assessments, precise targeting, and warnings to civilians near the target area.¹⁴²

In this situation, Amnesty International has reported the incidents where Israeli drone operations did harm to civilians.¹⁴³ Nonetheless, certain legal analysts have contended that Israel's use of drones in Gaza conforms to international legal standards, given that the strikes are proportional and distinguish between combatants and non-combatants.¹⁴⁴ According to the UN's inquiry into potential violations of the laws of war by Israel and Hamas in the Gaza conflict of 2023, meanwhile, the Israeli drone strikes in Gaza should be multifaceted and contentious.¹⁴⁵ Israel maintains that it has acted in self-defence, while critics contend that numerous strikes have transgressed

¹³⁷ *Id.*

¹³⁸ Gul, *supra* note 43.

¹³⁹ Jacquelyn Caroe, *If It Ain't Broke Don't Fix It: The Proportionality Principle and the Changing Face of War*, 9 STETSON J. ADVOC. & L. 1 (2022), <https://www2.stetson.edu/advocacy-journal/if-it-aint-broke-dont-fix-it-the-proportionality-principle-and-the-changing-face-of-war>.

¹⁴⁰ Enemark, *supra* note 124.

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ Amnesty International, *Everything You Need to Know about Human Rights in Israel and Occupied Palestinian Territories* 2020, <https://www.amnesty.org/en/location/middle-east-and-north-africa/israel-and-occupied-palestinian-territories/report-israel-and-occupied-palestinian-territories>.

¹⁴⁴ *Id.*

¹⁴⁵ UN Press, *Concluding Deliberations on Crimes against Humanity, Sixth Committee Speakers Debate Need for Universal Treaty amidst Recent Conflict in Middle East* (2023), <https://press.un.org/en/2023/gal3691.doc.htm>.

IHL, leading to the deaths of innocent civilians.¹⁴⁶

The International Court of Justice (ICJ) has also delivered the safeguards related to humanitarian principles. In its Advisory Opinion to the *Nuclear Weapons* case, the ICJ affirmed that parties in conflicts are constrained in their choice of weapons.¹⁴⁷ The Court emphasised the principle of distinction as a fundamental rule of IHL,¹⁴⁸ prohibiting attacks that cannot be discerned between lawful and unlawful targets.¹⁴⁹

In *Nuclear Weapons*, the ICJ underscored the critical role of IHL in regulating the armed conflicts. The Court's affirmation that parties in conflicts are constrained in their choice of weapons reflects a recognition of the need to minimise the humanitarian impact of warfare.¹⁵⁰ By confirming the principle of distinction as a fundamental rule of IHL, the ICJ highlighted the importance of differentiating between lawful military targets and civilian objects or individuals. This principle serves to protect civilians from the indiscriminate effects of armed conflict and ensures that attacks are directed only at legitimate military objectives. Upholding the principle of distinction is thus essential for mitigating the humanitarian costs of war and preserving the integrity of international legal standards. Therefore, the ICJ's stance on the prohibition of attacks that cannot discern between lawful and unlawful targets reinforces the humanitarian imperative of safeguarding civilian lives and minimising unnecessary suffering in armed conflicts.¹⁵¹

In this context, we believe that while Israel may assert its right to self-defence under international law, it is crucial to note that when its military actions result in disproportionate harm to civilians and civilian infrastructure, they may contravene the IHL principles, as discussed above. Therefore, despite Israel's justification of its actions as necessary measures to protect its citizens from threats posed by Hamas, the international community including human rights organizations has raised concerns about the proportionality of Israeli military operations. Instances where such operations have led to excessive civilian casualties and the destruction of civilian infrastructure raise questions about Israel's adherence to IHL principles. While the right to self-defence is a legitimate aspect of international law, its invocation thus must be in accordance with the principles of distinction, proportionality, and necessity to avoid violations of IHL and uphold humanitarian standards in armed conflicts.

¹⁴⁶ *Id.*

¹⁴⁷ Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 1996 I.C.J. 226 (July 8).

¹⁴⁸ Rachel Alberstadt, *Drones under International Law*, 4(4) OPEN J. POL. SCI. 221 (2014).

¹⁴⁹ Sassòli, *supra* note 13.

¹⁵⁰ Legality of the Threat or Use of Nuclear Weapons, *supra* note 147.

¹⁵¹ *Id.*

2. Escalating Tensions: Israel's Attack on Iran's Consulate and Retaliatory Strikes by Iran on April 13, 2024

On April 13, 2024, Iran retaliated against Israel, using over 120 ballistic missiles and 170 drones¹⁵² in response to an Israeli surprise attack on an Iranian consulate complex in Damascus, Syria. Iran claimed it as a self-defense action, citing Israel's violation of its sovereignty by assassinating two senior Iranian generals among others in Damascus. Iran's mission to the UN emphasised that any attack on diplomatic premises contravenes Article 51 of the UN Charter and the 1961 Vienna Convention on Diplomatic Relations.¹⁵³

Indeed, had Iran sought to inflict serious pain on Israel, it would have incorporated a heavier dose of fast-flying and precision-guided hypersonic missiles,¹⁵⁴ giving Israel very little time to prepare and respond. But it telegraphed its intentions to Washington and several Arab and European capitals, assuring that its strike would be relatively limited.¹⁵⁵ Consequently, casualties were minor without reported human fatalities. The Israeli Defense Forces acknowledged that "a small number of hits were identified" and "minor damage occurred to the infrastructure" at an air base in southern Israel.¹⁵⁶ It was definitely smaller casualties than expected considering Iran's capability to launch Hypersonic missiles which cannot be intercepted by airdrome defense system of Israel.¹⁵⁷

In our analysis, Iran has taken measures to ensure that there are as minimal human casualties as possible by exclusively targeting military installations such as airbases and providing advance alerts to the surrounding nations about potential attacks, providing transparency in the use of drone technology during armed conflicts. Notably, Iran complied with IHL norms by refraining from using more powerful weapons that may

¹⁵² Jeremy Diamond et al., *Iran Launches Unprecedented Retaliatory Strikes on Israel in Major Escalation of Widening Conflict*, CNN (Apr. 13, 2024), <https://edition.cnn.com/2024/04/13/middleeast/iran-drones-attack-israel-intl-latam/index.html>.

¹⁵³ Khaled Khiari, Assistant Secretary-General for Middle East, Asia and the Pacific in the Departments of Political and Peacebuilding Affairs and Peace Operations for the United Nations, said in his briefing to the UN Security Council after the attack. *See UN calls for restraint following Iran consulate attack in Syria*, U.N. NEWS (Apr. 2, 2024), <https://news.un.org/en/story/2024/04/1148191>.

¹⁵⁴ *Id.*

¹⁵⁵ Sanam Vakil & Bilal Saab, *Iran's Attack on Israel was not the Failure Many Claim but It Has Ended Israel's Isolation*, Chatham House Expert Comment (Apr. 15, 2024), <https://www.chathamhouse.org/2024/04/irans-attack-israel-was-not-failure-many-claim-it-has-ended-israels-isolation>.

¹⁵⁶ *See Iran attacks Israel with over 300 drones, missiles: What you need to know*, AL JAZEERA (Apr. 14, 2024), <https://www.aljazeera.com/news/2024/4/14/iran-attacks-israel-with-over-300-drones-missiles-what-you-need-to-know>.

¹⁵⁷ Hypersonic missiles are known for their ability to manoeuvre and change trajectory during flight, making them difficult to defend against. *See BrahMos Aerospace, Classification of Missiles*, <https://www.brahmos.com/content.php?id=10&sid=9>.

have seriously harmed Israel's land and civilian casualties. Therefore, Iran's actions in its recent scuffle with Israel are aligned with the IHL principles of proportionality, necessity, and distinction.

C. Drone Strike in the Ukraine-Russia War

In recent, Ukrainian drone attacks on various locations within Russia has been escalating. Despite the Ukrainian government's hesitance to publicly accept accountability for these strikes, many observers have indicated the progressive advancement of Ukraine's formidable drone forces.¹⁵⁸ In August 2023, Ukrainian suicide drones conducted a daring assault on Russian airfields, penetrating over 370 kilometres into Russian territory. Responding to this attack, Russia supposedly launched approximately 20 drones, potentially under the awareness or supervision of Ukraine's Defence Intelligence.¹⁵⁹ However, the Ukrainian air force managed to down 17 out of 24 Iranian-produced Shahed drones utilised by Russia in its assault that were successfully intercepted over several regions including Odesa, Mykolaiv, Kirovohrad, Khmelnytskyi, and Zhytomyr.¹⁶⁰ Recently, the Ukrainian autonomous systems, described as a "army of drones," destroyed 116 armoured vehicles and numerous other Russian military assets within a week, showcasing a significant achievement for the country's unmanned technology.¹⁶¹ Additionally, a Russia-launched Kh-59 guided air missile was neutralized over the Dnipropetrovsk region, as Oleh Kiper, the regional governor, reported that four drones were eliminated over the southern region of Odesa, resulting in damage to a logistics and transport facility along with a gas station.¹⁶²

Today, various drones have been employed in the ongoing conflict in Ukraine, such as the Kvazimachta, which Ukraine and Russia have both used.¹⁶³ Indeed, both

¹⁵⁸ Mykola Bielieskov, *Ukraine's Drone Army is Bringing Putin's Invasion Home to Russia*, Atlantic Council (Sept. 26, 2023), <https://www.atlanticcouncil.org/blogs/ukrainealert/ukraines-drone-army-is-bringing-putins-invasion-home-to-russia>.

¹⁵⁹ Mark Jacobsen, *Ukraine's Drone Strikes Are a Window into the Future of Warfare*, Atlantic Council (Sept. 14, 2023), <https://www.atlanticcouncil.org/blogs/new-atlanticist/ukraine-drone-%20%-strikes-are-window-into-the-future-of-warfare>.

¹⁶⁰ *Russia Launches 24 Attack Drones, Infrastructure Hit, Ukraine Says*, REUTERS (Apr. 8, 2024), <https://www.reuters.com/world/europe/russia-launches-24-attack-drones-overnight-ukraine-says-2024-04-08>.

¹⁶¹ Joe Saballa, *Ukraine "Army of Drones" Destroys 229 Russian Military Vehicles in One Week*, DEF. POST (Apr. 12, 2024), <https://www.thedefensepost.com/2024/04/12/ukraine-drones-russian-vehicles>.

¹⁶² RFE/RL's Ukrainian Service, *Zelenskiy Inspects Fortifications in Kharkiv, Urges Western Partners to Send More Aid* (Apr. 9, 2024), <https://www.rferl.org/a/ukraine-zelenskiy-kharkiv-fortifications/32898031.html>.

¹⁶³ *How are 'Kamikaze' drones being used by Russia and Ukraine?*, BBC NEWS (Dec. 29, 2023), <https://www.bbc.com/news/world-62225830>.

sides have utilised DJI commercial drones, which are popular among civilian drone enthusiasts. They serve multiple purposes, such as reconnaissance, assisting in artillery strikes. In particular, “loitering munitions” or “kamikaze drones” drop grenades on enemy positions or directly strike targets with explosives.¹⁶⁴ If Ukraine’s drone attacks on Russia’s energy facilities and other critical sites lead to disproportionate consequences or harm to non-combatants or civilian assets, they could potentially violate IHL.¹⁶⁵ However, Ukraine, amidst allegations of potential violations, may assert the defensive nature of its drone strikes in response to Russian hostility.¹⁶⁶

The right to self-defence against an ongoing or impending armed attack is recognised under international law. Nonetheless, any use of force in self-defence must be justified by perceived threat,¹⁶⁷ because the complexity involved in drone strikes would transcend the strategic components of military operations under international law. It is thus important to understand how drone deployment complies with international legal rules in the context of contemporary armed conflicts.¹⁶⁸

IV. Conclusion

The warfare system is fast developing with complexity in the twenty-first century. One of them is drone strikes in the context of targeted killing. It brings debates on ethical principles, human rights, and international law. So far, the intricate ethical terrain of modern armed conflict has been considered to safeguard the lives and dignity of all individuals involved.¹⁶⁹ The current international legal environment grapples with the complexities of drone warfare. As countries strive to balance national security interests with humanitarian concerns, it is vital to collaborate and establish a strong regulatory framework that reinforces the IHL principles that we mentioned. The urgent tasks in this regard are a collective dedication to upholding the rule of law; giving precedence

¹⁶⁴ Ulrike Jenny, *Star Tech Enterprise: Emerging Technologies in Russia’s War on Ukraine*, European Council on Foreign Relation (Sept. 5, 2023), <https://ecfr.eu/publication/star-tech-enterprise-emerging-technologies-in-russias-war-on-ukraine>.

¹⁶⁵ Bielieskov, *supra* note 158.

¹⁶⁶ Bernd Riegert, *How Far Does Ukraine’s Right to Self-Defense Extend?*, DEUTSCHE WELLE (Aug. 28, 2023), <https://www.dw.com/en/ukraine-war-right-to-self-defence/a-66420497>.

¹⁶⁷ Bielieskov, *supra* note 158.

¹⁶⁸ Heyns et al., *supra* note 3, at 825-7.

¹⁶⁹ *Id.*

to human rights;¹⁷⁰ and promoting transparency in the use of drone technology during armed conflicts.¹⁷¹ By encouraging communication, bolstering accountability mechanisms, and adhering to established legal standards, the international community can build the legal and ethical system for using drones in warfare to safeguard the value of human life.¹⁷²

There is an urgent need for a coordinated international effort to guarantee the moral and legal applications of such technology.¹⁷³ The international community can obtain the ultimate goal by improving accountability systems, communicating effectively, and upholding existing legal requirements.¹⁷⁴ It finally ensures drone using consistent with the fundamental values of justice and human dignity while preserving the worth of human life and the ideals embodied in IHL.¹⁷⁵

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¹⁷⁰ Davis et al., *supra* note 27.

¹⁷¹ Dorsey & Amaral, *supra* note 54.

¹⁷² LEWIS & VAVRICHEK, *supra* note 60.

¹⁷³ Heyns et al., *supra* note 3.

¹⁷⁴ Buchanan & Keohane, *supra* note 53.

¹⁷⁵ Herbert Kelman, *The Conditions, Criteria, and Dialectics of Human Dignity: A Transnational Perspective*, 21(3) INT'L STUD. Q. 529-52 (1977).

