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# Legality of Targeted Killings by Drone Attacks in Pakistan

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War on terror has called into question many legal paradigms of public international law. To probe into any other aspect of the US policy of target killings by drone attacks in Pakistan, exploring the legal basis of this logic is very critical. In following section I will discuss the position taken by U.S. and counter arguments to that position in the light of ILOAC, domestic U.S. law and public international law. Lawyers have often struggled to find some rationale of drones in International law of Armed Conflict (ILOAC) and International Human Rights law (IHRL). However, use of drones is not covered by any so far. ICRC has not come up with clear explanation due to changing nature of the warfare<sup>1</sup>.

Jonathan Manes, a legal fellow of National Security Project of the American Civil Liberty Union's said "The public has a right to know whether the targeted killings by predator drones being carried out in its name are consistent with international law and with the country's interests and values...The Obama administration should disclose basic information about the program, including its legal basis and limits, and the civilian casualty toll thus far." ACLU released a media advisory after the lawsuit filed on March 16, 2010 against federal agencies, Defense Department, the State Department and the Justice Department,<sup>2</sup>. The CIA answered the ACLU's request by refusing to confirm or deny the existence of any relevant documents<sup>3</sup>. On March 16, 2010 ACLU has filed a lawsuit after neglected to answer a Freedom of Information Act request seeking specific information about procedures of targeting and data of civilian casualties caused by military's predator drones. On March 25, 2010 Legal advisor of State department, for the first time since 2002, came up with legal response to questions raised by lawyers.

U.S. government has taken a stance in the light of ILOAC that U.S. is at war with Al Qaida, Taliban and their affiliates<sup>4</sup>. U.S envisages drone attacks an extension of 'war' on terrorism. According to ILOAC, a combatant is one who takes direct part in conduct of hostilities<sup>5</sup>. Koh has described that Taliban are not political leaders, but "belligerents" so targeting them is lawful according to ILOAC<sup>6</sup>. However, there is no consensus among experts about legal status of Taliban. They do not fulfill the two conditions of article 4 of Third Geneva Convention: first, having 'fixed distinctive sign visible from a distance' and secondly they do not carry arms openly e.g. suicide bombers. So they may be declared "unlawful combatant" or "unprivileged combatants". An objection to this position is raised by some experts that terrorists are civilians living in population so they deserve more protection<sup>7</sup> and they are not taking direct part in the conduct of hostilities at the time of drone attacks. Human Rights Watch opines that

warring parties are themselves responsible for keeping the military targets away from civilian population.

Human Rights Watch commented in its report about Israel, "International humanitarian law does not prohibit fighting in urban or residential areas, although the presence of civilians places greater obligations on warring parties to take steps to minimize harm to civilians. These include: avoiding locating military objectives within or near densely populated areas; endeavoring to remove the civilian population from the vicinity of military objectives; and not deliberately seeking to prevent attacks on one's forces by mingling with civilians or using them as "human shields."<sup>8</sup> In the absence of any armed conflict in Pakistan, it will be highly questionable to call Pakistani population as "warring party to conflict". However, targeting civilian population and civilian targets is clearly prohibited according to ILOAC<sup>9</sup> and International Criminal Court<sup>10</sup>.

However, there are two other issues of necessity and proportionality about use of force to neutralize the enemy and there are diverging opinions on this subject. Experts argue that if it is necessary to neutralize the enemy and use of force is proportional to the threat posed by the target then it falls within the purview of ILOAC. Next section deals with two important legal questions: First, according to international or domestic law use of drones is legal or not. Second, how U.S. legally defends targeted killings and what are views of international stakeholders on this issue.

### **Can US Drones Operate in Pakistan?**

Other than International law, domestic laws are also referred to legitimize the drones operations. On March 25, 2010, U.S. has first time taken a legal position on the use of drone attacks which is summarized in the following:

**First**, 'as a matter of international law, the United States is in an armed conflict with al-Qaeda, as well as the Taliban and associated forces, in response to the horrific 9/11 attacks, and may use force consistent with its inherent right to self-defense under international law<sup>11</sup>.

**Second**, as a matter of domestic law, Congress authorized the use of all necessary and appropriate force through the 2001 Authorization for Use of Military Force (AUMF) law. These domestic and international legal authorities continue to this day<sup>12</sup>.

**Third**, 'Of course, whether a particular individual will be targeted in a particular location will depend upon considerations specific to each case, including those related to the imminence of the threat, the sovereignty of the other states involved, and the willingness and ability of those states to suppress the threat the target poses'<sup>13</sup>.

Particularly about Targeting, Koh mentioned:

**Fourth**, 'some have suggested that the very act of targeting a particular leader of an enemy force in an armed conflict must violate the laws of war. But individuals who are part of such an armed group are belligerents and, therefore, lawful targets under international law... Indeed, targeting particular individuals serves to narrow the focus when force is employed and to avoid broader harm to civilians and civilian objects<sup>14</sup>.

**Fifth**, 'some have challenged *the very use of advanced weapons systems*, such as unmanned aerial vehicles, for lethal operations. But the rules that govern targeting do not turn on the type of weapon system used, and there is no prohibition under the laws of war on the use of technologically advanced weapons systems in armed conflict-- such as pilotless aircraft or so-called smart bombs-- so long as they are employed in conformity with applicable laws of war. Indeed, using such advanced technologies can ensure.....that civilian casualties are minimized in carrying out such operations<sup>15</sup>.

**Sixth**, 'some have argued that the use of lethal force against specific individuals fails to provide adequate process and thus constitutes *unlawful extrajudicial killing*. But a state that is engaged in an armed conflict or in legitimate self-defense is not required to provide targets with legal process before the state may use lethal force. Our procedures and practices for identifying lawful targets are extremely robust, and advanced technologies have helped to make our targeting even more precise. In my experience, the principles of distinction and proportionality that the United States applies are not just recited at meetings. They are implemented rigorously throughout the planning and execution of lethal operations to ensure that such operations are conducted in accordance with all applicable law<sup>16</sup>.

**Seventh** and finally, 'some have argued that our targeting practices violate *domestic law*, in particular, the long-standing *domestic ban on assassinations*. But under domestic law, the use of lawful weapons systems—consistent with the applicable laws of war—for precision targeting of specific high-level belligerent leaders when acting in self-defense or during an armed conflict is not unlawful, and hence does not constitute "assassination"<sup>17</sup>."

**Consent Issue:** It is presumed that Pakistan government 'privately endorses the strategy under "rules" negotiated in mid-2008<sup>18</sup>. This agreement permits the CIA to fire when it has solid intelligence and to provide "concurrent notification" to Pakistan, which typically means shortly after a Hellfire missile is launched<sup>19</sup>. However, Koh did not mention name of Pakistan nor discussed issue of number of civilian casualties in his otherwise very detailed response.

On the basis of these arguments, U.S believes, it is justified in targeting suspect terrorists in (Pakistan or) any other country and she can execute them without any due process of law.

### Other Point of View

Interestingly, international NGOs are more critical of these strikes and international law experts present their case on the following arguments against US position.

**First**, sovereignty argument, **Article 2(4)** of the UN charter provides that: "All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state'. Based on the article, unless justifications are provided, drone attacks in their current form are in contravention of the UN charter and hence a violation of international law<sup>20</sup>.

**Second**, the limited use of force under Article 51 is an exception to the general prohibition prescribed by Article 2(4) of the UN Charter. However, the language of Article 51 does not allow **pre-emptive attacks**. As a matter of established practice, acts of self-defense are legitimate only if they meet certain preconditions. Accordingly, the use of force in self-defense is permitted only (i) in case of necessity, where there is an attack and the use of force is necessary to repel it and is defensive in nature; and (ii) to the extent that the defensive use of force is proportionate to the attack and not punitive in nature. In *Nicaragua*, the Court held that low-level shipments of weapons did not amount to an armed attack and could not be invoked as a basis for self-defense. Literature of International law has ample guidance in the light of three famous cases: Nicaragua case, Oil platform case and Nuclear Weapon case<sup>21</sup>.

**Third**, it is important to bear in mind that the UN Security Council, while recognizing and reaffirming the inherent right of individual or collective self-defense in accordance with the UN Charter in Resolutions 1368 and 1373 in the aftermath of the 9/11 attacks in the US, did not authorize the use of force in any way<sup>22</sup>. Even later, UNSC resolutions such as Resolution 1540, to combat terrorism did not provide for the use of force, therefore, is in consistent with its obligations under the UN Charter<sup>23</sup>.

**Fourth**, AUMF<sup>24</sup>, a domestic legislation applied in international realm (sanctioning the concept of hot pursuit across international boundaries) is of no legal consequence<sup>25</sup>. It is said that the drone attacks are seen as one of "all necessary measure" to prevent terrorism, but this hot pursuit must be connected to specific operations. Drone attacks are proving counter-productive to the military objective of repressing militancy and terrorism. Thus, they do not meet the test of necessity<sup>26</sup>. According to explanation given by Koh, USA can attack any place in the world on the pretext of eliminating terrorists without following any other law. Can India, Iran, China pass such a domestic law and hunt down "suspected terrorists" in another country?

**Fifth**, Pakistan is able to establish, in the eyes of international community, that there is no 'armed conflict' in Pakistan<sup>27</sup>. In that case 'International law of Armed Conflict' does not apply in Pakistan. Pakistan has not formally asked for self help from USA so any use of force by US is illegal<sup>28</sup>. Even if it is accepted for a moment then following issues are questionable:

- Drones attacks by CIA civilians and private contractors<sup>29</sup> are violation of (ILOAC) and it makes them unlawful combatants and legitimate military target, just like Taliban<sup>30</sup>.
- Bombing civilian places like houses, schools and public gatherings cannot be justified because these are not military targets<sup>31</sup>. It becomes very easy for TTP to exploit this argument and question if terrorism is condemned because it kills the innocent, how can one justify counterterrorism tactics that kill the innocent civilians too<sup>32</sup>?
- The tough test of military necessity and proportionality cannot be passed in the wake of high civilian casualties.
- Killing of civilians is violations of common article 3 of Geneva conventions which proclaims that persons not actively involved in hostilities cannot be murdered or subjected to violence, torture or cruel treatment<sup>33</sup>.

**Sixth**, the most prominent justification offered by the proponents of this policy is *silent consent* of Pakistan. Koh, the legal advisor of state department of U.S, have not touched upon the issue directly by saying that these attacks on "particular location will depend upon considerations specific to each case"<sup>34</sup> according to willingness or ability of the state. Specifically, Article 20 of the UN's 'Responsibility of States for Internationally Wrongful Acts' states: "Valid consent by a state to the commission of an act by another state precludes the wrongfulness of the act in relation to the former state to the extent that the act remains within the limits of that consent"<sup>35</sup>. US stance in the absence of a "valid consent" which clearly mentions the justifications, jurisdiction and temporal limits, at worst, makes the drone attacks a violation of public international law. However, it is pertinent to look into domestic realm and justification provided in the domestic law of the U.S.A.

#### **Legal basis of Targeted Killings in US domestic law**

**Role of CIA:** Use of intelligence agencies, like CIA, is a "third way" to deal with terrorists<sup>36</sup>. Since its inception<sup>37</sup> in 1947, under due mandate, CIA has been responsible for covert political and lethal actions in other countries during cold war. However, after Watergate scandal, there were restrictions imposed on funding<sup>38</sup> and extent of use of force in covert actions<sup>39</sup> and congressional oversight mechanisms<sup>40</sup> were introduced.

### **Prohibition on Assassination**

American law that most closely addresses targeted killing is an Executive Order 12333 first proclaimed by President Gerald Ford in 1976 and then renewed by President Reagan in 1980 and still enforced. The pertinent section reads: “No person employed by or acting on behalf of the United States Government shall engage in, or conspire to engage in, assassination<sup>41</sup>.” Executive order 12333 bans assassinations but executive branch has not complied with this order in its spirit. Koh has mentioned that target killing is not banned in armed conflict<sup>42</sup>. On legal grounds, this is only a domestic law so it does not cover the international realm of law.

There are more procedural issues related with CIA’s role as drone operators.

### **Arbitrary selection of Targets and Unaccountability**

Where some scholars like Peter W. Singer<sup>43</sup> express concern about lack of transparency about procedures adopted by CIA, Roger Cohen in New York Times,<sup>44</sup> questions the mystery involved in selection of targets. Same questions were raised in ACLU lawsuit but no answers have been provided so far. Moreover, Jane Mayer mentions that CIA was ordered to conduct these operations because of lesser accountability issues. Samuel Hersh quotes General Tommy Frank who denied to use such drone strikes due to legal limitations because department of defense has comparatively better and discrete way of decision making as compared to CIA<sup>45</sup>. Philip Alston, UN Special Rapporteur for summary executions and extrajudicial killings warned that CIA “cannot legitimately carve itself out as the sole actor which is not subject to any form of accountability when its activities are so well-known and proclaimed with such pride<sup>46</sup>”. “The heavy involvement of the CIA and CIA contractors in the decisions to strike may alone account for the high unintended death rate. CIA operatives are not trained in the law of armed conflict. They are not bound by the Uniform Code of Military Justice to respect the laws and customs of war<sup>47</sup>. The issue of parliamentary oversight is called into question because ‘despite all the mystery and lack of transparency budget of CIA’s drone attacks for coming year was increased by 40%<sup>48</sup>.”

### **International Human Rights Law**

The subject of application of International Human Rights Law (IHRL) in this Pakistani context has not been touched in most of the circles. History shows that when societies trade human rights for security, most often they get neither<sup>49</sup>. Sometime this trade off comes in the form of mass murder, genocide and some time it results in arbitrary killings. This section will argue that human rights norms should be the starting point and basic standards to view state responses to new and emerging security threats<sup>50</sup>.

### Concerns about HR violations

Unlike the law of armed conflict, international human rights law applies to all persons at all times, regardless of nationality, status, or location, and for the most part, international human rights law applies in times of war as much as in times of peace<sup>51</sup>. International human rights law offers basic guarantees of due process, equal protection, humane treatment, and suggests an alternative framework for analyzing and critiquing U.S. government actions in the war on terrorism. 'Thus, the U.N. Committee on Civil and Political Rights (which was established by the ICCPR<sup>52</sup>) has observed that despite the derogations permitted in times of emergency by the ICCPR, "[s]tates parties may in no circumstances invoke [the derogation clauses] of the Covenant as justification for acting in violation of... peremptory norms of international law, for instance... through arbitrary deprivations of life and liberty or by deviating from fundamental principles of fair trial, including the presumption of innocence.<sup>53</sup>" The "right to life" is a deeply held principle that is protected in times of both peace and war. A common starting point of both International Human Rights Law and International Humanitarian Law is respect for human values and the dignity of the human person<sup>54</sup>. The two normative regimes "share a common 'core' of fundamental standards which are applicable at all times, in all circumstances and to all parties, and from which no derogation is permitted<sup>55</sup>." It has been noted that "[w]hen life is deprived, it is impossible to enjoy any fundamental freedom<sup>56</sup>." This fundamental status makes it tempting to consider the right to life in unqualified terms.

On the other hand, the use of deadly force is strictly limited by the requirement that a person not be "arbitrarily" deprived of life<sup>57</sup>. In order to avoid this arbitrary deprivation of life, the concept of due process is ingrained in criminal justice system since thirteenth century. Clause 39 of the Magna Carta proclaims: "No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any other way, nor will we proceed with force against him, or send others to do so, except by the lawful judgment of his equals or by the law of the land<sup>58</sup>." In US constitution, the clause is imported from United Kingdom with some variation<sup>59</sup>. In case of targeted killings by drones, accused has never been proclaimed as wanted by law, allegation against him are not known, there is no opportunity is provided to him to vindicate his position, no effort is made to arrest him with or without the help of surveillance by drones. Therefore, neither lawful judgment is passed nor law of the land is followed. Any arbitrary killings in this fashion fall into the category of extrajudicial killings.

### Extrajudicial Killings

On the Yemen incident in 2002, Amnesty International put it, "if the attack was a deliberate killing, in lieu of arrest, in circumstances in which the men did not pose an immediate threat, the killings would

amount to extra-judicial executions in violation of international human rights law.<sup>60</sup> "Extrajudicial" has its genesis in human rights documents such as the International Covenant on Civil and Political Rights (ICCPR), Article 6, which, in describing the right to life, specifically qualifies it by prohibiting arbitrary deprivation of life and permitting the death penalty in certain respects<sup>61</sup>. Right to life is fundamental right and cannot be denied in war times or peace times. Depriving people arbitrarily by technological weapons, without going through any transparent method of calling them "suspect terrorists" is violation of the fundamental human rights. ICCPR has no temporal limitations and, regardless of debate of existence of any armed conflict, fundamental rights of citizens must be respected. From the lens of ICCPR, the logic of use of drone attacks is not defensible.

Drone Attacks are not only arbitrarily ringing death knell for hundreds but they are also torturing, maiming and disabling many for rest of their life. An independent researcher based in U.S., claims that from 2004 to March 2010, 1150 civilians have died and 379 have been injured by these drone attacks in Pakistan. Number of actual Al Qaida terrorists is only 29<sup>62</sup>. However, there are no investigations and inquiries conducted by Pakistan to ascertain the facts about the targets. According to UN rules of summary trials and executions, the duty of the state also includes determining the circumstances in which an individual was deprived of this right. This also includes official responsibility of state to conduct "independent investigations" when a person is killed as result of use of force to ensure the accountability of the death apparatus, in this case drones<sup>63</sup>. But there are no details available about people killed, injured, arrested in these attacks and no information about any "charge sheet" against them. "Terror thus spreads not simply in the village where the drone attack has taken place but far and wide in the bazaars of Peshawar and the streets of Lahore and the offices of Islamabad where these recruits avenge their anger against the drone attacks<sup>64</sup>. UN reporter on extrajudicial killing Philip Alston said, "My concern is that these drones, these Predators, are being operated in a framework which may well violate international Humanitarian law and international human rights law <sup>65</sup>.

Addressing the Security Council session on counterterrorism measure, Kofi Annan said, "We should all be clear that there is no trade-off between effective action against terrorism and protection of human rights. On the contrary, I believe that in the long term, we shall find that human rights, along with democracy and social justice, are one of the best prophylactics against terrorism"<sup>66</sup>. In the war against terrorism, human rights norms are not respected by many states but if great powers become the violators of such norms then it will open doors to "unrestricted wars"<sup>67</sup>.

Human Rights Watch observed, "Since September 2008, US aerial drones are believed to have carried out dozens of missile attacks on suspected militant hideouts in Pakistan's tribal areas, killing hundreds of civilians in addition to alleged militants, and prompting allegations that the US attacks have violated

the laws of war”<sup>68</sup>. How these violations affect the state practice? It took fifty years for the international community to establish a “public order system”<sup>69</sup> based upon universal human rights policies in the world. The promotion of human rights was intended to reinforce the pursuit of collective security<sup>70</sup>. The Cold War era was not focused on upholding these values but commendable work was done in establishing the framework of IHRL. The post-Cold War era witnessed the rise of liberal values and even the use of force was justified to protect these values in other states by the US<sup>71</sup> on the premise of “responsibility to protect”, and the international community watched these novel steps anxiously. For the first time in history, the status of the individual and the protection of human rights were regarded as fundamental aspects of international law in the pursuit of international peace<sup>72</sup>. Drone attacks are a trend in an opposite direction and will be tantamount to treading on a path leading to gross violations of established norms of human rights in the name of security and national interests. Drone attacks are depriving people of their fundamental right to life without following the due process of law. Nobody knows about the names of targeted people, their crime, and their role in any terrorist plans even after the strikes. Civilian casualties are accepted as collateral damage in this unannounced war in Pakistan.

To conclude, it is clear that there are different interpretations of laws of intervention but ‘at least four considerations are central to determining the morality and legality of the drone campaign: proportionality, distinction of targeting, the agent carrying out the strikes, and the process used to make targeting decisions’<sup>73</sup>. U.S. drone attacks fail on all counts. Even NATO allies of U.S. do not see eye with U.S. on this issue and drone attacks are “U.S. only operations”. They are not carried out to repel an imminent armed attack. Instead, these strikes use disproportionate, unnecessary and deceptive force with the help of “unlawful combatants” of CIA against suspected militants and innocent civilians in Pakistan.

Illegality of target killings by drones in Pakistan is Achilles’ heel of U.S. policy and it is counterproductive to achieve political and security gains in the region<sup>74</sup>. Moreover, U.S. should sign an agreement with Pakistan to extend military help in Pakistani territory and get consent of Government of Pakistan and legitimize its efforts to dismantle, disrupt and destroy safe heavens of Al Qaeda in border regions of Pakistan. U.S. should work on improving the capacity of Pakistani law enforcement agencies and share latest technology of drone with Pakistani forces that are actively fighting against Taliban. Even having this technology will still require that Pakistani forces do apply all standards of IHRL and domestic legal limitations to deal with emergency situations on its own territory. Pakistani authorities should also follow the transparent procedures to inform public about wanted terrorists and their roles in terrorist activities before applying use of force and ensure legal procedures according to constitution of Pakistan and pay compensations to victims of terrorism and prevent them being exploited by enemies of state.

## Notes:

<sup>1</sup> Statement by Jakob Kellenberger, president of the ICRC, to the conference on the challenges for IHL posed by new threats, new actors and new means and methods of war, organized by the Swiss Federal Department of Foreign Affairs in cooperation with the ICRC, Geneva, 9-10 November 2009

<sup>2</sup> American Civil Liberty Union, Press Release, ACLU Seeks Information On Predator Drone Program, March 16, 2010 <http://www.aclu.org/national-security/aclu-seeks-information-predator-drone-program>

<sup>3</sup> *ibid*

<sup>4</sup> Harold Hongju Koh, Legal Adviser U.S. Department of State, “The Obama Administration and International Law”, Annual Meeting of the American Society of International Law, Washington DC, March 25, 2010, <http://www.state.gov/s/l/releases/remarks/139119.htm>

<sup>5</sup> Geneva Convention III

<sup>6</sup> Harold Hongju Koh

<sup>7</sup> Daniel Bayman Do Targeted Killings Work?, *Foreign Affairs*, Vol. 85, No. 2 (Mar. - Apr., 2006), pp. 95-111

<sup>8</sup> Human Rights Watch, ‘Precisely Wrong’ June 30, 2009 <http://www.hrw.org/en/node/84077/section/6>

<sup>9</sup> Article 51 Protocol I Additional to the Geneva Conventions

<sup>10</sup> Article 8(2)(b)(i) of the [Rome Statute of the International Criminal Court](#)

<sup>11</sup> Harold Hongju Koh

<sup>12</sup> *ibid*

<sup>13</sup> *ibid*

<sup>14</sup> *ibid*

<sup>15</sup> *ibid*

<sup>16</sup> *ibid*

<sup>17</sup> *ibid*

<sup>18</sup> David Ignatius, ‘What the partisan squabbles miss on Obama's terror response’ February 17, 2010 <http://www.washingtonpost.com/wp-dyn/content/article/2010/02/16/AR2010021605043.html>

<sup>19</sup> *ibid*

<sup>20</sup> Dr. Tariq Hassan, DAWN, The Illegality of Drones , June 02, 2009 <http://www.dawn.com/wps/wcm/connect/dawn-content-library/dawn/news/pakistan/16-the-illegality-of-drones-hs-09>

<sup>21</sup> Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 1996 I.C.J. 226, 245 (Jul. 8) [See also Nicaragua, 1986 I.C.J. ; Oil Platforms case, I.C.J.]

<sup>22</sup> *ibid*

<sup>23</sup> *ibid*

<sup>24</sup> Authorized Use of Military Force (AUMF), September 2001

<sup>25</sup> Dr. Tariq Hassan

<sup>26</sup> Mary Ellen O’Connell, “Unlawful Killing with Combat Drones: A Case Study of Pakistan, 2004-2009,” *Notre Dame Law School*, Legal Studies Research Paper no. 09-43.

<sup>27</sup> This is causing great humanitarian crises where ICRC is not allowed to operate in Pakistan, especially FATA. ICRC has no access to sick and wounded in the combat zone and humanitarian issues are not getting proper attention.

<sup>28</sup> Mary Ellen O’Connell

<sup>29</sup> Jane Mayer, “The Predator War,” *The New Yorker*, October 26, 2009, [http://www.newyorker.com/reporting/2009/10/26/091026fa\\_fact\\_mayer](http://www.newyorker.com/reporting/2009/10/26/091026fa_fact_mayer)

<sup>30</sup> Gary Solis, “CIA Drone Attacks Produce America's Own Unlawful Combatants,” *Washington Post* (Washington), March 12, 2010,

<http://www.washingtonpost.com/wp-dyn/content/article/2010/03/11/AR2010031103653.html>

<sup>31</sup> Geneva Conventions

<sup>32</sup> Daniel Byman, Do Targeted Killings Work?, *Foreign Affairs*, Vol. 85, No. 2 (Mar. - Apr., 2006), pp. 95-111

<sup>33</sup> Geneva Conventions article 3

<sup>34</sup> Harold Hongju Koh

<sup>35</sup> UN Charter Article 20

<sup>36</sup> Kenneth Anderson, “Targeted Killing in US Counterterrorism strategy and Law,” Brookings Institution, *Working Paper on Counterterrorism and American Statutory Law*, #9, May 11, 2009.

<sup>37</sup> National Security Act of 1947, USA

- <sup>38</sup> Foreign Assistance Act of 1974, USA
- <sup>39</sup> Executive order 12333,
- <sup>40</sup> Intelligence Oversight Act of 1980, USA
- <sup>41</sup> Executive Order 12333
- <sup>42</sup> Harold Hongju Koh,
- <sup>43</sup> Director of the 21st Century Defense Initiative at the Brookings Institution
- <sup>44</sup> Roger Cohen, “An Eye for an Eye,” *New York Times* (New York), February 25, 2010, <http://www.nytimes.com/2010/02/26/opinion/26iht-edcohen.html>
- <sup>45</sup> Jane Mayer mentions that originally reported by Seymour Hersh in the *New Yorker*, occurred in Afghanistan in October 2001 when a CIA-operated Predator aircraft picked up the convoy carrying ousted Taliban leader Mullah Mohammed Omar. Gen. Tommy Franks, then-commander of [United States Central Command](#), who explained, “My JAG [military lawyer] doesn’t like this, so we’re not going to fire.” Omar escaped and remains at large. [http://www.cfr.org/publication/9627/targeted\\_killings.html#p6](http://www.cfr.org/publication/9627/targeted_killings.html#p6)
- <sup>46</sup> Philip Alston, “UN Special Rapporteur on Extrajudicial Killings, Philip Alston: Record of Pakistan Drone Attacks under Obama May Violate International Law,” *Democracy Now*, June 4, 2009, [http://www.democracynow.org/2009/10/28/un\\_special\\_rapporteur\\_on\\_extrajudicial\\_killings](http://www.democracynow.org/2009/10/28/un_special_rapporteur_on_extrajudicial_killings)
- <sup>47</sup> Mary Ellen O’Connell
- <sup>48</sup> David Ignatius
- <sup>49</sup> Paul Hoffman, “Human Rights and Terrorism” *Human Rights Quarterly*, Vol. 26, No. 4 (Nov., 2004), pp. 932-955
- <sup>50</sup> Rosa Ehrenreich, “*War Everywhere: Rights, National Security Law, and the Law of Armed Conflict in the Age of Terror*” *University of Pennsylvania Law Review*, Vol. 153, No. 2 (Dec., 2004), pp. 675-761
- <sup>51</sup> Derek Jinks, *International Human Rights Law and the War on Terrorism*, 31 *DENV. J. INT’L L. & POL’Y* 58, 65 (2002)
- <sup>52</sup> International Covenant on Civil and Political Rights (ICCPR)
- <sup>53</sup> U.N. Human Rights Comm., General Comment No. 29, States of Emergency (Article 4), at 5, U.N. Doc. CCPR/C/21/Rev.1/Add.11 (2001)
- <sup>54</sup> Kenneth Watkin, *Controlling the Use of Force: A Role for Human Rights Norms in Contemporary Armed Conflict* “*The American Journal of International Law*”, Vol. 98, No. 1 (Jan., 2004), pp. 1-34
- <sup>55</sup> Prosecutor v. Delalic, Appeals Judgment, No. IT-96-21-A, para. 149 (Feb. 20, 2001) (Celebici case);
- <sup>56</sup> Inter-American Commission on Human Rights, Report on Terrorism and Human Rights, OEA/Ser.L/V/II. 116, doc. 5, rev. 1 corr., para. 81 (Oct. 22, 2002), available at <http://www.cidh.oas.org/Terrorism/Eng/part.c.htm>
- <sup>57</sup> European Convention on the Protection of Human Rights and Fundamental Freedoms, opened for signature Nov. 4, 1950, Art. 2, 213 UNTS 221.
- <sup>58</sup> The Text of Magna Carta 1215
- <sup>59</sup> The New York Ratification Resolution 1788 “[N]o Person ought to be taken imprisoned or disseised of his freehold, or be exiled or deprived of his Privileges, Franchises, Life, Liberty or Property but by due process of Law.
- <sup>60</sup> Thomas Haidon, The CIA’s Yemen Operation: A Legal Critique, *COUNTERPUNCH*, Nov. 19, 2002, <http://www.counterpunch.org/haidon119.html> (arguing that the U.S. attack in Yemen was illegal)
- <sup>61</sup> ICCPR
- <sup>62</sup> Zeeshan ul Hassan Usmani ‘Pakistan Body Count’ March 15, 2010 <http://www.pakistanbodycount.org/drn.php> The website is not accessible in USA after Wikileaks disclosures.
- <sup>63</sup> Thomas Haidon
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