

## **License to Kill? On the Legality of Targeted Killings in Pakistan by Drones**

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### **Abstract**

*The US launched its targeted killing campaign in the northwest region of Pakistan in 2004. The human rights organizations, civil society, media, intelligentsia and representatives of all political parties have strongly condemned drone attacks within Pakistan's territory and urged to halt these attacks as they are stirring up anger among masses. Upholding US drone policy, the US administration advocated that drone strikes comply with all applicable laws. In this regard, two important legal aspects come on surface: does Article 51 of the UN Charter authorize the US to conduct drone attacks unilaterally in Pakistan as an act of self-defense or has Pakistan government accorded permission to the US to carry out drone attacks on its territory? This study, while finding the answers of such queries, analyzes the legality of US targeted killing operations in Pakistan and determines whether drone attacks correspond with Pakistan's requirements or counterproductive for peace and security.*

**Key words:** Drone, Pakistan, Targeted killings, Legal, Defense

### **Introduction**

The concept of drones emerged during the American Civil War, when adversaries tried to launch balloons equipped with explosive devices to hit enemy targets. A similar attempt was made by the Japanese against the United States (US) in World War II to create panic and horror. These endeavors remained unproductive and could not attain much attention. However, the idea of an aerial vehicle with a remote pilot was materialized in the 1950s and this technology was successfully developed and used by the US for reconnaissance against Communist China and Vietnam in the 1960s and continued to be used widely during wars. Later on, these spy planes turned into modern sophisticated weapon systems having the ability to remain in the air for long and respond to a target without endangering its remote pilot. This weapon system has now been employed in combat role, hunting al-Qaeda targets from Somalia to Yemen, Afghanistan to Pakistan. This shift from reconnaissance to combat role has put forth a serious discussion among legal and political analysts about whether or not drone **operations comply** with the legal framework of international law. Are drones legitimate weapons to be used in accordance with *jus in bello* principles? Could a targeted killing operation through drone strikes outside a combat zone be a lawful action in

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self-defense? This article addresses to these questions by discussing the legality of US drone strikes in Pakistan.

Since September 11, 2001 terrorist attacks, US armed forces have been engaged in counterterrorism operations against al-Qaeda. Initially, these terrorist attacks were considered 'acts of mass murder' and a law enforcement response was suggested to bring the criminals to justice.(US President 9/11 Address to the Nation, 2001)Soon this political rhetoric lost its grounds and these acts of mass murder were declared as an 'act of terrorism,' thus, a military response was initiated in self-defense. On September14, 2001, a joint resolution passed by the US Congress authorized the president to "use all necessary and appropriate force against who planned, authorized, committed or aided September 11 terrorist attacks."(US Congress Joint Resolution, 2001)This was the first time when the US Congress authorized use of force against unknown (unnamed) nations, organizations and persons, and empowered the US President to take any action anywhere against anyone, whom he considered a threat to the US.

Initially, this military engagement was restricted to Afghanistan but gradually the spectrum of this war broadened up with US targeted killing policy beyond Afghan borders. President Bush, under the Authorization for the Use of Military Force (AUMF) 2001, signed a classified presidential directive to authorize the Central Intelligence Agency (CIA) to find ways to capture or kill al-Qaeda leaders.(Woodward, 2001) Since then, the CIA has been devising and weighing up its covert targeted killing operations by employing various means such as drones equipped with Hellfire AGM-114 laser-guided missiles against specified individuals accused as terrorists.(Agm-114b/K/M Hellfire Missile, 2013)The first targeted killing operation, reported by the media in November 2002, was a CIA operated drone strike on a vehicle in Yemen killing six occupants of vehicle including Abu Ali al-Harithi, a suspected al-Qaeda leader, who was believed to be the mastermind behind the attack on USS Cole in October 2000. This was the moment when the CIA propelled its secret targeted killing campaign beyond the emblematic battle field and further extended it to the northwestern region of Pakistan.

### **Targeted Killings by Drones**

There are two opinions on targeted killing. US officials and supporters of drone attacks claim that targeted killing is a lawful action self-defense, reducing the threat of terrorism.(Anderson, 2009)Others argue that such attacks are extra-judicial killings(acts of assassination) without due process giving rise to more violence.(Dennis, 2003)The United Nations (UN)Special Rapporteur for Extrajudicial, Summary or Arbitrary Executions, Professor

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Philip Alston, holds that “targeted killing is not a term defined under international law. Nor does it fit neatly into any particular legal framework.”(Alston, 2010, p. 4). He clearly points out that targeted killing is a term which may be used in any context which suits the executing state to justify its “intentional, premeditated and deliberate use of lethal force against a specific individual” on the territory of another state.(Alston, 2010, p. 3)Therefore, the term ‘targeted killing’ is to substitute the expressions such as extrajudicial killing or assassination.

The US, once critical of targeted killings, particularly Israel’s assassination policy, changed its stance on the issue after September 11, 2001 and adopted the policy of targeted killing in preemptive self-defense. This change in policy was contrary to President Gerald R. Ford’s Executive Order (1976), which states that “[n]o employee of the US government shall engage in, or conspire to engage in, political assassination.”(US Foreign Intelligence Activities Executive Order No. 11905, 1977)This presidential order not only upholds the spirit of Article 23(b) of the Hague Convention of 1899, but also restricts the US government to take any action beyond its legal jurisdiction. In order to avoid legal constraints, Bush administration “sought to cast its killing targets as the killing of combatants” and empowered the CIA to use broad and previously prohibited means and methods to attack al-Qaeda targets.(Anderson, 2009)This new posture totally changed the US longstanding restrictive policy and validated unilateral pursuit of high-value al-Qaeda targets anywhere and anytime as an act of war. President Obama took one step ahead and adopted the same approach to counterterrorism strategy more aggressively.

The US government maintained that the targeted killing policy is consistent with all applicable laws. The proponents of targeted killings suggest that it is not necessary to target an enemy combatant, directly participating in a declared war; any individual who is even a part of it can be targeted as a military objective wherever he may be found. They propagate two main advantages of targeted killings. First, they allow killing the high-value target without engaging in a large scale combat. Second, such attacks are limited in their destructive nature due to the precision of drones. Therefore, a drone strike is the best suited approach in remote areas. The cost-benefit analysis of targeted killings, however, invites criticism.

### **Drone Strikes in Pakistan**

The CIA launched its targeted killing campaign in the northwest region of Pakistan in June 2004.Since then there has been a strong criticism against drone strikes. The Pakistani officials denied the occurrence of such attacks

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initially, but as these attacks mounted to a full-fledged targeted operation and hundreds of civilian casualties were widely reported by the media, it alarmed the international community in general and the Pakistani nation in particular. The human rights organizations, civil society, media, intelligentsia and representatives of all political parties including ruling elites have strongly condemned drone attacks within Pakistan's territory and urged to halt these attacks as it is stirring up anger towards the US as well as Pakistan government.

The US administration believed that drone policy in Pakistan equally justified as an act of collective self-defense under Article 51 of the UN Charter. Upholding the US drone policy, Harold Koh, a legal advisor to the US State Department, advocated that "US targeting practices comply with all applicable laws, including the laws of war." (Koh, 2010) In the wake of US targeted killing policy in Pakistan, two important legal aspects come on surface: does Article 51 of the UN Charter authorize the US to conduct drone attacks unilaterally in Pakistan as an act of self-defense or has Pakistan government accorded permission to the US to carry out drone attacks on its territory?

In international law, the right to resort to force is embedded in Article 51 of the UN Charter, which provides legitimacy of the right for individual or collective self-defense. The right to self-defense is further elaborated by the International Court of Justice (ICJ), that it is the "fundamental right of every state to survival, and thus its right to self-defense, in accordance with Article 51 of the Charter, when its survival is at stake." (Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons, 1996, p. 263) Therefore, survival of a state becomes fundamental right but the military response is subjected to the authorization of the UN Security Council (UNSC). If a state exercises its right to self-defense without referring it to the UNSC, the state cannot justify its unilateral action legally.

The US government officials established the fact that the US unilateral action against the terrorist elements taking refuge in the tribal areas of Pakistan is justifiable. They took the position that terrorists in Afghanistan had been using hit-and-run tactics and it was necessary to follow these terrorists wherever they run and hide themselves. They have established safe havens across the Afghan border into Pakistan and use these hideouts as launching pads for their terrorist activities in Afghanistan. In such a situation, the US reserves the right under Article 51 to use force in its self-defense and conduct drone attacks in Pakistan's tribal areas to preempt such threats.

In contrast, the proponents of this conventional approach advocate that Article 51 does not allow any kind of use of force in Pakistan until Pakistan is

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declared an aggressor state or considered an imminent threat to international peace and security. They believe that if a state is attacked without sufficient evidence of being an aggressor then such attack is not only against the spirit of Article 51 but also contrary to Article 2(4) of the UN Charter. Therefore, there is no room available to act unilaterally or conduct preemptive strikes to target individuals across the territorial boundaries of an independent state, which does not happen to pursue a hostile attitude in violation of international law.

In *Congo v. Uganda*, the ICJ rejected cross-border incursion as a valid reason to exercise the right of self-defense. The Court observed that Article 51 cannot be invoked against non-state actors operating from the territory of another state.(Hoogh, 2006)In this regard, Pakistan cannot be blamed for the activities of non-state actors in Afghanistan as they are not state-sponsored. In *Nicaragua v. United States*, the ICJ did not support the claim to use force against militants as a right of self-defense. Christian J. Tams writes while discussing this case said that “only terrorist attacks effectively controlled by another state triggered a right of self-defense. By adopting a restrictive approach to attribution the Court effectively restricted self-defense to the inter-state context.”(Tams, 2009, pp. 368-369)

Pakistan is already facing a serious law and order situation in its tribal areas and its armed forces are engaged in fighting against insurgents and miscreants. In this situation, the international law does not permit other states to interfere in its domestic state of affairs. In *Nicaragua v. United States*, the ICJ also declared that it is the duty of other states “not to intervene in matters within the domestic jurisdiction of a state.”Therefore, the principles of use of force and non-intervention both restrict the US to act unilaterally in Pakistan against non-state actors. The US drone strikes can only be justifiable if Pakistan invites US forces to assist in combating insurrection and terrorist activities.

### **Implied Consent**

The US government claimed, though not acknowledged clearly, that there was a secret deal between Pakistan and the US to conduct drone strikes.(Miller, 2009)David Ignatius writes that “the secret accord was set after the September [2008] visit to Washington by Pakistan’s President.”(Ignatius, 2008)This statement had never been authenticated in Pakistan rather drone attacks have been widely condemned. Pakistani officials repeatedly expressed their concerns that these strikes did no good to Pakistan and are against its sovereignty and counterproductive. The US administration maintained that despite public comments, Pakistan’s leaders clandestinely

committed to intelligence sharing and allowing drones to strike the proposed targets, thus, indicates Pakistan's 'implied consent.'

If at all, it is accepted that drone strikes in Pakistan could be a secretly planned joint counter terrorism venture, but still this approach of settling the legality of drone strikes contradicts the stance taken by various US officials that these strikes are being conducted in self-defense under Article 51. If the drone strikes are being conducted in Pakistan with its consent then these attacks are, in fact, supplementing the efforts of Pakistan's armed forces in combating terrorism and there is no unilateral action involved. But the status of drone strikes as unilateral actions is confirmed by the former US Director of National Intelligence, Dennis C. Blair, who stated in the context of drone strikes on Pakistan that there should be a "pull back on unilateral actions by the US."(Blair, 2011)

Besides these contradicting approaches, there is an important observation regarding the status of implied consent in international law and its relation to targeted killing operations. J. L. Briery writes that "implied consent is a fiction [and] is not a philosophically sound explanation of customary law."(Orakhelashvili, 2008, p. 83) He explains that consent itself cannot create an obligation; only a treaty or a contract is binding on a consenting party. States do not regard consent in international relations until it is fully expressed in terms of a treaty. If a sovereign state withdraws its consent for any reason, then "the obligation created by it comes to an end."(Orakhelashvili, 2008) In this way, implied consent is a weak and rather controversial form of consent, which does not create legal obligations.

Implied consent is, therefore, based on mere intentions of the parties dealing in a particular situation and is extremely vulnerable to their behaviors and future interests. In the present circumstances, Pakistan's implied consent is difficult to determine from the outlook of strategic interests of both states in the region. The statements made by officials of both countries are not only contrary to each other but also exposing the susceptibility of such less-than-obvious agreement to confusion. In recent years, Pakistan's parliament has passed several unanimous resolutions condemning US drone strikes in the northwestern region of the country. These resolutions declare that drone attacks are the clear violation of territorial integrity and political independence of Pakistan and must be halted at once. The UN also unanimously adopted a resolution to condemn drone attacks in Pakistan. In *Congo v. Uganda*, the ICJ observed that a state must withdraw its troops if consenting state gives signals (even indirect) to do so. In this regard, the position taken by the highest lawmaking institution of Pakistan not only weakens the possibility of any implied consent but also puts a big question mark on its validity in international

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law. A secret consent document (if available) with no authenticating feature or unsigned does not have value or character to satisfy any legal standard.

The ground reality shows that Pakistan has been dealing with militancy within a law enforcement framework. Therefore, Pakistan's actions undermine the assertion that Pakistan is unwilling or unable to take action against militants within its territory, giving right to the US to conduct drone strikes in self-defense. In this situation, it is a challenge for the US government whether to justify drone attacks by expanding the de facto theater of war or by relying on Pakistan's implied consent.

### **Drone Strikes and the Law of Armed Conflict (LOAC)**

There is an argument that targeting individuals in Pakistan through drone strikes is taking place outside of war zone, thus, constituting unlawful killings under criminal law. The legal scholars term "counterterrorism actions as a war not purely academic, but rather a conscious political choice." (Downes, 2004, pp. 282-283) However, the tactical posture adopted by the US intelligence agencies especially Central Intelligence Agency (CIA) suggests that targeted killing of an individual through drone strikes using Hellfire missiles (an anti-armor air to surface missile) is not analogous to killing with a gunshot or with some less violent means. Launching a missile either by armed forces or by an intelligence agency irrespective of the target does not confirm it as a peacetime measure.

If it is resolved that targeted killing through drone strikes is an act of war against terrorism then its conduct is indisputably subjected to *lex specialis* of the LOAC, which forbids use of lethal weapons and attack against unlawful targets. (Detter, 2000) The applicability of LOAC primarily focuses on the concept of an armed conflict. In Common Article 2 to Geneva Conventions of 1949, armed conflict is defined as international and non-international armed conflicts. As the scope of the LOAC is limited in its applicability, so categorization of an armed conflict is necessary to identify appropriate rules within four parameters i.e. *Ratione Materiae* (material scope), *Ratione Personae* (personal scope), *Ratione Loci* (spatial scope) and *Ratione Temporis* (temporal scope).

*Ratione Materiae* (material scope) determines the situation in which law is applicable. The conflict between the US and non-state actors (al-Qaeda) is complex to determine whether it is an international or non-international armed conflict. When US armed forces launched an attack against Afghanistan in 2001, the Bush administration declared it as a global war against terrorism. Since no provision was available in international law dealing with any global

armed struggle against non-state actors, therefore, this conflict was categorized as an international armed conflict. Those who supported this notion argued that the US and Afghanistan under de facto Taliban government were two High Contracting Parties in the conflict to make a case for an international armed conflict. But, soon after the defeat of Taliban, a new situation arose when the US forces joined hands with the new Afghan government and became allies in the fight against terrorism. This situation completely changed the nature of the conflict because both states were no more adversaries and the conflict would no longer be an international armed conflict.

In the midst of such legal vacuum, the decision in *Hamdan v. Rumsfeld*, was the decisive factor when the US Supreme Court expressly rejected the executive's argument that the conflict was of international nature. Therefore, the US administration took a new position by considering the ongoing conflict a non-international armed conflict. If this perspective is workable, and the war against terrorism is considered a non-international armed conflict, then the legal framework applicable to drone strikes is Common Article 3 of the Four Geneva Conventions of 1949.

If there was a non-international armed conflict in Afghanistan then what would be the status of drone strikes in Pakistan. Pakistan is not engaged with al-Qaeda in non-international armed conflict rather it is dealing with isolated Taliban factions within its boundaries. Neither al-Qaeda nor Taliban are engaged with US armed forces in Pakistan. The relationship between Taliban groups and al-Qaeda can also be not a justifiable reason to conduct drone strikes in Pakistan. Therefore, it is obvious that the US targeted killing operation is outside the context of an armed conflict and is a kind of intervention in Pakistan's domestic law and order situation. The only possibility is that Pakistan requests the US to provide military assistance but again it is subjected to the level of hostilities taking place between Taliban and Pakistan government, and intensity of the conflict. The assistance being provided disproportional to the conflict and based on independent course of actions, which is not subject to the LOAC, cannot be justified as an act of war.

The personal scope (*Ratione Personae*) of applicability of the LOAC requires identifying those who are bound and those who are to be protected in an armed conflict. In a non-international armed conflict, the state forces and non-state actors both are bound by the LOAC. In Article 2 of the resolution passed by the Institute of International Law clearly states that "[a]ll parties to armed conflicts in which non-state entities are parties, irrespective of their legal status, have the obligation to respect international humanitarian laws." (Šahoviæ, 1999) As far as protected persons are concerned, they are



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those who in no circumstances be attacked in an armed conflict. Common Article 3 of the Four Geneva Conventions of 1949 and Article 4 of Additional Protocol II clearly state that “[a]ll persons who do not take a direct part or who have ceased to take part in hostilities shall in all circumstances be treated humanely, without any adverse distinction.” In the Fourth Geneva Convention, the irregular combatants or fighters are also considered to be protected persons.

There are views that terrorists conducting terrorist activities do not enjoy any protection under law. A person accused of terrorist acts in the context of an armed conflict does enjoy protection under Common Article 3 but depends upon the status whether he is civilian or combatant or irregular fighter. (Hamdan v. Rumsfeld, 2006) Here, one thing is important that the LOAC, based on principle of humanity, aims to provide some degree of protection and does not consider any preconceived notion about the accused whether he is a terrorist or not. (Neuman, 2003, pp. 283-298) However, if a person is accused of terrorist act outside the context of an armed conflict then he does not enjoy any protection under the LOAC, thus, must be dealt under criminal law or domestic law. In this way, targeting individuals in Pakistan and considering them as belligerents in the context of Afghan war is not a lawful practice.

Many scholars argue that CIA Drone pilots also do not fall under the personal scope of the LOAC. The remote pilot of drone sitting afar outside the context of an armed conflict does not enjoy combatant privileges; therefore, has no immunity. According to Article 43(2) of Additional Protocol I, a lawful combatant who has the right to participate directly in hostilities must be a member of the armed forces of a party to the conflict. The CIA is not a part of US armed forces. Nor is it subject to the military chain of command. Its drone pilots are civilians and have no right to participate in hostilities as lawful combatants. Article 51(3) of Additional Protocol I says that a civilian loses his protection if he takes direct in hostilities. In the case of drone strikes in Pakistan, these drone pilots cannot have any protection under the LOAC. David Glazier notes that “CIA drone pilots are liable to prosecution under the law of any jurisdiction where attacks occur for any injuries, deaths or property damage they cause.” (Hodge, 2010)

Pakistan is not a party to the Afghan conflict; therefore, killing any individual within its territory in this context does not fall under the legal framework of the LOAC. If a person residing in Pakistan is believed to be involved in terrorist activities outside Pakistan then there are only two possibilities: either he is charged with domestic laws or he is extradited to the state concerned for prosecution. In the Resolution 978 (1995), the UNSC urged that a “state to

arrest and detain a person found within its territory against whom there is sufficient evidence that he was responsible for [unlawful] acts, in accordance with national and international law."The presence of al-Qaeda terrorists in Pakistan can be dealt with Pakistan's domestic laws or relevant international laws but declaring them as belligerents in the context of Afghan conflict is not justifiable.

*Ratione Loci* (spatial scope) deals with the territory of belligerent states or spaces where effective fighting takes place. In case of non-international armed conflict, the LOAC applies to the whole territory of state; however, specific rules pertaining to combat only apply to the vicinity where actual fighting takes place. In *Prosecutor v. Jean-Paul Akayesu*, the ICT stated that "applicability *ratione loci* in non-international armed conflicts ... [Common Article 3] must be applied in the whole territory of the State engaged in the conflict." Therefore, in case of Afghan conflict, the LOAC is only applicable to the Afghan territory and any action taken outside of Afghanistan does not fall under its scope. The LOAC is entirely based on principles of sovereignty and does not allow violating territorial integrity and sovereignty of Pakistan.

*Ratione Temporis* (temporal scope) describes the situations in which law continues to apply or ceases to apply. The LOAC applies the moment an armed conflict begins or the moment a hostile act affects the first protected person. It is a simple rule to apply but the question as to when it ceases to apply is a bit complex. The Afghan conflict started the moment US armed forces launched its attack on Afghanistan. In Pakistan, US drone strikes do not fit in the context of the Afghan conflict; therefore, the question of determining when the LOAC continues to apply is irrelevant. However, there are two possibilities to determine the applicability of the LOAC; either they are considered as an armed attack on Pakistan or as a part of ongoing counterterrorism efforts made by Pakistan. There are voices in Pakistan considering these drone attacks as a violation of its territorial integrity and sovereignty and are unacceptable. Now, if these concerns, which are considered mere public statements, reach a level where clash of interests occurs then implied consent has no value.

### **Drone Strikes and Principles of Law of War**

In the light of above discussion, the scope of applicability of LOAC does not suggest that drone strikes in Pakistan are subject to *lexspecialis* of an armed conflict. The US administration hold that "targeted operations are conducted consistently with law of war principles,"(Koh, 2010)but the rhetoric of motives and robotic action on ground are apparently yielding a divergent behavior, more inflicting in nature than defensive. However, if drone strikes in Pakistan,

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with no other choice, are treated as an act of self-defense, then it is significant to assess these attacks under customary principles.

The necessity of an armed attack is to achieve definite military advantage based on clear objectives. If objectives are blurred or disproportionate to the situation on ground then it is difficult to achieve any definite military advantage. If rule of necessity is over stretched to achieve a military objective then it will not only endanger its basic purpose but also force to violate other customary principles. Choice of means to deal with anticipatory threats may be limited but a wrong choice always dilutes the efficacy of the purpose. The perceptible objective behind US targeted killing campaign in Pakistan is to kill “persons such as high-level al-Qaeda leaders who are planning attacks”(Koh, 2010) in order to secure “the complete submission of enemy [al-Qaeda] as soon as possible.”(US Army Field Manual on Law of Land Warfare, 1956, p. 164) Apart from this debate whether such broad objective is achievable at tactical level or not, it is more important to analyze the effects drone attacks are generating.

### **The Principle of Distinction**

The principle of distinction requires that attack must not indiscriminate and only limited to military objectives. The Hague Convention (V) Respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land (1907) prohibits targeting or attacking civilians and civilian objects. In case of drone strikes in Pakistan, there are two important factors to evaluate these attacks under the principle of distinction i.e. distinguishing between civilian and military targets, and indiscriminate attacks. Article 4 of Geneva Convention III of 1949 identifies the lawful combatants i.e. those who are members of armed forces or militia or volunteer corps of a party to the conflict or belong to an armed group organized under a chain of command, having distinct sign, carrying weapons openly and conducting operations in accordance with laws and customs of war. Article 44(3) of Additional Protocol I also requires that combatants must distinguish themselves from the civilian population. There is no available rule which suggests any other category that can be lawfully targeted.

The targets being hit in Pakistan do not meet the criteria to be lawful combatant as they are not engaged in actual hostile act; moreover, they are outside of the actual battlefield. In a sense they have ceased to take direct part in actual fighting. They are also not distinguishing themselves from civil population. They wear civilian dresses and hide in public places. In this situation, it is hard to determine even with the sophisticated cameras of drones that the target is a civilian or militant. ICRC suggests that “[i]n case of

doubt as to whether a specific civilian qualifies a direct participation in hostilities, it must be presumed that the general rules of civilian protection apply and that this conduct does not amount to direct participation in hostilities.”(Interpretative Guidance on Direct Participation in Hostilities, pp. 75-76)

Same is the case with drone pilots as they also do not distinguish themselves among civilians. They operate in a civilian environment not part of an armed conflict. According to ICT, an individual who does not fulfill the conditions for being a regular combatant will fall precisely under Geneva Convention IV and treated as civilian.(Prosecutor v Brdjanin, 2004)If we consider that terrorist elements in Pakistan are civilians, who have forfeited their protected status then are these drone strikes indiscriminate to avoid hitting non-military objectives. The facts on ground are evident enough to witness numerous civilian casualties including destruction of civilian objects. These attacks explicitly refute the claim of US officials that “procedures and practices for identifying lawful targets are extremely robust and advanced technologies have helped to make our targeting even more precise.”(Hoogh, 2006)

### **The Principle of Proportionality**

To assess the effects of drone attacks on civilians, in relation to the achievement of military objectives, the principle of proportionality is of paramount importance. Article 51 (5) of Additional Protocol I states that any kind of military action must be proportionate to the aim it seeks to be accomplished and incidental loss of civilian life must not be excessive to the objective anticipated. Showing commitment to these rules, the US Army Field Manual of Counterinsurgency states that “[p]reserve noncombatant lives by limiting the damage they do and assume additional risk to minimize potential harm.”(US Army Field Manual on Insurgencies and Countering Insurgencies, 2014)

In case of drone strikes in Pakistan, the rules of proportionality demand refrain from measures disproportionate to the threats being perceived. The targets being hit in Pakistan are either believed to be involved in terrorist activities or having intentions to do so. Therefore, attack on such targets must be proportional to future threats posed by them and the damage being done to the local population. Media reports and independent findings reveals that every drone strike in Pakistan causes more innocent casualties than its targeted objectives. The proportionality between objective and civilian losses cannot be rationalized if the US administration is just concerned to get success by hitting maximum persons on its hit list. The remote operators of drones sitting in front of a video console and having a joy stick in hand is

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neither bound to the LOAC principles nor does he feel any responsibility towards the deaths of innocent civilians. In such conditions, the purpose of eliminating al-Qaeda leadership to save American people from anticipated threats does not give right to the US to hit local population in Pakistan. It is, therefore, hard to establish whether targeted killing of militants is balancing against civilian losses or threats being perceived hypothetically.

### **Conclusion**

The point of this debate is to analyze that the US has no legal right to use force in Pakistan. Pakistan is not responsible for terrorist attacks nor is it effectively controlling militancy across the border in Afghanistan. The US has no expressed consent based on Pakistan's request to provide military assistance. If any such consent exists even then the assistance provided must not exceed the level of force which the receiving state itself has the right to use. Drone attacks are planned and conducted by the US independently, whereas, these attacks, as a supportive measure, must be a part of Pakistan's military strategy. Drone attacks do not correspond with Pakistan's requirements; therefore, these attacks are counterproductive for peace and security of Pakistan. Every drone strike is causing more death and raising more concerns, thus, creates more doubts about efficacy of targeted killing operations. The US targeted killing operations in Pakistan do not have the justification of any legal paradigm; even self-defense doctrine does not support them. Their conduct is out of the LOAC scope and largely conflicting with its basic principles.

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