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6 **Abstract**

7 With the advancement of technology, the shape and nature of warfare has changed. In recent
8 times, there has been the proliferation of armed drones technology and its usage. From when
9 drones were made operational in the Balkans war, they have been used particularly by the US
10 in places like Afghanistan, Yemen, Somalia and Iraq and controlled by the CIA. With these
11 rapid development and proliferations, machines are starting to take the place of humans in the
12 battlefield. The proliferation and usage of these armed drones poses challenges to the
13 principles of international humanitarian and human rights laws especially when they are
14 operated by non-military personnel like the CIA, the parameters of their detention and
15 prosecution. This paper therefore analyses the effects that the proliferation and usage of
16 armed drones has on the basic principles of international humanitarian and human rights law
17 and concludes that the ability of armed drones to carry out targeted killings without
18 exercising effective control over territory and without having the individual in custody,
19 threatens or presents dangers to the protection of life which is not only a concept of humanity
20 but a human rights violation and posit also that innocent civilians can be killed and indeed
21 have being killed in the process of their usage thence threatening the concept of distinction
22 and proportionality which are some of the cardinal principles of IHL and thence recommends
23 that there should be the regulation in the manufacture, possession and usage of these weapons.

24

25 ***Index terms***—

26 The Unmanned Killer Machine: The Proliferation of Armed Drones Technology, Strikes and Effects on
27 International Humanitarian and Human Rights Laws By Ibrahim Abdullahi Usmanu Danfodiyo University,
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The Unmanned Killer Machine The Proliferation of Armed Drones Technology Strikes and Effects on International Humanitarian and Human Rights. Strictly as per the compliance and regulations of:

The Unmanned Killer Machine: The Proliferation of Armed Drones Technology, Strikes and Effects on International Humanitarian and Human Rights Laws Introduction With the development of technology, the nature of warfare has changed rapidly. The invention of the aeroplane not only opened up the possibility of eliminating distances between continents, countries and people for the purposes of facilitating trade and discovery, but equally has distanced combatants several distances away from each other.

The first aerial bombardment was reported to have taken place on the 1st of November 1911 during the Italo-Turkish war in Tripolitania. On the 5th counterpart on the first aerial duel in history. Bombing techniques are now being improved upon through the combination of new technologies and in the decades that followed later, torrents of incendiary bombs destroyed whole cities of Guernica, Coventry, Dresden and Tokyo. The bombing of Hiroshima and Nagasaki ushered in the nuclear era which almost led to the collapse of humanity.

The development of new methods of warfare has led to the development of armed drones. Now, armed drones piloted at a distance of thousands of kilometres are dropping their arsenals on Afghanistan, Pakistan, Somalia, Yemen and Iraq. As it is often said, science has now gathered knowledge faster than society gathers wisdom. Over the years, the use of armed drones or unmanned aircraft for military and counter terrorism purposes has seen explosive growth. The usage of armed drones has led to the ability to commit acts of warfare without mobilizing conscripts, occupying territories and conducting vast land operations as was the case during the major wars of the twentieth century. The use of armed drones piloted a distance of thousands of kilometres makes it possible to reach an enemy who cannot fight back. The principle of distinction which requires participants in an armed conflict to differentiate themselves from civilian and which demands a distinction between lawful target and civilians stands at the core of IHL, so also is the principle of proportionality and humanity. But all these principles stand threatened through the use of armed drones in armed conflicts.

2 3

In 2010 alone, the United States President, Barack Obama's administration authorized more than twice as many armed drone strikes in North West Pakistan than it did in 2009. Third of all US military aircraft. In the conflicts in Vietnam in 1960, Bosnia and Herzegovina and Kosovo in the 1990's, drones were deployed on a significant scale by the United States of America for surveillance and reconnaissance purposes in the armed conflicts in these states. In 2012, the Syrian regime used drones to identify the location of rebel forces and equally for targeted killings of suspected terrorists especially in cross border operations.

What are drones? The basic object of this paper therefore is to look at the proliferation of armed drone technology, strikes and their interplay with the general principles of international humanitarian and human rights laws and concludes with recommendations.

There is no definition provided for drones in neither the Geneva Conventions nor the Additional Protocols or any other instrument applicable to international humanitarian law as it relates to drones. However, according to the US Federal Legislations adopted in 2012, the term drones were referred to as unmanned aircraft. Unmanned aircraft was defined as: "An aircraft that is operated without the possibility of direct human intervention from within or on the aircraft" 9

The etymology being the old English word for a male bee. In Palestine, the drones which make a buzzing noise were nicknamed Machay (wasps) by the Pashtu's.

According to the Oxford English Dictionary, a drone was defined as: "A remote-controlled pilotless aircraft or missile".

3 . b) Proliferation of Armed Drones

The term proliferation may mean different things to different people depending on the context with which one is using it. To the Biologist, it is the process of an individual organism growing organically from a single to a more complex level 11. To the legal minds and the sociologist, it may mean, a rapid increase in the number especially a rapid increase in the number of deadly weapons 12. It may also mean a process of becoming larger or longer or more numerous or more important 13. According to the press release from the office of the High Commissioner for Human Rights of 2012. However, the context in which the term proliferation of armed drones is used is in relation to the rapid increase in the number of armed drones in existence.

By June, 2010, over 40 states possess drone technology 14. By early 2012, the Pentagon was said to have 7,500 drones under its control, representing about one-third of all US military aircraft 15. A similar percentage of drones to piloted aircraft are expected within twenty years in the British Royal Air Force (RAF) 16. General Schwartz N.A of the US Air Force Chief of Staff was reported to have deemed it conceivable that drone pilots in the Air Force would outnumber those in cockpits in the foreseeable future, although he predicted that the US Air Force would have traditional pilots for at least thirty more years 17. The use of Unmanned Aerial Vehicles (UAV's) by police forces in connection with traditional law enforcement within a state's border has also been steadily growing though at a slower pace 18. In the US, increase powers has been given to local police forces across the USA to use their own armed drones 19. c) The Debate. The development of modern

103 technology which enables increasing distance to be put between weapons users and the legal force they project
104 by enabling those who control lethal force not to be physically present when they are deployed but rather to
105 activate it while Scientific development calls for alarm as scientific developments are leading to larger and faster
106 drones as prototype hummingbird drones were invented in 2011 which can fly at 11 miles per hour and perch
107 on a windowsill . sitting behind computers in distance places thus staying out of the line of fire, has sparked
108 out considerable debate as to the challenges which it poses to both international humanitarian and human
109 rights laws. Some of the arguments for the use of armed drones are as follows: 1. Notwithstanding the above
110 arguments, the International Committee of the Red Cross (ICRC) have emphasized that the deployment of such
111 systems raises . a range of fundamental legal ethical and societal issues, which need to be considered before such
112 systems of technology are developed and deployed ??8 As for the Special Rapporteur on extrajudicial summary
113 or arbitrary executions of the United Nations General Assembly, they have expressed the view that unmanned
114 Aerial vehicles or armed drones engaged in targeted killings raises concern for the protection of life under both
115 the framework of international human rights law as well as under international humanitarian law and sees the
116 right to life as a supreme and non-derogable right both under treaty and customary international law Public
117 International Law can be described as being composed of two layers: first is the traditional layer consisting of the
118 law regulating co-existence and cooperation between members of the international society essentially the states;
119 and the second is a new layer consisting of the law of the community of six billion human beings. Although,
120 international humanitarian law came into being as part of the traditional layer i.e. as a law regulating belligerent
121 inter-states relations, it has today become nearly irrelevant unless understood within the second layer namely
122 as a law protecting war victims against states and all others who wage war ??0 The principles of the law of
123 armed conflict also known as the law of war or international humanitarian law (IHL), are simple to summarise
124 for soldiers. Many militaries today carry pocket sized code of conduct that list the fundamentals; fight only
125 enemy combatants and destroy only military objectives; collected and care for the wounded, whether friend or
126 foe, do not attack or harm enemy personnel who surrender; do not kill, torture or abuse prisoners of war, treat
127 all civilians humanely; do not engage in rape or looting . 31 28 ICRC, "International Humanitarian Law and
128 the challenges of contemporary Armed Conflicts", Report of the 31 st International Conference of the Red Cross
129 and Red Crescent, ICRC, Geneva, October 2011, p.39, available at <http://www. Icr. Org/eng/assets/files/red-cross-crescent-movement/31-st-international-conference-ihl-challenges-report-11-5-1-2en.pdf> (last visited
130 on 10 th November 2014). ??9 See Christof H, "Report of the Special Rapporteur on extra judicial, summary or
131 arbitrary executions; Human Rights Council, Un /DOC . A/HRC/23/47 of 9 th April 2013, p.7.

132 See equally, Art. 68 the International Covenant on Civil and Political Rights, enshrining the right to life
133 and Art. 4 (2) on its non -derogability. ??0 Sassoli M, "State Responsibility for violation of International
134 Humanitarian Law" ICRC Vol. ??4, 2002, p. 401. 31 This statement of rules is an excerpt from the South
135 African National Defence Force's Code of Conduct for uniformed member of the South African Defence Force,
136 adopted on the 15 th February 2000, available at <http://www. Dcc. mal. za/code of conduct /files/english.htm>.
137 (Last visited on the 28 th October 2014).

138 . In the majority cases, adherence to these sorts of simple and ostensible obvious rules will guide a military
139 commander and his subordinates towards a form of warfare that respects the fundamental tenets of the law
140 of armed conflicts, humanity, military necessity, distinction, proportionality, precaution and the preventions of
141 unnecessary sufferings.

142 Unquestionably, these rules which form the core legal component of modern soldiers or military training will
143 serve as a useful humanitarian starting point for any conceivable military operations. Nevertheless, today's troops
144 are assigned roles that range from riot control to domestic counter insurgency to more traditional international
145 armed conflict, and they are expected and indeed required to grasp the legal nuances associated with the sliding
146 scale of conflicts. Failure to do so may have drastic consequences for the implicated troops. International
147 humanitarian law thus seeks to regulate the conduct of armed conflicts or the use of force with the consequent
148 view of protecting those who are no longer taking part in hostilities.

149 The most authoritative definition of an armed conflict is contained in the International Criminal Tribunal for
150 Yugoslavia (ICTY) Appeal Chambers decision on jurisdiction in the TADIC case ??2 In contemporary armed
151 conflicts, armed drones have nearly moved away from the horizon into the realm of the known to the effect that:
152 "An armed conflict exists wherever there is a resort of armed force between states or protracted armed violence
153 between governmental authorities and organized armed groups or between such groups within the state.." ??3 .
154 The report of the United Nations General Assembly on extrajudicial, summary or arbitrary executions 34 does
155 not see drones as illegal weapons ??5 i. Armed Drones and the Principle of Distinction . There however seems
156 not to be consensus on how to apply the rules of international law that regulate the use of force to drones inspite
157 of their proliferation and the established technology. Whether the view of the United Nations is correct can be
158 seen in the light of balancing the use of these drones with the principles of international humanitarian law as
159 follows:
160

161 The principle distinction was originally and conventionally articulated within the preamble to the St.
162 Petersburg Declaration of 1868 36 32 ICTY, Prosecutor Vs Dusko Tadic, Appeal Chambers decision of 2 nd
163 October 1995. ??3 See United Nations General Assembly, "Extrajudicial, Summary or Arbitrary Execution",
164 note by the Secretary General of 12 th August 2013, p.7. ??4 Ibid. ??5 Ibid. This view must however be
165 distinguished with its views with lethal autonomous robots. See Report Note 3 supra. ??6 Precisely on the 11 th

3 . B) PROLIFERATION OF ARMED DRONES

166 of December 1868, following a meeting convened by Tzar Alexander II intended to attenuate as much as possible
167 the calamities of war.

168 . A recent codified expression of this norm is found within Additional Protocol 1 to the General Convention
169 37 "In order to ensure respect for and protection of the civilian population and civilian objects, the parties to the
170 conflict shall at all times distinguish between civilian population and combatants and between civilian objects
171 and military objectives and accordingly shall direct their operations only against military objectives"

172 . The said Additional Protocol 1 provides thus: 38 This principle obliges the belligerents to distinguish at all
173 times between non-combatants and combatants as well as between civilian's property and military objectives .
174 ??9 . Consequently, military operation may only be directed against military objectives. There is therefore a
175 duty of care, which is imposed upon those who plan military operations. Thus, in planning an attack, everything
176 feasible must be done to verify that the objective to be attacked is neither civilian nor a civilian object but in fact
177 a legitimate military objective. This is an obligation of means but not an obligation of results. If there is doubt
178 that a civilian object is being used to make an effective contribution to military action, it must be presumed not
179 to be used and must not be attacked 40 (a) Is not directed at a specific military objective or, . Even though in
180 practical terms this is often not the case.

181 The Corollary to the principle of distinction is that attacks must not be indiscriminate.

182 An indiscriminate attack is defined as being one which:

183 (b) Employs a method or means of combat which cannot be directed at a specific military objective; or (c)
184 Employs a method or means of combat, the effects of which cannot be limited as required by Additional Protocol
185 41

186 37 See Art. 48 of AP 1, 1977.

187 38 Ibid. ??9 It is interesting to state however the following comments of the United States Department of
188 Defence Report to congress on the conduct of the Persian Gulf War, Appendix on the Rule of the law of war
189 (Hereinafter referred to an "the Gulf War Report") reprinted at 311 LM 612 (1992), that Article 48 AP 1 states
190 that attacks means: acts of violence, against an adverse party whether in offence of defence. The use of the word
191 attack is however etymologically inconsistent with its customary use. The word "attack" historically has referred
192 to and today refers to offensive operations only. The language of Articles 48 and 49(1) except for the European
193 use of the word "attack", is generally regarded a codification of the customary practice of notions and therefore
194 not binding on all. 40 See Article 52 AP 1. When the Gulf War report was issued, this disposition was criticized
195 as not reflecting customary international law as it shifts the burden for determining the precise use of an object
196 from the part controlling that object (and therefore as possession of the facts as to its use) to the party lacking
197 such control of war in demanding a degree of certainty of an attacker that seldom exists in combat.

198 41 See Rogers A. P. V, Law on the Battle Field (Manchester University Press, Manchester, New York) 1996,
199 p.8. Similarly, taking direct part in hostilities must be more narrowly construed than making a contribution to
200 the efforts and it would not include taking part in arms production or military engineering works or military
201 transport.

202 Furthermore, civilian and civilians' objects may not be object of reprisals ??2 . The failure to make a distinction
203 during attack would render the attack unlawful and constitute evidence of war crimes. States must therefore
204 take all practical or practicable possible precautions in the choice of means and methods of attack with a view
205 to avoiding and in any event to minimizing, incidental loss to civilian life, injury to civilians and damage to
206 civilian objects 43 "Intelligence personnel do not have immunity from prosecution under domestic law for their
207 conduct. They are thus unlike state armed forces which would generally be immune from prosecution for the
208 same conduct... Thus, CIA personnel could be prosecuted for murder under domestic law of any country in
209 which they conduct targeted drones killings and could also be prosecuted for violations of applicable US law" .
210 The precautionary duties imposed on a person who controls an armed drone are the same as those imposed on
211 the pilot of a manned aircraft. This does not reduce their duties because of the absence of a person from their
212 cockpit.

213 The UN Special Rapporteur on extra judicial, summary or arbitrary execution, Philip Alston has noted the
214 CIA involvement in drone warfare thus: which narrows down the options regarding CIA drone operators. By
215 the said prosecution, it is both a violation of domestic law as well as IHL violation. If this is understood to be
216 the position, then, United States is under an obligation to prosecute CIA drones operators that have used lethal
217 force if those operators are civilians engaged in direct participation in hostilities ??6 . The act of the CIA drone
218 operations may equally amount to grave breaches of the laws of war. The US has not deemed it fit to punish
219 drone operators but this does not preclude their prosecution in foreign courts though both Italy 47 and Spain
220 48 have attempt this with no success ??9 "Those CIA agents are, unlike their military counterparts but like the
221 fighters they target, unlawful combatants. No less than their insurgent targets, they are fighters without uniforms
222 or insignia, directly participating in hostilities, employing armed force contrary to the laws and customs of war.
223 Even if they are sitting in Langley, the CIA pilots are civilians violating the requirement of distinction, a core
224 concept of armed conflict, as they directly participate in hostilities... It makes no difference that CIA civilians
225 are employed by, or in the service of the US government or its armed forces. They are civilians, they wear no
226 distinguishing uniform or sign, and if they impute target data or pilot armed drones in the combat zone, they
227 directly participate in hostilities which means they maybe lawfully targeted... Moreover, CIA civilian personnel
228 who repeatedly and directly participate in hostilities may have what recent guidance from the International

229 Committee of the Red Cross terms "a continuous combat function". That status, the ICRC guidance says, makes
230 them legitimate targets whenever and wherever they may be found, including Langley" . While the US are
231 prompt at making use of the notion of unlawful combatants, it is argued that the CIA drone attacks produces
232 America's own unlawful combatants or unprivileged belligerents. This view was succinctly put forward by Gary
233 Solis where he opined thus: 50

234 The CIA drone operation would however qualify as unprivileged belligerents if it is shown that the drone
235 operators are members of a paramilitary group or armed law enforcement agency that have been incorporated
236 into the US armed forces. Article 43(3) of Additional 47 See Italian bid to induct US Soldier, CNN (June 19, 2006),
237 also available at <http://articles.cnn.com/2006-06-19/world/iraq.italy-1-italian-intelligence-agent-nicola-calipari-soldier?-s=pm:WORLD>. ??8 The proliferation and use of armed drones present a challenge to the principle of
238 distinction relating to who operates them which is a critical issue under IHL. The question has always been
239 as to whether the CIA drone operators are civilians directly participating in hostilities (DPH)? to make them
240 legitimate targets and whether there is any way they might acquire combatant status? Thus the control of armed
241 drones by non-military personnel has created another distinction problem even though their development was
242 arguably to comply with the requirements of destruction under IHL. IHL is quite silent on the right to strike back
243 at them, the parameters, of their detention and prosecution in the domestic sphere. The question has always be
244 whether the civilian involvement in armed drone operation is a potential violation of principle of distinction and
245 if permission can be given to civilian involvement on the operation of armed drones?
246

247 Protocol 1 51 Such incorporation exist where there is a chain of command and evidence of being trained in
248 the laws of war and whether the chain of command enforces the laws of war. Evidence abound to show that the
249 CIA drones operators began to receive law of war training within the few months following the terrorist attacks
250 of September 11, 2001 which deals with combatants and prisoners of war status states as follows:

251 "Whenever a party to a conflict incorporates a paramilitary or armed law enforcement agency into its armed
252 forces, it shall so notify the other parties to the conflict".

253 4 52

254 In Pakistan, a three month investigation including eye witness reports has found evidence that at least 50
255 civilians were killed in follow up strikes when they had gone to help victims. More than 20 civilians have also
256 been attacked in deliberate strikes on funerals and mourners . Less clarity however exists to show how the CIA's
257 chain of command enforces the laws of war. If they do enforce the laws of war, they are combatants entitled to
258 the combatant's privilege but also liable to be targeted at all times. If the chain of command does not enforce the
259 law, the CIA drone operators remain unprivileged belligerents who could face domestic criminal prosecution in
260 places like Yemen and Pakistan and they would remain targetable at all times as continuous combat functionaries
261 rather than as combatants. ??3 . In March 2012, Noor Kharis father, Malik Daud Khan was killed in a drone
262 strike in Pakistan in 2011 while presiding over a peaceful council of tribal elders 54 51 Protocol Additional
263 to the Geneva Convention of 12 th August 1949 and relating to the protection of victims of International
264 Armed Conflicts. Though the United States has not ratified Protocol 1, it recognises much of Protocol 1 as
265 descriptive of customary international law. For example, a statement issued by the Obama's White House in
266 2011 announced the intention of the administration to accept the applicability of Article 75 of Protocol 1. See
267 Press Release, White House Office of the Press Secretary, facts sheets, new actions on Guantanamo and Detainee
268 Policy, 7 th March 2011 also available at . In 2009, the Pentagon roster approved terrorist targets containing
269 387 names which were further expanded to include some fifty Afghan drug lords suspected of giving money
270 to help finance the [http://www. Whitehouse.gov/the-press-office/2011/03/07/fact-sheet-new-actions-guantanamo-and-detainee-policy](http://www.Whitehouse.gov/the-press-office/2011/03/07/fact-sheet-new-actions-guantanamo-and-detainee-policy). ??2 Ambassador Henry Crumpton, Former Deputy Chief Operation, CIA Counter
271 Terrorism Centre, keynote address at the Texas International Law Journal Symposium: "The Air and Missile
272 Warfare Manual: A Critical Analysis", 10 th February 2011. ??3 Chris Wood and Christian Lamb, "Obama
273 Terror Drones, CIA tactics in Pakistan includes targeting rescuers and Funerals" In: Bureau of investigative
274 journalism, 4 th February 2012. Also available at [http://www. the bureau investigate.am/2012/02/04/obama-terror-drone-cia-tactics-in-pakistan-include-targeting-rescuer-and-funerals](http://www.the-bureau-investigate.am/2012/02/04/obama-terror-drone-cia-tactics-in-pakistan-include-targeting-rescuer-and-funerals). ??4 See GCHQ, "Staff could be at
275 risk of prosecution for war crimes", In: Gloucester Echo, 13 th March 2012, also available at [http://www.this is Gloucestershire.co.uk/GCHR-staff-risk-prosecution-war-crimes/story-15505982-detail/story.html](http://www.this-is-gloucestershire.co.uk/GCHR-staff-risk-prosecution-war-crimes/story-15505982-detail/story.html).

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279 Taliban's 55 . In Afghanistan, individuals engaged in the cultivation, distribution and sale of narcotics were
280 targeted with armed drone strikes even though not directly participating in hostilities in Afghanistan ??6 ii.
281 Armed Drones and the Principle of Proportionality .

282 The principle of proportionality limits the effects of attack by attempting to establish a balance between the
283 military interest and the humanitarian interests. In planning and executing military operations, military planners
284 must take all feasible and reasonable precautions in the choice and methods of attacks in order or at least to
285 minimize incidental loss of civilian life, injury to civilians and damages to civilian objects. ??7 (i) Collecting
286 information about the target; This includes:

287 (ii) Analyzing the information to determine whether the target is a lawful target for attack at the time
288 of the attack; (iii) Appreciating the potential incidental effects of the weapon and taking feasible precaution
289 to minimize those effects; (iv) Assessing the "proportionality" of any expected incidental effects against the
290 anticipated military advantage of the overall attack (not just the particular attacks of the individual weapons);

291 58 (v) Firing, releasing or otherwise using the weapons such that its effects are directed against the desired target;
 292 (vi) Monitoring the situation and cancelling or suspending the attack if the incidental effects are disproportionate.
 293 ??9 The above simply means that should it became apparent that the object to be attacked is not a legitimate
 294 military objective, that the attack maybe expected to cause incidental loss of civilian life or damage to civilian
 295 objects, or a combination thereof, which would be excessive in relation to the concrete and military advantage
 296 anticipated, the attack must then be cancelled.

297 Assessing the proportionality of an attack is even more important and often even more difficult. Despite the
 298 fact that international humanitarian law pursues the overall aim of limiting civilian casualties and damages as
 299 far as possible, it does not really prescribe any absolute limit in relation to "collateral damage". Thus, a very
 300 considerable military advantage could potentially justify significant civilian damages and even casualties that
 301 are extensive as opposed to excessive collateral damage. ??0 The details of the proportionality principle and its
 302 application in practice could still be worked out more completely then they have been today. The question may
 303 then be asked, what are the relative values to be assigned to the military advantage gained and the injury to run
 304 combatants or damage to civilian objects? What do you include or exclude in totalling your sums? And what is
 305 the standard of measurement in time or space? ??1 The spectrum of opinion is not closed but wide. Moderate
 306 position excludes the consideration of indirect civilian damages but try to sketch out where to draw the link
 307 between indirect damages that maybe considered and those that should not.

308 International humanitarian law answers to these questions are rather in the abstract. While a military
 309 commander deciding upon an attack must determine the relative value given to the military advantage against
 310 that attributed to the anticipated damage on the civilian side, normative guidance regarding the margin of
 311 discretion in the identification of the military advantage and its relative value is rather frail. As a corollary to
 312 the debate of the military advantage is the question of how far is direct civilian damages resulting from an attack
 313 are to be taken into consideration. The wordings of Article 51 paragraph 5(b) and Article 57 paragraph 2(1)
 314 of Additional Protocol I would seem to suggest that the concept of anticipated civilian casualties and damages
 315 is to be interpreted at least as broadly as the notion of the military advantage, otherwise the proportionality
 316 assessment would be distorted from the outset in favour of military consideration. Moreover, these two articles
 317 require explicitly that the anticipated military advantage be concrete and direct, where no such limiting qualifies
 318 were added to the expected incidental civilian damages, the word 'incidental' is certainly broader than the
 319 objectives 'concrete and direct'. Similarly, it would seem that the conception of what maybe expected (incidental
 320 loss of civilian life, injury to civilian, damage to civilian object or a combination thereof) from an attack is broaden
 321 than what is actually anticipated (military advantage). Thus, in line with the fundamental tenet that the civilian
 322 population enjoys general protection in general, foreseeable long-term repercussions on civilian population are
 323 to be taken into consideration or account in the context of the proportionality assessment. 63 (i) A lack of full
 324 knowledge as to what is being hit notwithstanding the availability of surveillance equipment;

325 There are three manners in which the principles of proportionality are often violated. These are:

326 (ii) The inability to surgically craft the amount of force been applied to the target; and (iii) The inability to
 327 ensure that weapons, strikes, precisely at the point targeted.

328 The principle of proportionality of course raises some practical problems. These problems arise from the
 329 fact that different states have different assessment of what is proportionate. For example in March, 2011, in
 330 Afghanistan, difference occur when a UK Royal Air Force drone killed four Afghanistan civilians and injured
 331 four others in an attack against insurgent leader in the Helmand Province, the first confirmed operation in which
 332 a UK Reaper aircraft had been responsible for the death of civilians. ??4 In this particular scenario, the UK
 333 Reaper was programmed to destroy two pick-up trucks but ended up killing four Afghan civilians and a further
 334 two Afghan civilians were injured but nonetheless the UK held that the UK Reaper crews action had been in
 335 accordance with procedures and UK rules of engagement. ??5 Similarly in June, 2009, the CIA killed Khwaz
 336 Wali Mehsud, a Pakistani Taliban Commander. The initial plan was to use his body as bait to target Baitullah
 337 Mehsud, who was expected to attend Khwaz Walis Mehsud's funeral. Up to 5,000 people attended the funeral,
 338 including not only Taliban fighters but many civilians. US armed drones were used to conduct yet another strike
 339 killing up to eighty-three people. Forty five of the dead were reportedly civilians, amongst which were ten children
 340 and four tribal leaders. Such an attack raised the very sensitive question about respect for the prohibition on
 341 indiscriminate attacks and proportionality. The CIA conducted sixteen missile strikes which resulted in 321
 342 deaths before they could manage to kill Baitullah Mehsud. ??6 iii. Armed Drones and the Principle of Humanity

343 The conventional origin of the principle of humanity can be found in the preamble to the St. Petersburg
 344 Declaration on explosives projectiles of 1868. The Declaration through its following preamble left a mark and
 345 also set forth the first principle of the law of war as follows:

346 "Considering that the only legitimate object to be accomplished during war is to weaken the military force of
 347 the enemy, that for the purpose, it is sufficient to disable the greatest possible number of men; that an object
 348 would be exceeded by the employment of arms which uselessly aggravate the suffering of disabled men, or render
 349 their death inevitable, that the employment of such arms would therefore be contrary to the laws of humanity" 67
 350 "Suffering is useless, it is militarily unnecessary and because it offers no direct and concrete military advantage,
 351 disproportionate" Evidence of the importance of the above principle is the fact that it is also one of the seven
 352 fundamental principles of the Red Cross and Red Crescent movement.

353 The principle of humanity is based upon the desire to maintain dignity during military operations by respect

354 of the human being. A great many rules of humanitarian law applicable in armed conflicts are so fundamental to
355 the respect of the human person and elementary consideration of humanity. The goal of this principle to reduce
356 and alleviate sufferings caused by war of armed conflicts. As Professor Schmitt cogently argues: 68 One of the
357 most important conventional expression of the principle is to be found in the text of the MARTENS CLAUSE,
358 which first appeared within the preamble of the Hague Convention 69

359 The Marten Clause predates the general principle of public international law resulting from the steamship
360 Lotus case. as follows:

361 "Until a more complete code of the laws of war has been issued, the high contracting parties deem it expedient
362 to declare that in case not included in the regulations adopted by them, the inhabitants and the belligerents
363 remain under the protection and the rule of the principle of the law of nations, as they result from there usages
364 established among civilized people, from the laws of humanity and the dictates of the public conscience"

365 5 The effect of the Martens

366 Clause is two folded and limited to international agreement that deals with the law of armed conflicts; that where
367 the law of armed conflict treaties are silent, customary international law governs the situation. Secondly, during
368 the conduct of hostilities, what is not specifically prohibited is not necessarily permitted. Different versions of
369 the Martens Clause appear throughout the corpus of the law of armed conflicts. ??1 "In cases not considered
370 by this Protocol or by other international agreements, civilian and combatants remains under the protection and
371 authority of the principle of international law derived from established customs, from the principles of humanity
372 and from the dictates of public conscience"

373 The most recent expression of this clause reads as follows:

374 72 Under international Human Right Law, the right to life is widely regarded as the "Supreme Right". ??3
375 While its exact scope can be contested, there is however no serious challenge to the fundamental status of the right.
376 ??4 The right against the arbitrary deprivation of life has been described as a rule of customary international law
377 as well as a general principle of international law, a rule of jus cogens. ??5 It is further included in the United
378 Nations Declaration of Human Rights, 76 largely regarded as setting out rules of general international law. The
379 right to life is similarly regarded in the constitution of most legal system as a fundamental right 77 and unlawful
380 killing is universally criminalized and certain violations of the right to life are considered to be war crimes or
381 crimes against humanity. ??8 As a general rule, human rights treaties statutory deprivation of life must not be
382 arbitrary. The use of force is, in any event, a matter of last resort under International Human rights Law (IHRL).
383 Any force must be necessary and proportionate and international force can only be used where strictly necessary
384 to protect against an imminent threat to life. The contention is that standards of human rights law remains the
385 same even in situations of approaching armed conflicts and should be applied in ways that are realistic in the
386 circumstance.

387 Even in periods of armed conflicts, IHRL continues to apply during the armed conflicts to complement IHL.
388 ??0 The judgment of the International Court of Justice (ICJ) in the Construction of a Wall case, ??1

389 6 Conclusion

390 the Inter American Commission concluded that the shooting down of two private US registered air planes by
391 Cuban military aircraft in international space violates the right to life of the passengers.

392 The deliberate killing of targeted individual through extra territorial drone strikes does not only affect the
393 person within the jurisdiction of the operation state but a violation of the principle of humanity.

394 Revolutionary technologies like armed drones are game changers not because they solve all problems but
395 because they force new questions upon us that a generation earlier people did not imagine we would be asking
396 ourselves or our respective organizations or nations imagining questions. Scientific and technological developments
397 does not necessarily mean progress and the decisions to apply an invention for military purposes must give rise
398 to an in-depth study on the impact of the use of the inventions, including the positive and negative consequences
399 thereof. Likewise, each decision to produce, by ultimately another technological innovation for military ends
400 involves a political and civil responsibility, one that is all the more important in that it has direct repercussions
401 for human lives. States have an obligation to ensure that the use of new weapons and new means and methods
402 of warfare is consistent with the rules of international humanitarian law. Civil society equally have an important
403 role to play by reporting on the consequences of weapons and charting a debate about their legality and this
404 will help to shape a real international "public conscience" as referred to in the Martens Clause to the effect that:
405 "In cases not covered by this Protocol, or by other international agreements, civilians and combatants remain
406 under the protection and authority of the principles of international law derived from established, customs, from
407 the principles of humanity and from the dictates of public conscience" 89 "... It had proved to be an effective
408 means of addressing the rapid evolution of military technology..." ??2 Armed drones have been used to carry
409 out targeted killings without exercising effective control over a territory and without having the individual in
410 custody which poses a danger to the protection of life which is not only a concept of humanity but a human
411 rights violation. Innocent individuals in the process have been Article 36 of the 1977 Additional Protocol 1,
412 obligates parties to respect and to ensure respect for international humanitarian law (IHL) whether or not it is
413 a party to the Protocol, to conduct legal analysis of weapons before its deployment and usage. However all the

6 CONCLUSION

414 states reportedly in possession of drones and drones technology have not made public their own analysis. The
415 problem of who is criminally responsible in cases of unlawful strikes making use of armed drones remains largely
416 unanswered. Non-state armed groups it is argued with time can procure drones technology or even hack into the
417 operations of a state controlled drone and assume control, leading to unimagined nastier experiences judging by
418 the history of weapons technology. ??9 Art 1(2) Additional Protocol 1. See also the preamble to the 1907 Hague
419 Convention IV respecting the laws and customs of war on land and preamble to the 1899 Hague Convention II
420 with respect to the laws and customs of war on land. ??0 See ICJ, Legality of the Threat or use of Nuclear
421 Weapons, Advisory Opinion, 8 th July, 1996, ICJ Reports (1996). P, 226.

422 The International Court of justice (ICJ) has emphasized the importance of this clause in its Advisory Opinion
423 on the legality of the threat or use of Nuclear Weapons 90 where the ICJ was of the opinion that the "continuing
424 existence and applicability of the Martens Clause was not to be doubted. ??1 The court similarly held that:
425 killed thus threatening the concept of distinction and proportionality which are some of the cardinal principles
426 of international humanitarian law. Regulation in the manufacture, possession and usage of these weapons are
427 hereby advocated. This can be done through:

428 (i) The various Human Rights Council calling on all states with drones and drones technology to declare and
429 implement national moratoria on at least the testing, production, assembly, transfer, acquisition, deployment
430 and use of armed drones, until such a time as an internationally agreed upon framework can be established.
431 (ii) Emphasizing the need for full transparency regarding all aspect of this development of drones system. (iii)
432 Seek for more international transparency from states regarding their internal weapons review process, including
433 those under article 36 of the Additional Protocol 1 to the Geneva Conventions. (iv) To developers of drone's
434 technology, there is the need to establish a code or code of conduct, ethics and or practice defining responsible
435 behaviour in accordance with IHL and IHRL. (v) NGO's, civil society and human rights groups as well as the
436 international committee of the Red Cross can assist in urging states to be transparent as possible in respect of
437 their weapons review processes and consider the implications of armed drones for human rights, principles of
international humanitarian law and for those in situations of armed conflicts and raise awareness about the issue.



Figure 1: 44

438

1 2 3 4 5 6 7 8

Figure 2:

79

71 See Geneva Convention 1, Art 63, Geneva Convention IV, Art 58, Additional Protocol 1, Art 1.

72 Additional Protocol 1, Art 2.

73 See General Comment No. 6, the Right to life 1982.

74 United Nations: "Extra Judicial, Summary or Arbitrary Executions, Report of Special Rapporteur", 2013. p. 13.

75 Ibid.

[Note: 76 Of 1948, Art 3.77]

Figure 3:

[Note: 88II.]

Figure 4:

80 See legality of the Threat or use of Nuclear Weapon, Advisory Opinion (1996) ICJ Rep 226, Para 24-25; Legal consequence of the construction of a wall in the occupied Palestine Territory of 9 th July, 2004, para 106.

81 Ibid.

82

CCPR/C/21/REV.I/Add.13 2004.

83 Case No. 10 .951, Report No. 109/00, /ACHR, 29 th September, 1999, para 37.

84 Application No. 55721/07 Grand Chamber Judgment, 7 th July, 2011, P. 47-72, para 106 -186.

85 (1997) 23 EHRR 513.

86 (2005) EHRR 46 para 312.

Human Rights Committee,

[Note: 87]

Figure 5:

¹Asimov I, and Shulman J.A, Science and Nature Quotations, Blue Cliff Edition, Weidenfield, Nicholson, New York, 1988, p.281. ³ US Department of Defence, "US Unnamed System integrated Road Map" (Fiscal years 2009(Fiscal years -2034)), Washington D.C 2009, p.2.4 Bergen Peter, and Tiedemann Katherrine, "Hidden War, there were more drone strikes and far' fewer civilians killed" In: New American Foundation, 22 nd December 2010, available at <http://newamerica.net/node/41927>.

²Hennigan W. J, "New Drones has pilot anywhere, so who's accountable?" In Los Angeles Times, 26 th January 2012 available at http://www.atimes.com/business/la-fi-aato-drone-20120126,0,740306_story.6 "Syrian forces used drone in attacks in rebel city" In ABC News, 12 th June 2012, Also available at <http://www.abc.net.au/new/2012-0612/52-killed-in-Syria-as-troops-point-rebels-strongholds/4064990.7> Elizabeth Bumiller and Thom Shanker, "War evolves with drone, some tiny as bugs" In: New Yale Times of 19 th June 2011. Available at

³See "Proliferation", a free online dictionary at <http://www.the-free-dictionary.com>, P.2 accessed on 25/10/2014. ¹² Ibid.¹³ Ibid.¹⁴ See Press Release, office of the High Commissioner for Human Rights (OHCHR), UN Expert Citizens "Illegal Targeted Killing Policies and calls on the U.S to halt CIA Drone Killings" (June 2 nd 2010), available at http://www.ohchr.org/en/news_events/pages/DisplayNews.aspx?NewsID=10194&LangID=E.15 See Hennigan W.J. (etal) op cit.¹⁶ See Hopkins N, "Afghan Civilians killed by RAF Drone", In the Guardian, 5 th July 2011, available at <http://www.guardian.co.uk/2011/July/05/afghanistan-raf-drone-civilian-deaths>, accessed on 14/10/2014. ¹⁷ See Elizabeth Bumiller Op cit. ¹⁸ "Groups concerned over arming of domestic drones", In CBSDC,

⁴See Bernard V, "Editorial: Science cannot be placed above its consequences", International Review of the Red Cross, Volume 94 Number 886, 2012, P. 461.²¹ Ibid.²² Ibid at pp461 -462. ²³ Ibid at pp 461. ²⁴ Ibid at pp 462.²⁵ Philip Alston and Hina Shamsi., "A Killer above the law", In the Guardian, 2 nd August 2010.²⁶ See Bernard V, "Editorial: Science cannot be placed above its consequences", op cit at p. 460.²⁷ Ibid at pp460 -461.

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⁶Jane Mayer, "The Predator War" In: the New Yorker, 26 th October 2009, available at <http://www.newyorker.com/reporting/2009/10/26/091026Fa-Fact-mayer.56> See "The 2010 study on targeted Killings", available at <http://www.2ohcr-org/English/bodies/hrcouncil/docs/14session/A.HRC.14.24Ad6.pdf>.⁵⁷ See Additional Protocol 1, Art 57 (2) (ii) and Art 57 (4).⁵⁸ See for example, Australian Declaration of understanding to the effect that military advantage in Articles 51 and 57 of AP1, mean "the advantage anticipated from attack considered as a whole and not for isolated or particular parts of the attack" -Reprinted in Adam Roberts and Richard Guelff, Document on the Laws of War, 3 rdEdn, Oxford University Press, 2000, p. 500.

⁷Gerb R, (et al). "Has the Armed Conflict in Afghanistan affected the rule on the Conduct of Hostilities?", International Review of the Red Cross, Vol. 93, No. 881 of March, 2001, p. 31. ⁶⁴ See Nick Hopkins, "Afghan Civilians killed by RAF Drone", In the Guardian, 5 th July, 2011, available at <http://www.guardian.co.uk/2011/jul/05/afghanistan-raf-drone-civiliandeaths>.

⁸The Unmanned Killer Machine: The Proliferation of Armed Drones Technology, Strikes and Effects on International Humanitarian and Human Rights Laws