

Human Rights and Human Realities

Local perspectives on drone strikes and
international law



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Colophon

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Cover photo: A photo taken with a commercial drone of an image of young girl who lost both her parents and two young siblings in a drone attack. This was part of an art installation called #Notabugsplat, located in the heavily bombed Khyber Pukhtoonkhwa region of Pakistan, where drone attacks regularly occur. See www.notabugsplat.com for more information.

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About PAX

PAX means peace. Together with people in conflict areas and concerned citizens worldwide, PAX works to build just and peaceful societies across the globe. PAX brings together people who have the courage to stand for peace. Everyone who believes in peace can contribute. We believe that all steps, whether big or small, inevitably lead to the greater sum of peace.

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1. Introduction

What did these women do to be targeted by these damn American drones? A question desperately asked by the son of Dhabia Ali Ahmed Al Taisi.¹ He had found his mother torn apart into 'pieces of meat' after a US drone targeted her on a December afternoon in 2017. She and other Yemeni women had been gathering in a house in the area of Yakla, but when Dhabia (63 years old) walked outside she was, for completely unknown reasons, immediately targeted and torn apart. Shrapnel was scattered around and also killed Dhabia's pregnant niece, Hajra Saleh Ahmed Al Taisi (33 years old). Hajra's husband recounted how the shrapnel had penetrated 'her neck and went out of her back', killing her and the fetus, while their 8 year old son stood by helpless. 'People's lives are almost paralyzed', Dhabia's son continued, 'they are afraid, and their movements are restricted especially after the increase in American air strikes and the mistakes [in] targeting defenseless citizens'.² Until today, the deaths of Dhabia and Hajra have not been investigated, leaving the bereaved with a sense of indignation and constant anxiety over the next drone strike.

Sadly, the case described above is not an isolated incident. The last decade has been marked by a rapidly increased use and proliferation of drones.³ The technological capabilities of drones permit their deployment for a wide array of purposes, ranging from surveillance to targeted killings. The key features of drones, briefly summarized in the first chapter, have incentivized States to increasingly rely on unarmed drones for Intelligence, Surveillance and Reconnaissance (ISR) purposes, and to a lesser extent, on armed drones instead of manned aircraft for the use of force. This development reflects a shift from conventional to remote warfare: threats are countered from a distance while a minimal amount of military forces are deployed. This new logic reduces the risk for soldiers. However, it does not necessarily reduce the dangers faced by innocent civilians on the ground, as the above-mentioned case illustrates.

For instance, it has been argued that the use of armed drones stimulated a shift towards a 'hunt-warfare' doctrine, that focuses on eliminating individuals rather than controlling a specific area. As a result, the battlefield is no longer a demarcated combat zone, but is defined by the movements of the enemy, disregarding State boundaries.⁴ This logic has led States to preemptively strike individuals wherever they are, based on the principle of self-defense against an 'imminent threat'. However, reliance on these notions is problematic from a legal standpoint. First of all, it confuses the legal parameters to be used for the justification of the use of force as such and how such force should be used. Furthermore, even when the argument is used for the right purpose, there is a lack of consensus on what exactly an imminent threat entails and what use of force is proportionate.⁵ What makes it even more complex is the fact that targeted killings rely on secret datasets and so-called 'pattern-of-life analysis' to distinguish between combatants and non-combatants.⁶ States are also remarkably silent regarding the legal grounds on which drone strikes are conducted, relying extensively on national security concerns to justify their non-transparency. In this context, there has been a lively debate among academia, politicians and civil society on the legality of the use of armed drones and far-reaching implications.⁷

"When I arrived, the scene was shocking. I didn't see the bodies because they were taken to the village. I saw the tree where we used to sit, it was covered by their bodies remains, pieces of their clothes and blood stains were everywhere. The smell of the gunpowder filled the place. I quickly collected the remains that have not been taken, and buried them under the tree so that the animals would not eat them. (...) No one feels safe anymore. Everyone was saying that they or their families might be the next target. I went home that day feeling very sad. Now, every time I hear a drone, I get the feeling that I will die."

Abdullah Ali Jeradah (30 years old)

5 October 2017, Yemen



Nabila Rehman, 9, is pictured in front of a photograph of her grandmother Mamana Bibi, who was killed by a U.S. drone strike in Pakistan, and a drawing Nabila made depicting the incident, at a news conference on Capitol Hill in Washington, October 29, 2013. Nabila and her father and brother attended the news conference to highlight the personal costs in collateral damage for civilians killed and injured in the U.S. drone strike program.

2. About armed drones

Armed drones, also known as armed UAVs (Unmanned Aerial Vehicles), are remotely piloted aircrafts capable of striking targets with bombs or missiles.⁹ Due to various technical features, drones have become increasingly popular with state militaries who rely on these weapon delivery systems for their (often clandestine) operations in the context of, for example, counter-terrorism efforts in Syria, Iraq, Pakistan, Afghanistan, Somalia, Yemen, and the Gaza Strip. Some of these features include the ability to remain in the air for a long period of time, to access difficult environments, to observe movements on the ground, and a relatively high degree of cost-effectiveness. Pre-programming ensures that take-off, flight modalities and landing can be planned in advance and implemented without a real-time involvement of a human operator. Due to these characteristics, States have found it easier to resort to targeting individuals beyond their territories, thousands of miles away from the location of the human drone operator.¹⁰

In contrast to what the term ‘Unmanned Aerial Vehicles’ might imply, the decision to target an individual is never taken by the weapon delivery system itself, but requires the authorization of a human.¹¹ To identify individuals who allegedly pose a threat, drone operators rely on extensive databases. These databases are produced and maintained by global networks of ground stations, operations centers, satellite capacities, and air bases located throughout the world, e.g. in Italy (Sigonella) and Germany (Ramstein). However, relying exclusively on such databases to identify legitimate targets remains problematic for several reasons, one of which is that databases sometimes provide inaccurate data and subsequently cause the loss of innocent life.¹²

The inadequacy of the policies of targeting individuals by means of drones to always distinguish between legitimate and non-legitimate targets has resulted in many civilian casualties. Hence, many academics, journalists and non-governmental organizations started reporting these atrocities. For example, the Bureau of Investigative Journalism created a database, drawing on academics, journalists and government officials, to document the number of drones strikes, the total number of deaths and the number of civilian deaths. The database reports a minimum of 4.737 confirmed US drone strikes launched since 2004 until now, that resulted in up to 10.667 deaths, of which up to 1.551 were civilians and children.¹³

While the number of drone strikes in Pakistan dropped in the last few years, places like Yemen and Somalia have witnessed an uptick in strikes under the Trump administration, aggravated by the fact that, in April 2018 Trump eased the rules restricting the proliferation of armed drones.¹⁴ Besides, the number of countries deploying armed drones has drastically increased, and so has the number of civilian casualties. These violent practices and inaccuracy of drone strikes rightly instigated international debate, which will be outlined below.

To determine the legality of their use, armed drones must be considered under international human rights law (IHRL) and international humanitarian law (IHL), often referred to as *jus in bello*, which governs how force may be used. When a drone strike is used in an international or a non-international armed conflict, a question whether such force should be considered under IHL or IHRL can be challenging and often results in a complex legal debate. Although PAX considers the legal debate crucial in working towards increased protection of civilians in armed conflicts, it should not hamper the fundamental message of demonstrating how the use of lethal force directly impacts the lives and livelihoods of human beings, often with devastating consequences for their security and well-being. However, there has been a ‘blatant ignorance’ to the human side in the public discourse regarding drone attacks, says Shahzad Akbar, the director of the Pakistan-based Foundation for Fundamental Rights (FFR). ‘*Seldom is the issue perceived from the victim’s perspective. It is as if in a world governed by strategic imperatives and international law, human stories simply do not matter*’.⁸

In this context, the objective of this publication is to provide a bottom-up perspective of what legal concepts such as ‘transparency’, ‘the protection of life’, and the ‘right to remedy’ entail for drone victims. Drawing on testimonies, this publication explains the utmost importance of the law for the individuals and communities who have fallen victim to the use of armed drones. Chapters two and three provide the report with context by discussing the key technical features of armed drones and the current political debate. The fourth part, on the law governing the use of armed drones in various contexts, addresses the relevant rules of IHRL and IHL. Based on stories of the victims of drone strikes, this publication analysis the legal framework governing the deprivation of life of individuals, the duty to investigate incidents involving killings by agents of state authority and accountability of perpetrators, victims’ right to remedy, transparency and access to information. At the end, concluding remarks and recommendations are provided.

3. Current drone debate

The targeted killing of alleged 'militants' through the use of weaponized drones has drastically increased since 2008, especially by the United States. The US drone operations in Pakistan, Somalia, and Yemen have been acknowledged by the Obama Administration, but so far the government declines to clarify its drone strike policies carried out by the CIA or the military's Joint Special Operations Command (JSOC).¹⁵ The practice of targeted killings outside recognized areas of armed conflict is often attempted to be legitimized on the pretext of drones constituting a more 'humanitarian form of violence' than traditional warfare, as they would permit precision airstrikes that are limited in terms of collateral damage, leaving the innocent untouched.¹⁶

However, local and international human rights organizations have increasingly contested the claimed accuracy of drones, spurring international debate.¹⁷ Drone strikes might be precise in eliminating whomever you wish, but it does not mean that drone pilots are more capable of making out who is a legitimate target.¹⁸ Since 2012, whistleblowers not only confirmed the inaccuracy of drones and faulty use of data for targeting practices but have also claimed that their use might be counterproductive, 'creating' more terrorists than they kill.¹⁹ In similar statements, former US Commanders cautioned about the use of armed drones and echoed the concerns of whistleblowers.²⁰

A number of non-governmental organizations began publishing data, gathered from open sources and field reporters that contested the official data released by the White House on the number of civilian casualties inflicted by US drone strikes. Particularly worrisome was (and is) reliance of the US on the permissive rules on targeting of individuals under the laws of war in situations, which, either fall short of the definition of armed conflict, or otherwise fail to fit requisite material, temporal or geographical limits of the applicability of such rules.²¹ For this reason, civil rights and human rights organizations are continuously calling for more accountability and transparency, especially with regard to views that undermine the long-standing legal frameworks regarding the use of lethal force.²²

3.1 Proliferation of Armed Drones

The lack of a common position on the export and proliferation of armed drones is another important aspect of the debate. Despite the fact that the US is the global leader in the use and export of drones, the debate should also address the rapidly growing number of States in Europe and the Middle East that are acquiring them. With no clear push-back to US policies, other states may very well use drones in a similar way. If more countries carry out such strikes with the same

obscure targeting policies, it would likely lead to regional security challenges and more civilians casualties. Civil society is thus trying to exert pressure to improve the control on export and use of drones.

In response to this pressure, the Obama administration attempted to deal with the growing challenges of drone proliferation and the potential misuse by initiating the *Joint Declaration for the Export and Subsequent Use of Armed or Strike-Enabled Unmanned Aerial Vehicles* on the 28th of October 2016.²³ However, human rights experts and civil society organizations, including PAX, have warned that the standards set by the initiative are too low, allowing the military drone market to grow in a so-called 'regulatory lacuna'.²⁴ In April 2018 the Trump Administration reversed the little restrictions made by the previous administration in order to vastly expand the sales of armed drones.²⁵ "However," if standards are not in accordance with the well-established rules of international law, drone technologies risk facilitating a global expansion of the use of lethal force, in particular outside the battlefield.

Signs of this development can already be seen. Turkey and Iran have respectively deployed their domestically produced armed drones in military operations against the Kurdistan Workers Party (PKK) and in the conflict in Syria.²⁶ Drones built in China have been deployed by Saudi Arabia and the United Arab Emirates in Yemen and by Iraq in operations against the Islamic State.²⁷ The Pakistani army has been experimenting with their variation of Chinese-built armed drones to fight Taliban affiliates. In Europe, the UK remains the only Member State that possesses and deploys armed drones, but other European countries are in the process of acquiring or developing armed drones. Italy, Germany, Spain and France have committed to the development of a Medium Altitude Long Endurance (MALE) drone, while France and the UK are developing a Future Combat Air System (FCAS).²⁸ Presently, the Netherlands and Spain are in the process of acquiring armed capable drones, and Italy and France have announced their decision to arm its surveillance drones.²⁹

3.2 International Calls for action on Armed Drones

Besides the Joint Declaration, a number of measures have been taken by the UN and the European Union (EU) to address the problematic use of armed drones. In February 2014, the European Parliament (EP) adopted a Resolution urging EU Members to develop a 'policy response at both European and global level which upholds human rights and international humanitarian law'.³⁰ The resolution condemns the illegal use of armed drones, especially the practice of targeted killings outside declared war zones, due to the suffering inflicted on civilians. In addition, the resolution calls upon Member States to secure complete transparency and accountability by conducting prompt and independent investigations into allegations of civilian deaths and 'to proceed to public attribution of responsibility' when allegations are proven correct.³¹

In March 2014, the UN's Human Rights Council (HRC) made a similar call upon States to ensure transparency and conduct independent investigations,³² in response to a number of concerns raised by UN Special Rapporteurs.³³ A year later, the HRC passed another resolution, aiming to ensure the use of armed drones in accordance with International Law, including IHRL and IHL.³⁴ Finally, EP's sub-committee on Human Rights issued a briefing containing specific recommendations for a European common position on the implications of the expanding use and proliferation of armed drones.³⁵



An MQ-9 Reaper sits on the flight line as remotely piloted aircraft crews wait for the fog to clear during Combat Hammer Nov. 6, 2017 at Duke Field, Fla.

The use of armed drones in compliance with international law is also a recurring theme within the UN General Assembly's First Committee. Countries such as the Netherlands, Lebanon, and Botswana emphasized the importance of regulating the use of armed drones in a universal and inclusive manner 'based on the principles of Human Rights and International Humanitarian Law'.³⁶ Though paramount, the focus on the principles of international law has frequently resulted in a legal debate; often abstract and far removed from the reality in which victims live. For this reason, the following chapters will translate the principles of law to the realities on the ground by discussing both international law and a number of matching case studies.³⁷

4. The law governing the use of armed drones

Although the use of armed drones is in and of itself not illegal under international law, it has proven to be one of the most legally controversial and complex issues confronting IHL and IHRL in the twenty-first century.³⁸ It is therefore not surprising that the current debate on armed drones, as described above, frequently becomes very abstract and difficult to understand. For this reason, the basic principles of international law, that are related to the use of armed drones, will be explained, before translating this complex discussion to the realities on the ground. This chapter will begin with the question of legality of the use of force, specifically elaborating on the use of force by armed drones, within the legal framework of international law. Once this is done, the difference between IHL and IHRL will be explained as well as the fundamental principles they entail. PAX considers respecting international law of paramount importance, because ignoring those rules and principles would risk facilitating a global expansion of the use of lethal force and as a consequence the destabilizing of the international security, a blowback in terrorism, and a transgression of ethical norms.

To begin with, the use of armed drones by States in the territory of another State raises important issues related to the prohibition of the threat or use of force by States as enshrined in Article 2(4) of the Charter of the United Nations (UN). Use of an armed drone does not necessarily violate this rule, as use of force may be justified if it is adopted in pursuance of individual or collective self-defence.³⁹ Though the question of legality of the use of force by States is beyond the scope of this publication,⁴⁰ two important aspects must be highlighted. First, when States are using armed drones on foreign territory, they should always observe the applicable rules of IHRL and IHL. Secondly, it has been acknowledged that States can be in violation of the right to life under IHRL when they use force contrary to the UN Charter, provided that such act will amount to an act of aggression.⁴¹

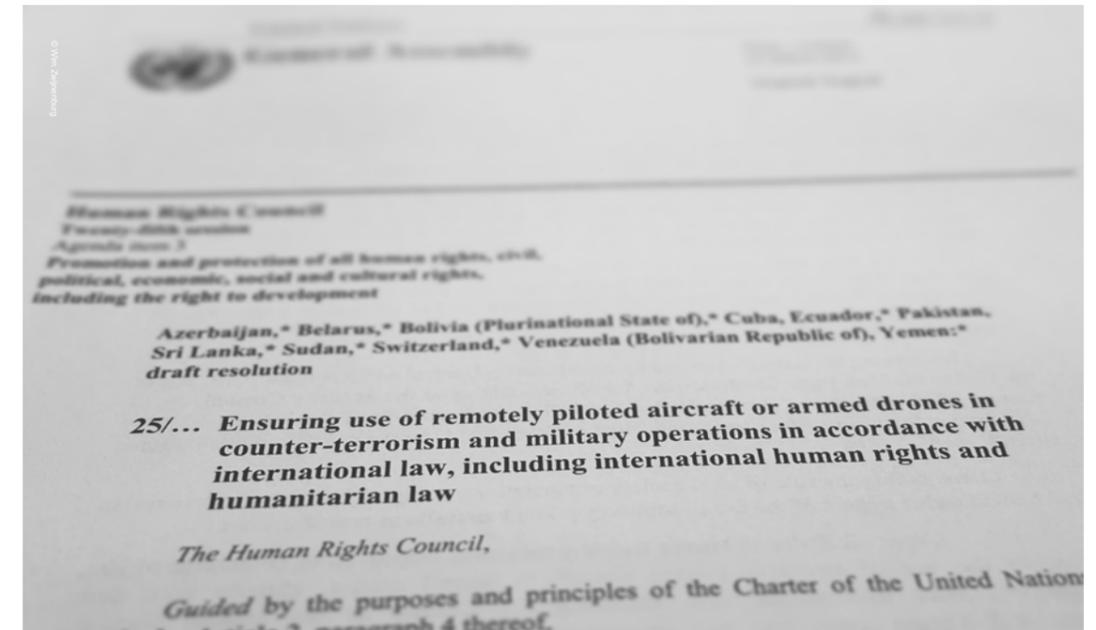
The legal framework on how force may be used by States and its applicability to the use of armed drones largely depends on the context and the situation on the ground, and in particular on whether there is an armed conflict taking place. Both IHL and IHRL seek to limit situations in which lethal force may be used against persons, but loss of life of individuals does not always violate international law.

IHL provides somewhat more 'permissive' rules for targeting individuals, which is why, when analysing the legality of drone strikes, States and commentators often rely on its rules for the conduct of hostilities. It is crucial to restate that unlike the IHRL regime, which applies at all times,⁴² the applicability of IHL depends on the factual determination of the existence of an armed conflict. Its rules on the material, temporal and geographical reach of the legal framework inherently limit the possibility of the State's reliance on the notions that exist solely under IHL. Thus, when the loss of life occurs outside the context of an armed conflict, States cannot invoke IHL to justify the use of lethal force against individuals as these standards 'cannot be transposed to situations other than armed conflicts'.⁴³

IHL applies only in times of international or non-international armed conflict.⁴⁴ In principle, its rules apply from the outbreak until the end of an armed conflict,⁴⁵ to the entire territory of the concerned State(s).⁴⁶ IHL treaties do not specifically limit the geographical scope of the applicability of IHL. While IHL could be formally applicable to the use of lethal force beyond the 'theatre of armed conflicts', it has been submitted that other applicable rules, such as IHRL, would prevail over IHL rules on targeting.⁴⁷ Broader interpretation of territorial reach of the applicability of IHL, namely the idea of a 'global battlefield', relied upon primarily by the US in its 'War on Terror', has been heavily criticized and dismissed by commentators.⁴⁸ Therefore, the use of armed drones beyond the territory of the State(s) where armed conflict takes place (e.g. territories of neutral States) would not be governed by IHL. Furthermore, even within the territory of the Party to such an armed conflict, relevant standards of IHRL might prevail over IHL rules on targeting.

Even though the international law applicable to international and non-international armed conflicts is not identical, its principles on targeting individuals are largely similar.⁴⁹ The fundamental **principle of distinction** requires that the Parties to the conflict should always differentiate between civilians and combatants (in non-international armed conflicts, members of organised armed groups who have a 'continuous combat function') and only direct their attacks against the latter. Civilians may not become objects of a direct attack, 'unless and for such time as they take a direct part in hostilities'.⁵⁰ IHL recognises that even when targeting military targets, there can be civilian casualties. In order to minimize such incidental loss of civilian life, the **principle of proportionality** requires that when civilian casualties are expected as a result of an attack on a military target, such casualties should not be 'excessive in relation to the concrete and direct military advantage anticipated'.⁵¹ For example, the use of lethal force against the fighter of an opposing organised non-state armed group, which incidentally kills dozens of innocent civilian bystanders will be clearly contradicting this principle. In order to ensure that the above-mentioned rules are observed, the **principle of precaution** requires that the attacking party takes all feasible measures to minimise civilian casualties.⁵² Such measures can include the choice of timing for the attack when there are no civilian bystanders in the vicinity of the identified military target or the selection of weapons which in the given circumstances can limit the deadly force to the initial target of the attack even when there are civilians nearby. Attacks carried out by means of armed drones have to observe these rules. Furthermore, States are under an obligation to review new means and methods of warfare in order to make sure that their use in armed conflict complies with relevant rules of IHL.⁵³

IHRL, in turn, has a broader scope of application, which is not limited to armed conflicts. Unlike the IHL regime, which only applies in case of armed conflict, IHRL applies at all times. In exceptional circumstances and in observance of requisite legal requirements, States may derogate from certain, but not all, IHRL obligations. Notably, under the International Covenant on Civil and Political Rights, even in exceptional situations like armed conflicts, States may not derogate e.g. from the right to life.⁵⁴ As for the geographical scope of applicability of IHRL, the jurisprudence of human rights bodies



UN Resolution A/HRC/25/L.32. Ensuring use of remotely piloted aircraft or armed drones in counter-terrorism and military operations in accordance with international law, including international human rights and humanitarian law. Adopted in March 2014.

confirms that it is not limited to the sovereign territory of a State and rather depends on whether an individual in question is subjected to the jurisdiction of the State. While this issue still remains subject to a heated debate, it has been submitted that an aerial control could be sufficient to bring an individual within the jurisdiction of a State.⁵⁵ Therefore, the use of lethal force by means of armed drones is governed by IHRL even when used extraterritorially, which is often times the case.

Unlike IHL, which provides a binary definition of persons for the purposes of targeting, the notion of a civilian, as opposed to a combatant or a fighter, does not exist under IHRL. Its rules on the use of lethal force against individuals apply to all persons and can only be legally justified if violence, or threat of such violence, emanates from the person concerned. Thus, unlike IHL, IHRL does not allow harm to be caused to anyone else than the person who poses a threat.⁵⁶ The use of lethal force against the person who poses a threat must comply with strict principles of **absolute necessity** and **proportionality**, that is to say that the lethal force can be used only as a last resort if there are no other means for achieving an aim which is legitimate under IHRL, and that such force is proportionate to the actual threat posed by the individual concerned.

In sum, the use of deadly force by means of armed drones in contexts other than armed conflicts must comply with IHRL, most importantly the right to life. The strict standards of absolute necessity and proportionality require that lethal force is used *only* as a last resort and *only* against individuals who are posing a serious and imminent threat. When used in the context of an *ongoing* armed conflict and *within the area of active hostilities*, attacks by means of drones resulting in death of individuals must comply with the principles of distinction, proportionality and precautions.

The following chapters outline the most important rights and principles that are applicable to the use of armed drones. Besides a brief explanation, the chapters also present a number of case studies that show the perspective of civilian victims.

5. Protection from arbitrary deprivation of life

Protection of life and integrity of human beings is central to the law governing the situations in which armed drones are used. Both IHRL and IHL place limits on the use of lethal force against individuals. While international law does not absolutely prohibit deprivation of life, those resorting to such extreme measures shall observe strict standards envisaged by the law. Despite the fact that the right to life is affirmed by all major IHRL treaties and is considered as the 'supreme right', instrumental to all other human rights and fundamental freedoms, by the UN Human Rights Committee (HRC),⁵⁷ many civilians live in constant fear of losing their life or losing their loved ones. This discrepancy will be illustrated based on interviews with victims and the communities they live in. But before doing so, the theoretical obligations with regard to the right to life will be explained.

First of all, taking of life will be in breach of IHRL if it is 'arbitrary'.⁵⁸ In this sense, killings by 'agents of state authority' are at the core of the right to life.⁵⁹ The use of lethal force by State agents must comply with strict requirements of the law. Such force may only be used in order to protect life, for example in situations of self-defence or defence of others against the *imminent* threat to their lives; it must be absolutely necessary, in other words, can only be used as a last resort when all other means prove ineffective; and it has to be proportionate, i.e. not more harmful than the threat itself.⁶⁰ It can already be seen from these principles that the use of armed drones is less likely to be in accordance with international law when used outside the context of an armed conflict. In particular, targeting of pre-identified individuals, solely because of their membership of a particular group, hardly meets the requirement of imminent threat.⁶¹ Furthermore, lethal force cannot lawfully be extended beyond those who pose such a threat. Therefore, the death of bystanders will always be 'arbitrary'.⁶²

When lethal force by means of armed drones is used in an armed conflict, the notion of 'arbitrariness' of deprivation of life can be complemented by relevant rules of IHL on the conduct of hostilities. The killing of an individual will be regarded as 'arbitrary' unless it complies with the principles of distinction, proportionality, and precaution. Various commentators have argued that the technical capacities of the drones that are currently in use pose similar challenges as manned aircraft. In practice, this has induced States to use the IHL regime as almost an automatic justification for deaths resulting from such attacks. It is important to highlight that the mere applicability of IHL to given circumstances does not absolve a State from its international responsibility. A lack of compliance with relevant rules of IHL could render a killing 'arbitrary' for

the purposes of IHRL, and under certain circumstances, it can even amount to a war crime. If the above-mentioned standards are not observed, States may be held responsible for their use of lethal force based on their obligation to act in accordance international law. An important question that must be answered, therefore, is what the reality of these specific legal principles are. The following chapter seeks to answer this question by presenting an example of targeted killings.

Case study 1: 'A fear of blue skies'

In October 2012 an alleged US drone strike ended the life of Mamana Bibi, a Pakistani 67 years old grandmother. She was gathering vegetables in the family fields in Ghundi Kala village when she was instantly killed by the strike. Each of her nine grandchildren suffered life-altering injuries.⁶³ Initial reports communicated that the strike in question targeted five militants, a weapon depot, and a vehicle carrying several foreign fighters.⁶⁴ However, multiple field investigations by Amnesty International, Reprieve, BBC Panorama and others, found only one person was killed: Mamana Bibi.⁶⁵ This raises an important question: was the deprivation of Mamana Bibi's life arbitrary?

It is very difficult to answer the question above because of the secrecy surrounding the drone strike. The US government has refused to even acknowledge it took the strike, much less release basic information surrounding the incident. Such information is indispensable for answering even the primary question, as to which legal regime of targeting of individuals was applicable, IHRL or IHL; but in case of Mamana Bibi there seems to be a violation of international law irrespective of which legal paradigms were applicable to her killing.⁶⁶

Seen from the victim's perspective, it becomes very clear why these principles of IHL and IHRL are indispensable. The attack has left the affected community and individuals with extremely high levels of stress, severe anxiety, feelings of powerlessness, and, as expressed by the thirteen years old Zubair, Mamana Bibi's grandchild, a 'fear of blue skies': *'The drones do not fly when the skies are grey. And for a short period of time, the mental tension and fear eases. When the skies brighten, the drones return and so too does the fear.'*⁶⁷

A similar case happened in Yemen on August 13, 2017, when a drone strike killed Ali Al Khadher (19 years old) and his friend Ali Haider (17 years old). The boys were guarding beehives in the village of Marjoun, located in the Abyan Governorate. According to local villagers, the boys were lifelong friends and both got married two years before their death. They had seen the drones flying over the area, but one villager explained: *'We didn't care much because we were sure that we were innocent and weren't involved in the conflict. We weren't worried about our lives. We were confident that these drones would never target us, just as you are standing in front of me here and know that these drones will not target you.'*⁶⁸

The cases are just two examples of the many victim stories which demonstrate that innocent civilians are killed and that states easily resort to secrecy instead of transparency. As a consequence, relatives live in constant fear of further senseless killing. As one witness stated: *'Now, every time I hear a drone, I get the feeling that I will die.'*⁶⁹

6. Investigation, accountability and remedy

States are not only obliged under international law to respect the right to life, but also to investigate deaths that occur as a result of use of lethal force by its agents in the exercise of public authority, and to prosecute those who are responsible for an unlawful taking of life. In fact, this duty emanates from the procedural limb of the right to life.⁷⁰ The obligation to investigate is triggered automatically whenever lethal force is used by agents of state authority and does not depend on the existence of a formal complaint.⁷¹ Such duty arises whenever there is a 'plausible indication' that individuals were killed.⁷² A failure to investigate, or to bring to justice those responsible for violations, will render the State involved in breach of its international obligations.⁷³

States are under an obligation to conduct the proceedings aimed at establishing legality of a use of lethal force promptly, observing the requirements of independence and impartiality.⁷⁴ Various human rights instruments have confirmed that it is particularly relevant that these rules are observed in the context of killings resulting from a use of armed drones.⁷⁵ If the investigation establishes that the lethal force was illegal, all responsible persons should be brought to justice and **held accountable**. Competent authorities should make sure that the sanctions applied to such individuals are adequate in relation to the gravity of the crime.

International law confers the **right to remedy** to the victims, entitling them to seek justice.⁷⁶ This includes the right to have effective access to remedy, to seek reparation of harm and to have access to information concerning the unlawful taking of life.⁷⁷ In cases involving the use of lethal force by agents of state authority, the rights of the next-of-kin of the deceased are correlated with the State's duty to investigate and hold accountable those responsible for unlawful killings. The family members and dependents of the victims of drone strikes should know when, where and why their loved ones have been killed. They should be given the opportunity to present complaints before competent authorities, to submit evidence and to be informed on the progress of the investigation.

Access to justice implies that appropriate remedies should be available for the victims.⁷⁸ It requires that necessary administrative or judicial mechanisms are put in place and that they are accessible to the family of the deceased. States are obliged to ensure that all necessary legislative and administrative measures are available for the victims to be able to seek justice. Accessibility of such remedies further requires that there are no legal or physical barriers that

would render resort to such mechanisms impossible or futile. Accessibility to appropriate remedies is especially important in the case of drone strikes, as remoteness inherent to the extraterritorial use of armed drones poses particular challenges, both physical and legal, to achieve this access.

The families of the deceased and their dependents are entitled to appropriate reparation, including the recognition of the violation and guarantees of non-repetition, as well as 'fair and adequate' compensation.⁷⁹

Case study 2: 'We feel like the dead'

In theory, States are obliged to investigate all allegations of civilians deaths, however, in practice allegations are often ignored. Ali Ahmed Abdulla Saleh (51 years old), for example, lives in Yemen and has repeatedly tried to present his complaints before the responsible authorities, but to no avail.

He explains: '*We used to live peacefully in Mujan village. We were like one family (...), until Al Qaeda invaded the Abyan province in 2011 and some villagers were tempted to join them. After Al-Qaeda left the province villagers began returning, while others fled to the mountains.*' According to Ali, the US responded by randomly conducting drone strikes in the area. Especially in 2017, the number of strikes grew more frequent, resulting in an increase of internally displaced persons and civilian casualties. Among the people killed were Ali's son Hadi (28 years old) and his brother Salem (34 years old). While traveling back home, their vehicle was hit by a drone missile in March, 2017.

'We have tried more than once to make our voices heard; that there are no terrorists here and we asked people to come and check, but no one is willing to listen to us', says Ali. Up to this day no investigation into the death of his son and brother occurred. There is only a deafening silence coming from the US and drone strikes that continue to bomb the area. Despite their efforts in proving their innocence, the armed drones have kept coming.

The case is reminiscent of the drone strikes in North Waziristan in 2009, where a US drone strike targeted the family house of the Pakistani Karim Khan. The strike killed his brother, his teenage son and a stonemason working on the house. They were all young men, who in Karim's words had committed no sin and done no wrong. '*They tell the world that they're killing terrorists [but] they're killing innocents*', says Karim about the US.⁸⁰ Until today, he struggles to find justice for his case. He has spoken in various national parliaments in Europe and has even attempted to sue the CIA station chief in Islamabad, but Kareem's attempts were only met with a lack of political action and intimidation home and abroad.⁸¹

The lack of any acknowledgement or investigation conducted into the loss of victims like Salem, Hadi and Karim's family is harrowing. Their cases undermine the pretentious US claim of being a firm supporter of human rights. The legal principles that are at the core of protecting human life and dignity against injustice are disregarded, including the right to an effective remedy, reparations of harm and access to information. Indeed, this is an international failure to redress the victims of drone strikes. In the words of Reprieve, an organisation supporting drone victims, they received '*No answers. No compensation. No apology. Just silence*'.⁸² Justice is denied and therefore interviewee Hadi Ahmed Abdulla Al Muraqeb, the younger brother of Ali, says that '*We live in this world, but we feel like the dead*'.

7. Transparency and access to information

In addition to the obligation to investigate the killings, hold accountable the responsible, and provide access to remedy, international law also obligates States to disclose information regarding the policy on the use of lethal force, as well as circumstances of situations where lethal force resulted in death. This principle of transparency is well established in IHRU. Although it is not specifically mentioned in relevant treaties, it can be regarded as a 'fundamental principle that underlies many human rights', such as the right to life under its procedural limb and the right to truth.⁸³

And indeed, various human rights instruments have repeatedly confirmed that the States resorting to lethal force through armed drones are under legal obligation to make public information on the policy and legal framework governing such strikes, as well as the information regarding individual attacks, but to no avail.⁸⁴ States have extensively relied on national security considerations in order to justify secrecy of drone strikes. However, national security concerns should not be used as a blanket defence for the **lack of transparency**.⁸⁵ While not invalid as such, reliance on such considerations will only be justified when 'strictly necessary to meet legitimate national security concerns'.⁸⁶ Certain techniques aimed at defending sensitive information (such as redaction) may be used, but not in a way that results in the total denial of the rights of the affected individuals.⁸⁷

The lack of information has been one of the principal concerns with respect to the extraterritorial targeting of individuals through armed drones. The details regarding the policy and legal framework, as well as information on individual strikes, have been withheld by States from the public domain with 'relative ease'.⁸⁸ This secrecy has prevented other States, international organizations and society at large from scrutinizing the assassinations carried out with drones, in turn enabling States to operate in an 'accountability vacuum'.⁸⁹ This undermines the values of democracy and rule of law, as it deprives the public of the **right to participate in public affairs** and to hold their Governments politically accountable for their actions. Transparency is closely linked with the duty to investigate the potentially unlawful use of lethal force and to hold perpetrators accountable. It is notable that critical evidence of the use of lethal force by means of armed drones is in the hands of the relevant State authority that perpetrates such attacks.⁹⁰ The authorities charged with investigating suspected cases of unlawful killings should have access to all information that is necessary for a meaningful inquiry.⁹¹ States are obliged to disclose the outcomes of the inquiry or investigation of strikes, specifying legal and factual aspects involved, as well as the information regarding measures taken to hold accountable those responsible for unlawful killings.⁹²

Access to relevant information is also indispensable for the realization of the right to an effective remedy. Family members of the deceased shall have access to information regarding the strike, as well as on the progress of the investigation.⁹³ Denial of such information removes the victims from relevant proceedings and hence violates their right to an effective remedy.

Case study 3: 'The overwhelming smell of burning flesh'

On 23 January 2013, just before 9pm, a Hellfire missile tore its way through a car in Yemen, killing Ali and Salim Al-Qawli. To the drone pilot the strike may have appeared as a quick and clean operation. When Mohammed Al-Qawli (Ali's brother) rushed to the scenery, however, he found a burning car and bodies that were torn beyond recognition. '*The smell of burning flesh was overwhelming*', says Mohammed.⁹⁴ He explains that Ali and Salim were driving a taxi and had picked up two men, not knowing that they were affiliated with Al-Qaida.

Initially, the Yemeni government claimed that all seven casualties had been al-Qaeda militants, but later investigation exonerated them of any connection with their passengers.⁹⁵ Mohammed has tried to uncover why this strike occurred, but the Obama administration denied access to any information about the strike. In 2016, the President released an estimate of civilians deaths caused by US drone strikes.⁹⁶ However, the estimate did not include the identity of the casualties, nor the location or the reason why individual strikes took place.

The lack of transparency hides the human suffering from the public and prevents the Yemeni victims from holding States accountable. Determining the legality of a drone strike is impossible if one does not know the drone policy. It also means that the victims cannot claim their right to an effective remedy, especially when – in the case of Mohammed – public acknowledgement of State responsibility is denied. The refusal to provide data on drone strikes also happened in Somalia, with the following examples as 2 documented incidents. The body of a dead shepherd, killed by a missile strike was found by his son in the morning of 24 February 2012, close to a burned-out car. Apparently the target had been an alleged member of Al-Shabaab and UK citizen.⁹⁷ A similar case occurred two years later, when a US drone targeted a convoy of cars. The strike killed alleged Al-Shabaab members, but also two young girls and injured their father who were herding their flock nearby the site. In both cases, the family of the victims tried to get justice and compensation for their loss. They even took legal action against the German and Dutch government – as these countries either hosted US bases involved in these strikes or had provided crucial data used for targeting killings – but without success.⁹⁸

Questions about why these decisions were made and who is accountable are crucial for the communities who are constantly living with the fear for another drone attack. The absence of transparency and the uncertainty over what might trigger a drone strike and who constitutes a target have, according to researcher Radidja Nemar, lead to psychological harm.⁹⁹ According to Nemar, many Yemeni's are, just like Mohammed, living with anxiety and fear to be killed or have a relative killed by a drone attack; nightmares and enuresis for children; anger and frustration towards the Yemeni and US governments; and feelings of being not worthy of protection or attention from the government. Ensuring accountability and transparency by upholding human rights principles is of utmost important for the victims in order to deal with the grave loss and to rebuild their lives.

8. Conclusion

The rapid increase in the use of armed drones for targeted killing, in particular outside the battlefield, has made significant changes in the international security landscape and resulted in fierce political, legal and ethical debates over the consequences of remote killing. During the course of this debate, the voice of those affected and their long established rights is often times faded from the agenda. Political statements, streams of papers drafted by legal advisors and experts and white-papers issued by governmental bodies have been used to divert the discussion away from reality into the theory. Charlie Chaplin's character formulated this passionately in his speech in the movie *The Great Dictator*, saying: *'We think too much and feel too little. More than machinery we need humanity. More than cleverness we need kindness and gentleness. Without these qualities, life will be violent and all will be lost.'*¹⁰⁰

This paper attempted to put the people affected by drone strikes from Yemen, Pakistan and Somalia back to the front of this discussion. Their worries, fear, anger, desperation and cry for justice need to be felt and listened to. The legal principles and human rights which should drive our democracies and societies are not merely commitments on paper. They are essential for upholding the rule of law and protect us from unchecked, unaccountable state violence. These principles and rights need to be upheld for those already fallen victim to the attempt to undermine international principles. Upholding these principles and rules are also important to protect our own future. If these practices are left unchallenged, they could set an alarming precedent for others to follow.

As military drones are proliferating rapidly, this is not a dystopian scenario from a distant future. Military drones will be part of every armed force and law enforcement due to their unique capabilities, low costs and low risks. Since taking office, president Trump has removed many of the measures put in place by his predecessor, Obama, to increase transparency and accountability measures for the use of armed drones. Respectively, an increase of drones strikes outside the battlefield has been observed since Trump has taken office. Local and international human rights organizations have reacted by stimulating an international debate on the consequences of such an extensive use of armed drones.

A debate on international law in this context is paramount, but it has remained abstract and complicated. States that actively deploy drones in their counter-terrorism operations, further complicated the debate by propagating permissive legal interpretation and withholding crucial information. A consequence hereof is that the 'human reality', the real life experiences of drone victims, is forgotten. Victims who seek justice and retribution find themselves in a legal labyrinth and rarely making any progress.

To be clear, it remains necessary to debate the legality of the use of armed drones on an international level in order to hold states accountable for their use of force. However, to prevent that the lives and dignity of individuals is completely lost from our view, we recommend that the legal debate is also translated to the level of individual victims and communities, and that efforts are made to provide local access to truth, justice and an effective remedy.



Kareem is a Pakistani journalist and anti-drones activist. His teenage son and brother were killed in a CIA drone strike on 31 December 2009.

Notes

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54 ICCPR, Article 4(2); ACHR, Article 27(2). Under the ECHR right to life is non-derogable "except in respect of deaths resulting from lawful acts of war", Article 15(2).

55 Christof Heyns, 'Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions', (2013) A/68/382, paras 42-51.

56 Noam Lubell, 'Challenges in Applying Human Rights Law to Armed Conflict', (2005) 87 International Review of the Red Cross 737, pp: 745; Pejic (n 4), pp: 87.

57 ICCPR, Article 6; ACHR, Article 4; ECHR, Article 2.

58 Ibid. ECHR does not mention 'arbitrary' deprivation of life, but expressly lists limited circumstances when the lethal force resulting in death of individuals may be justified.

59 Nigel Rodley, 'Integrity of the Person' in: Daniel Moeckli, Sangeeta Shah and Sandesh Sivakumaran (eds), International Human Rights Law, (Oxford University Press, 2014), pp: 186.

60 Code of Conduct for Law Enforcement Officials (Adopted by General Assembly resolution 34/169 of 17 December 1979), available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/LawEnforcementOfficials.aspx>, Articles 3; Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders) 27 August to 7 September 1990, available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/UseOfForceAndFirearms.aspx>, Principles 4, 5, 9, 10.

61 Gloria Gaggioli, 'Lethal Force and Drones: The Human Rights Question' in: Steven James Barela (ed), Legitimacy and Drones, (Ashgate Publishing, 2015), pp: 106-107; Nils Melzer, Targeted Killing in International Law (Oxford University Press, 2008), pp: 212. Ben Emmerson, 'Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism' (2013) A/68/389, para. 24; Heyns (n 22), para. 35.

62 Lubell (n 23), pp: 745.

63 Naming the Dead, 'Bibi Mamana', The Bureau of Investigative Journalism, available at: <https://v1.thebureauinvestigates.com/namingthedead/people/nd526/?lang=en>.

64 Ibid.

65 Amnesty International, "Will I be Next?" US Drone Strikes in Pakistan' (London, 2013), available at: <https://www.amnestyusa.org/files/asa330132013en.pdf>.

66 Validity of the discourse of the US, that seems to suggest its reliance on IHL, would depend on the context. Was the strike in Pakistan part of an armed conflict to which the US was a party to at the time of the attack? If the answer to this question is negative, IHL and its 'permissive' regime of targeting simply would not apply, making IHRL standards of absolute necessity and proportionality the sole yardstick for assessing the death and injuries caused by the strike. Thus, since Mamana Bibi was not the direct target of the attack, something that the US did not even deny, under IHRL her death would be arbitrary and thus in breach of international law. Even if the answer to the above question is positive, thus making IHL formally applicable to the situation, the strike does not seem to comply with relevant principles. Field research carried out by Amnesty International already diminishes the credibility of the US position. But even when the incident is analysed based on the version put forward by the US, civilian casualties caused by the strike would not be justified unless the individuals and objects directly targeted were indeed legitimate targets, as strictly defined by IHL. If no such targets were engaged, the aerial strike would amount to an indiscriminate attack, thus making the killing of Mamana Bibi unlawful under international law. At the minimum, the failure on the side of the US to verify the targets of the planned attack would render it in breach of its obligation to take all feasible precautionary measures. The case also illustrates how the scarcity of information on an incident can make the proportionality assessment virtually impossible, which is crucial in assessing the lawfulness of the attack in light of collateral casualties resulting from attacks directed against lawful targets.

67 Reprieve, 'Nabila and the Rehman Family', available at: reprieve.org/cases/nabila-rehman-family/ (last accessed on 3 October 2018).

68 Interview with Abdullah Ali Jeradah (30 years old), eyewitness and the victim's cousin, Yemen, October 5, 2017, (translated from Arabic by Mwatana for Human Rights).

69 Interview with Hadi Ahmed Abdulla Al Muraqeb (26 years old), Hadi's uncle and Salem's brother, Al Kud, Yemen, May 10, 2017 (translated from Arabic by Mwatana for Human Rights).

70 ICCPR, Articles 2 and 6; ECHR, Articles 1 and 2; ACHR, Article 4. CCPR, 'General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant', CCPR/C/21/Rev.1/Add. 13, paras 15 and 18. Code of Conduct for Law Enforcement Officials (n 27), Articles 3; Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (n 27), Principle 22. See also Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (Recommended by Economic and Social Council resolution 1989/65 of 24 May 1989); CCPR, Draft General Comment No. 36 (Advanced Version) (n 7), paras 31-32.

71 CCPR, Draft General Comment No. 36 (Advanced Version) (n 7), para. 30.

- 72 Ben Emmerson, 'Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism', (2014) A/HRC/25/59, para. 33.
- 73 CCPR, General Comment No. 31 (n 31), paras 15 and 18; Heyns (n 22), para. 95.
- 74 CCPR, General Comment No. 31 (n 31), para 15. See also CCPR, Draft general Comment No. 36 (Advanced Version), para. 31: 'Investigations into allegations of violation of article 6 [right to life] must always be independent, impartial, prompt, thorough, effective, credible and transparent, and in the event that a violation is found, full reparation must be provided, including, in view of the particular circumstances of the case, adequate measures of compensation, rehabilitation, satisfaction.'
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