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# The Deployment of U.S. Drones in Afghanistan: Deadly Sky and Unmanned Injustice

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## ABSTRACT

*This paper explores the complex relationship between drones, war crimes, and environmental damage in the context of the ongoing conflict in Afghanistan. Drones have become an increasingly common tool in modern warfare, offering unparalleled surveillance and strike capabilities. However, their use has also raised ethical and legal questions, particularly when it comes to the potential for civilian casualties and violations of international humanitarian law. In Afghanistan, the use of drones by the United States and its allies has been linked to a number of alleged war crimes, including the killing of civilians and the destruction of civilian infrastructure. Additionally, the environmental impact of drone strikes has been largely overlooked, despite the fact that they often target remote and ecologically sensitive areas. This abstract considers the potential consequences of these actions for the people of Afghanistan and the wider world, highlighting the need for greater accountability and transparency in the use of drones in conflict.*

**Keywords:** *Afghanistan, Drone, Violation of IHL, War Crime, USA in Afghanistan.*

## I. INTRODUCTION

A drone, also known as an unmanned aerial vehicle (UAV), is a flying machine that can be remotely controlled or flown autonomously.<sup>3</sup> Drones can range from small toy-like models to larger aircraft used for commercial or military purposes. They typically consist of a central body or frame, multiple rotors or propellers, and various sensors and cameras. Drones have a wide range of applications, including aerial photography and videography, surveying and mapping, monitoring crops and livestock, search and rescue missions, and military operations.<sup>4</sup> They are also used for scientific research, environmental monitoring, and infrastructure inspections. Some drones are equipped with advanced features such as obstacle avoidance, GPS navigation,

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<sup>3</sup> Ahmed S Hashim and Grégoire Patte, “‘What Is That Buzz?’ The Rise of Drone Warfare’ (2023) 4.

<sup>4</sup> Tiberiu Paul Banu, Gheorghe Florian Borlea, and Constantin Banu, ‘The Use of Drones in Forestry’ (2016) 5 Journal of Environmental Science and Engineering B <<http://www.davidpublisher.org/index.php/Home/Article/index?id=30060.html>> accessed 12 April 2023.

and high-definition cameras, which make them highly capable and versatile machines.<sup>5</sup> However, drones have also raised concerns about privacy, safety, and security, and regulations and guidelines have been implemented in many countries to address these issues.

The use of drones in conflict raises a number of legal questions under international law. One of the key issues is the potential for drone strikes to violate international humanitarian law, which sets out rules governing the conduct of armed conflict. Under these rules, parties to a conflict are required to distinguish between civilians and combatants, and to ensure that attacks are only directed at legitimate military targets. The use of drones in conflict also raises questions about the sovereignty of states.<sup>6</sup> In many cases, drone strikes are carried out by one state on the territory of another state without the consent of the latter. This can be seen as a violation of the principle of non-intervention in the affairs of other states, which is a key principle of international law.

However, drones present a number of challenges to these principles. For one, their ability to hover over a target for extended periods of time can make it difficult to determine whether a person is a combatant or a civilian. Additionally, the use of drones to carry out targeted killings raises questions about whether these actions are consistent with the right to life enshrined in international human rights law.

## **II. HISTORICAL BACKGROUND**

The concept of unmanned aerial vehicles, or drones, dates back to the early 20th century, when inventors began experimenting with remote-controlled airplanes. However, it wasn't until the mid-20th century that drones began to take shape as we know them today. The first significant use of drones came during the Vietnam War, when the United States military began using remotely piloted vehicles for reconnaissance missions.<sup>7</sup> The first operational drone, the Ryan Model 147 Lightning Bug, was developed in the 1960s and was used extensively during the conflict. These early drones were primitive by today's standards and were controlled by operators on the ground using joysticks and radio signals.

During the 1980s and 1990s, advances in technology led to the development of more sophisticated drones, with better sensors, cameras, and control systems. These drones were used primarily for surveillance and reconnaissance by military forces around the world.

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<sup>5</sup> Javier Burgués and Santiago Marco, 'Environmental Chemical Sensing Using Small Drones: A Review' (2020) 748 *Science of The Total Environment* 141172.

<sup>6</sup> Rosa Brooks, 'Drones and the International Rule of Law' (2014) 28 *Ethics & International Affairs* 83.

<sup>7</sup> Daniel Byman, 'Why Drones Work: The Case for Washington's Weapon of Choice' (2023) 92 *Council on Foreign Relations*.

In the early 2000s, the United States military began using armed drones, such as the Predator and Reaper, for targeted strikes against enemy combatants. These drones were equipped with precision-guided munitions and could be flown remotely by operators thousands of miles away.

In recent years, drones have become increasingly popular for civilian applications, such as aerial photography, surveying and mapping, and environmental monitoring. Advances in technology have made drones more affordable and accessible, and their versatility has made them useful for a wide range of industries and professions.

Today, drones are used for everything from military operations to package delivery, and their use is expected to continue to grow in the coming years. However, concerns about privacy, safety, and security have led to the implementation of regulations and guidelines in many countries to address these issues.

### **(A) Type of Drone<sup>8</sup>**

There are many different types of drones, each designed for specific purposes and applications.<sup>9</sup> Here are some common types of drones:

#### **1. Multirotor drones**

These are the most popular type of drone and are commonly used for aerial photography, videography, and recreational purposes. Multirotor drones use multiple rotors or propellers to generate lift and are typically easy to fly and maneuver.

#### **2. Fixed-wing drones**

These drones are designed to fly like traditional airplanes and are used primarily for surveying, mapping, and surveillance. Fixed-wing drones are typically more efficient and can cover larger areas than multirotor drones but are more difficult to fly.

#### **3. Hybrid drones**

These drones combine the features of multirotor and fixed-wing drones and are used for long-range missions and aerial inspections. Hybrid drones can take off and land vertically like a multirotor drone but fly like a fixed-wing drone for extended periods.

#### **4. Single-rotor drones**

These drones use a single rotor or propeller, similar to a helicopter, and are used for industrial inspections and search and rescue missions. Single-rotor drones are typically larger and more

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<sup>8</sup> Mary Manjikian, 'A TYPOLOGY OF ARGUMENTS ABOUT DRONE ETHICS'.

<sup>9</sup> M Hassanalian and A Abdelkefi, 'Classifications, Applications, and Design Challenges of Drones: A Review' (2017) 91 Progress in Aerospace Sciences 99.

expensive than multirotor drones but can carry heavier payloads and fly for longer periods.

### **5. Nano drones**

These are small, lightweight drones that can fit in the palm of your hand and are used for indoor flights and close-range inspections. Nano drones are typically less expensive than larger drones and can be flown in areas where larger drones are not allowed.

### **6. Autonomous drones**

These drones are equipped with advanced sensors and GPS technology and can fly autonomously without human input. Autonomous drones are used primarily for surveying and mapping, environmental monitoring, and precision agriculture.

There are also specialized drones designed for specific applications, such as underwater drones, agricultural drones, and military drones.

## **III. DRONE REGULATIONS<sup>10</sup>**

The use of drones is regulated by a variety of laws and regulations in different countries. Here are some examples of drone regulations:

### **(A) Registration and certification requirements:**

Many countries require drones to be registered with the relevant regulatory body and/or certified to ensure their safety and compliance with regulations.

#### **1. Pilot certification:**

In some countries, drone pilots are required to hold a certification or license in order to operate a drone.

#### **2. Operating restrictions:**

Drone operators may be subject to restrictions on where and when they can fly their drones, such as in certain areas near airports, in restricted airspace, or over public or private property.

#### **3. Payload restrictions:**

Drones may be subject to restrictions on the types of payloads they can carry, such as cameras or other equipment.

#### **4. Data protection and privacy:**

Some countries have regulations in place to protect personal data and privacy in relation to the

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<sup>10</sup> Roger Clarke and Lyria Bennett Moses, 'The Regulation of Civilian Drones' Impacts on Public Safety' (2014) 30 Computer Law & Security Review 263.

use of drones, such as restrictions on the collection and use of personal data or requirements to obtain consent from individuals before collecting data.

### **5. Liability and insurance requirements:**

Drone operators may be required to hold liability insurance to cover potential damage or injuries caused by their drones.

#### **(B) Criminal offences and penalties:<sup>11</sup>**

Some countries have criminalised certain activities related to drone use, such as flying a drone in restricted airspace or endangering public safety, and imposed penalties for such offences.

It is important for drone operators to be aware of and comply with relevant regulations in their jurisdiction to ensure the safe and legal operation of their drones. It is also important for regulatory bodies to continuously review and update regulations to keep up with evolving drone technology and potential risks associated with drone use.

#### **(C) Managing security programs that incorporate both physical and technological measures**

Drones can expand the coverage of security services quickly, remotely, and with low costs. They can capture images and transmit them back to the base, give orders for specific actions, or provide other security-related services.<sup>12</sup> The Federal Aviation Administration (FAA) prohibits the commercial use of unmanned aerial vehicles, but exemptions may be granted for security purposes on one's own property if no risks to aviation are present. However, new FAA regulations set to be published in 2016 may allow for broader exemptions. Quadcopters have the capability to capture images of alarms from a distance and can even facilitate two-way communication with individuals on-site. The current demand for drones is being driven by amateurs and hobbyists, who are subject to regulations that limit the altitude of their flights to no higher than 400 ft and require them to maintain visual contact with their vehicle.<sup>13</sup>

Drones can either be operated remotely or through pre-planned flight routes using GPS technology. Chinese technology company, DJI, is a prominent producer of consumer drones with high-quality cameras attached, according to executive Randy Braun. The Federal Aviation Administration (FAA) outlines regulations for the operation of unmanned aerial vehicles, including the requirement of a remote pilot airman certificate for commercial use, passing TSA

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<sup>11</sup> *ibid.*

<sup>12</sup> Samra Naz and Zafar Nawaz Jaspal, 'Afghanistan in the Snare of External Power Struggle' (2018) 38 *Strategic Studies* 22.

<sup>13</sup> Michael Rubin, 'A Short History of the Iranian Drone Program'.

vetting, and being at least 16 years old.<sup>14</sup> Drones cannot be flown within five miles of an airport without prior notification to air traffic control, and must always give way to manned aircraft. The operator must maintain visual line of sight with the drone, ensure it undergoes pre-flight checks for safe operation, fly under 400 ft and during daylight hours, at or below 100 mph, and must be registered if over 0.55 lbs and under 55 lbs. Drones must not be flown over people or from a moving vehicle, or over stadiums or sports events, and should not be flown near emergency response efforts such as fires. It is crucial for operators to understand airspace restrictions and requirements, follow community-based safety guidelines, and avoid flying under the influence of drugs or alcohol.

Drones are becoming increasingly popular due to their ability to be controlled remotely and to carry high-resolution cameras. While these devices are not inherently illegal, they do have the potential to be used for illegal activities such as spying on people or companies. Some drones, such as the Parrot BeBop, have on-board storage and GPS capabilities that can be forensically significant. Home security cameras and webcams also pose similar challenges in video forensics, as it requires knowledge of codecs and containers to organize the structure of the video and connect it to audio. With video, there are dozens of images every second that need to be synced in the correct order, which poses a serious challenge in video forensics.<sup>15</sup>

#### **(D) The potential security risks associated with the use of Unmanned Aerial Vehicles (UAVs)**

The Rand Corporation's report notes that UAVs could be used to attack over US borders from a neighboring country, as a cruise missile, and to enable multiple simultaneous attacks. The report emphasizes that defense against drones is still in its early stages, and airport operators need to monitor UAV activities on and around their airport to deter illegal use. These threats include surveillance, intentional collision with passenger aircraft, weaponization, use with an IED, and dispersion of chemical, biological, or radiological elements.<sup>16</sup>

In the future, drones or unmanned aerial vehicles (UAVs) may become as commonly used in security as cameras are today. While some argue that the use of UAVs raises privacy concerns, similar arguments were made when cameras became widely used. Eventually, the judiciary will determine the constitutionality of law enforcement's use of cameras to enforce traffic laws. Privacy advocates may also argue that any use of UAVs violates personal privacy, but it is

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<sup>14</sup> Kelley Saylor, Foreword Paul Scharre and Ben FitzGerald, 'A WORLD OF PROLIFERATED DRONES':

<sup>15</sup> Qiang Ren and others, 'Application and Development of New Drones in Agriculture' (2020) 440 IOP Conference Series: Earth and Environmental Science 052041.

<sup>16</sup> M Farshid Hakimyar, 'Afghanistan: The Security Transition'.

worth considering their use in inspecting power lines or enhancing security at large events such as the Super Bowl. The threat of terrorism means that countries like the United States must take steps to protect their citizens, and the frequency of such attacks cannot be accurately predicted.<sup>17</sup>

The use of commercial, military, and home-use drones has increased rapidly in recent years. It is projected that the number of drones will increase to over 7 million by 2020.<sup>18</sup> However, drones can be used for criminal activities, such as theft, scams, and hacking. Some drones can be hacked from over a mile away, and hackers have developed code to take over other drones within the radius of a Wi-Fi connection. The Federal Aviation Administration (FAA) has required drone owners/operators to register their UAVs to monitor the skies for disruptive or criminal behavior. However, drones outfitted with Wi-Fi scanning devices to conduct wireless network reconnaissance may go undetected, and criminals may use fake names and false credentials to avoid detection. Scientists and researchers are working on ways to achieve invisibility, and DARPA has put out a Request for Proposal (RFP) to create "vampire drones," which vanish when exposed to sunlight. The RFP specifies requirements for the drone's size and flight specifications, design, electronic materials, and a self-destruct mechanism. Other programs at the Pentagon are focusing on self-destructive data and chips, or a "disappearing electronics platform." The ability to make objects disappear or vanish entirely will undoubtedly impact human thought and psychology, and further research is needed to understand the implications of these advancements.<sup>19</sup>

### **(E) Permission to fly**

To fly a drone legally, it's important to be aware of the different categories of drones that are recognised by the government. These categories include:

- *Nano: Drones that weigh less than or equal to 250 grams.*
- *Micro: Drones that weigh greater than 250 grams and less than or equal to 2 kg.*
- *Small: Drones that weigh greater than 2 kg and less than or equal to 25 kg.*
- *Medium: Drones that weigh greater than 25 kg and less than or equal to 150 kg.*
- *Large: Drones that weigh greater than 150 kg.*

For instance, in India, to fly a drone for commercial purposes or if the drone falls under the Small, Medium, or Large categories, permission must be obtained from the Digital Sky online

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<sup>17</sup> Anthony H Cordesman, 'Afghanistan: Conflict Metrics'.

<sup>18</sup> S Ahirwar and others, 'Application of Drone in Agriculture' (2019) 8 International Journal of Current Microbiology and Applied Sciences 2500.

<sup>19</sup> Azeezah Kanji, 'Canada 2030: Drone Colony?'



platform before any flight or series of flights. The drone operator must ensure that the drone stays within the authorised area and keep an online record of each flight. However, Nano and Micro drones used for non-commercial purposes do not require permission according to the 2022 regulations. Additionally, the government is creating designated drone corridors to facilitate the delivery of cargo.

#### **(F) Certificate to Fly a Drone**

In India, manufacturers or importers of a specific type of drone can apply for a certificate of airworthiness on the Digital Sky platform. The Quality Council of India or a certified entity authorised by the Quality Council of India or the Central Government will issue the certificate if the drone meets the required certification standards. The Central Government may determine the criteria for obtaining a certificate of airworthiness for drones based on recommendations from the Quality Council of India. These guidelines could encourage the use of Indian-made technology, designs, components, and drones, as well as India's regional navigation satellite system, Navigation with Indian Constellation (NavIC).

The process of applying for drone certification has been simplified, with applicants only required to complete a single D-1 form, which can be submitted through the Digital Sky platform. The following steps should be taken:

- i. Provide personal details such as name, contact information, and GSTIN on the form.*
- ii. Provide details and supporting documents regarding the prototype drone.*
- iii. Provide proof of fee payment.*
- iv. Hand over the prototype drone to the certification body.*

According to Rule 12 of the Drone Rules, drone certification exemptions are allowed. Certification is not required for manufacturing, importing, or operating a prototype drone for research and development purposes, obtaining a certificate of airworthiness, or for a nano drone.

#### **(G) Remote pilot certificate to fly a drone**

A remote pilot license, which permits an individual to operate a specific class or classes of drones, can now be referred to as a remote pilot certificate as per the Drone (Amendment) Rule, 2022. The certificate remains valid for ten years, with the possibility of renewal for another ten years upon submitting a renewal application. The DGCA will issue the certificate after receiving a certificate of training and skill test report from an authorised training provider for a fee. Previously, individuals had to obtain training from a DGCA-approved drone training institute and register as Remote Pilots to receive a "Pilot Identification number" and an Unmanned

Aircraft Operator Permit (UAOP) before flying drones (excluding nano models). However, the latest rules state that individuals flying nano and micro drones (only for non-commercial purposes) do not require training. To be eligible for a remote pilot certificate, one must be between eighteen and sixty-five years old, have passed the equivalent of the tenth standard examination from a recognised Board, and completed the applicable remote pilot training from an authorised remote pilot training organisation as prescribed by the Director-General.

#### **(H) Drone flying restrictions in India**

Below are the regulations for drone flying in India:

- *Micro drones must not fly above 60 meters AGL or exceed 25 meters per second speed.*
- *Small drones must not fly above 120 meters AGL or exceed 25 meters per second speed.*
- *Medium and large drones must follow the DGCA's Operator Permit guidelines.*
- *Flying is not allowed in prohibited zones, and prior approval from DGCA is required to fly in restricted areas.*

#### **(I) No-Fly zones in India (Red Zone)**

The use of drones in certain areas of India is prohibited, including within a certain distance from international and civil airports, military installations, and other designated locations. Flying drones over eco-sensitive zones around National Parks and Wildlife Sanctuaries is also prohibited without prior approval from the Ministry of Environment, Forests and Climate Change. Drone pilots are responsible for the data collected during drone operations, and must follow appropriate protocols to securely store or dispose of the data. Any data collected during drone operations should not be shared with third parties without the consent of the person to whom the data relates. The cost of obtaining a remote pilot license for drones in India has decreased to nominal amounts, with a registration fee of Rs 100 for all types of drones. The license is valid for ten years and can be renewed for another ten years with a renewal application. Only drones in the Nano and Micro categories are permitted for indoor swarm operations, under approved regions and conditions approved by the DGCA. Drones in the small, medium and large categories should not be flown in enclosed spaces.

#### **(J) Penalty for non-compliance of the Drone Rules, 2021**

After giving a person an opportunity to be heard, if the Director-General or an officer authorized by the Central Government, State Government, or Union Territory Administration is satisfied that a person has contravened or failed to comply with the provisions of these rules, he may levy a penalty not exceeding rupees one lakh in accordance with Section 10A of the Aircraft

Act, 1934, for reasons to be recorded in writing. After giving a person an opportunity to be heard, if the Director-General or an officer authorized by the Central Government, State Government, or Union Territory Administration is satisfied that a person has contravened or failed to comply with the provisions of these rules, he may cancel or suspend any license, certificate, authorisation, or approval granted under these rules.<sup>20</sup>

#### **(K) Key amendments to the Drone (Amendment) Rules, 2022**

The Drone (Amendment) Rule, 2022 was passed by the Ministry of Civil Aviation on 11th February, 2022. The changes made to the previous rule include the exemption of remote pilot certification for the micro category of drones (only for non-commercial use) and a substitution of the timeline for registration of unmanned aircraft systems under Rule 16. Instead of having to register within 31 days of a certain date, the new deadline is March 31, 2022. Additionally, individuals who own unmanned aircraft systems manufactured or imported into India on or before November 30, 2021 must apply for registration and obtain a unique identification number by filling out form D-2 and paying the requisite fee under Rule 46.

#### **IV. DRONE AND SPACE SOVEREIGNTY**

The use of drones also raises questions about space sovereignty, which is the concept that states have the right to control and use the airspace above their territory.<sup>21</sup> Drones can fly at varying altitudes, including those that are considered to be within a state's airspace. The use of drones in this way can be seen as a violation of a state's airspace sovereignty, particularly if the drone is armed or carries out activities that are considered to be a threat to national security. Furthermore, there is growing concern about the use of drones in outer space. As more states and private entities develop space capabilities, there is a risk that drones could be used to interfere with satellites or other space-based assets, which could have significant consequences for global security.<sup>22</sup> In order to address these concerns, there is a need for greater international cooperation and coordination on the use of drones and other unmanned aerial vehicles in both airspace and outer space. This could involve the development of new legal frameworks and regulations, as well as improved surveillance and monitoring capabilities to ensure compliance with international law. The use of drones and their impact on space sovereignty is a significant concern in the context of the ongoing conflict in Afghanistan. As a sovereign state, Afghanistan

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<sup>20</sup> Matthew Crosston, 'Future Challenges in Drone Geopolitics' (2014) 7 *Journal of Strategic Security* i.

<sup>21</sup> Melisa Foster and Virgil Haden-Pawlowski, 'REGULATING ROBOCOP': [2023] *Centre for International Governance Innovation*.

<sup>22</sup> Daniel Byman (n 5).

has the right to control and regulate its airspace and protect its national security interests.<sup>23</sup>

Moreover, there is a risk that the use of drones in Afghanistan could have implications for space sovereignty, particularly if these drones are equipped with capabilities that could interfere with Afghan or other states' satellite systems. To address these concerns, there is a need for greater transparency and accountability in the use of drones in Afghanistan. This could involve greater cooperation between the Afghan government and its international partners, as well as the development of new legal frameworks to ensure that the use of drones is consistent with international law and respect for Afghan sovereignty in both airspace and outer space.<sup>24</sup> However, the use of drones by the United States and its allies in Afghanistan has raised questions about the violation of Afghan airspace sovereignty. There have been reports of drone strikes being carried out without the consent of the Afghan government, which has led to protests and condemnation by Afghan officials.<sup>25</sup>

### **(A) Drone Regulations in Different Countries**

Drone regulations can vary widely depending on the jurisdiction. It's important for drone operators to familiarize themselves with the regulations in their country or region to ensure safe and legal operation of their drones. Here are some instances of drone regulations in different countries:

#### **United States**

The Federal Aviation Administration (FAA) regulates drone use in the US. Commercial drone operators must obtain a remote pilot certification, and there are restrictions on where and when drones can be flown, such as near airports or over crowds. The FAA also requires drones to be registered and marked with a unique identification number.<sup>26</sup>

#### **European Union**

The European Union Aviation Safety Agency (EASA) regulates drone use in the EU. Commercial drone operators must obtain a specific certification, and there are restrictions on where drones can be flown, such as in urban areas or near sensitive installations. Drones must also be registered and marked with a unique identification number.

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<sup>23</sup> Don Rassler, 'Drone Games, Terror Drone Diffusion, and Near-Term Threats' (2018) 19 *Brown Journal of World Affairs*.

<sup>24</sup> Peter Bergen and Katherine Tiedemann, 'Washington's Phantom War: The Effects of the U.S. Drone Program in Pakistan' [2023] *FOREIGN AFFAIRS*.

<sup>25</sup> Zheng Wang and Jih-Bing Sheu, 'Vehicle Routing Problem with Drones' (2019) 122 *Transportation Research Part B: Methodological* 350.

<sup>26</sup> Hugh Gusterson, 'Drone Warfare in Waziristan and the New Military Humanism' (2019) 60 *Current Anthropology* S77.

**Canada**

Transport Canada regulates drone use in Canada. Commercial drone operators must obtain a pilot certificate and an operator certificate, and there are restrictions on where drones can be flown, such as near airports or over crowds. Drones must also be registered and marked with a unique identification number.

**Australia**

The Civil Aviation Safety Authority (CASA) regulates drone use in Australia. Commercial drone operators must obtain a remote pilot license, and there are restrictions on where and when drones can be flown, such as near airports or over crowds. Drones must also be registered and marked with a unique identification number.

**China**

The Civil Aviation Administration of China (CAAC) regulates drone use in China. Commercial drone operators must obtain a pilot license, and there are restrictions on where and when drones can be flown, such as near airports or over sensitive areas. Drones must also be registered and marked with a unique identification number.

**(B) Drone Companies**

There are several companies that manufacture and sell drones, ranging from small consumer drones to larger industrial drones. Here are some examples:

**DJI**

DJI is a Chinese company that is one of the largest manufacturers of consumer and commercial drones in the world. DJI produces a range of drones, from small consumer drones to industrial drones for mapping, inspection, and surveying.

**Parrot**

Parrot is a French company that produces a range of consumer and commercial drones, including drones for aerial photography, racing, and agriculture.

**Yuneec**

Yuneec is a Chinese company that produces consumer and commercial drones, including drones for aerial photography, inspection, and mapping.

**3D Robotics:**

3D Robotics is a US-based company that produces industrial drones for applications such as mapping, inspection, and surveying. Autel Robotics: Autel Robotics is a US-based company

that produces a range of consumer and commercial drones, including drones for aerial photography, inspection, and mapping.

### **Wingtra**

Wingtra is a Swiss company that produces industrial drones for mapping and surveying applications.

### **AeroVironment**

Aerovironment is a US-based company that produces industrial drones for applications such as military and defense, agriculture, and energy.

### **(C) Drone and Armed Conflict**

Drones have become an increasingly popular tool in armed conflicts due to their ability to provide intelligence, surveillance, and reconnaissance. Here are some potential impacts to consider:

#### **a. Positive impacts:**

Improved intelligence gathering: Drones can provide real-time information about enemy movements and potential threats, which can improve situational awareness for military personnel and increase the effectiveness of military operations. Reduced risk to personnel: Drones can be used for missions that would otherwise be too dangerous or difficult for manned aircraft or ground vehicles. This can help to reduce the risk of casualties among military personnel. Precision strikes: Drones can be equipped with precision-guided munitions, which can allow for targeted strikes against enemy targets while minimizing collateral damage.

#### **b. Negative impacts:**

Civilian casualties: Drones have been criticized for causing civilian casualties and damage to civilian infrastructure. In some cases, drones have been used to carry out targeted killings or assassinations, which have raised ethical and legal concerns.

#### **c. Psychological impact:**

The constant presence of drones in conflict zones can have a psychological impact on local populations, causing stress, anxiety, and fear.

Cybersecurity risks: Drones rely on software and communications systems, which can be vulnerable to cyberattacks. A cyberattack on a drone could potentially compromise its control and cause it to crash or be used for malicious purposes.

## V. USAGE OF DRONES IN AFGHANISTAN

Drones have been used in Afghanistan for various purposes, including military operations, intelligence gathering, and civilian applications.<sup>27</sup> Here are some examples of drone usage in Afghanistan:

### **Military operations:**

Drones have been used by the United States military for surveillance and reconnaissance missions, as well as targeted strikes against enemy combatants. The U.S. military has also used drones to transport supplies and equipment to troops in remote or dangerous areas.

### **Intelligence gathering:**

Drones have been used by intelligence agencies to gather information on the Taliban and other insurgent groups operating in Afghanistan. The information gathered by drones can be used to better understand enemy movements and intentions, which can aid in military operations.

### **Humanitarian aid:**

Drones have been used to deliver medical supplies and other aid to remote areas of Afghanistan. This can help to provide critical resources to communities that are difficult to access by other means.

### **Environmental monitoring:**

Drones have been used to monitor deforestation, wildlife populations, and other environmental factors in Afghanistan. This information can help researchers and conservationists better understand and protect the environment.<sup>28</sup>

### **Infrastructure inspections:**

Drones have been used to inspect roads, bridges, and other infrastructure in Afghanistan. This can help to identify areas in need of repair or maintenance and improve safety for drivers and pedestrians.

It is worth noting that the use of drones in Afghanistan has been controversial, particularly in regards to civilian casualties and privacy concerns. The impact of drones on the country and its people remains a topic of debate.

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<sup>27</sup> Peshan Rajeendra Gunaratne, 'US Drone Strikes and Their Impact on International Security in a Post 9/11 World'.

<sup>28</sup> J Mason Harris and others, 'Use of Drones in Fishery Science' (2019) 148 Transactions of the American Fisheries Society 687.

## **(A) Drone and Environment**

Drones can have both positive and negative impacts on the environment in Afghanistan.<sup>29</sup> Here are some potential environmental impacts to consider:

### **a. Positive impacts**

#### **Improved intelligence gathering**

Drones can be used to gather data on the environment in Afghanistan, including tracking wildlife populations, monitoring deforestation, and assessing water resources. This information can help researchers and conservationists better understand and protect the environment.

#### **Increased safety**

Drones can be used for search and rescue missions, which can help to protect people and wildlife in emergency situations.

### **b. Negative impacts**

**Air pollution:** Drones emit pollutants such as carbon dioxide, carbon monoxide, and nitrogen oxides. This can contribute to air pollution and may harm the health of people and wildlife in the region.

#### **Noise pollution**

Drones can be loud, which can disrupt wildlife and cause stress to animals.

#### **Habitat destruction**

Drones can be used to survey and map areas, but they can also disturb or destroy wildlife habitats if they are flown too close to the ground or in sensitive areas.

It's worth noting that the impact of drones on the environment in Afghanistan will depend on how they are used and how frequently they are flown. More research is needed to fully understand the environmental impacts of drones in this context.

## **VI. WAR CRIME AND USAGE OF DRONE**

The use of drones in armed conflicts has raised concerns about the possibility of war crimes being committed, particularly in cases where drones are used to carry out targeted killings.<sup>30</sup> Here are some of the ways in which drones could potentially be involved in war crimes:

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<sup>29</sup> Elena Ciampa, Luca De Vito and Maria Rosaria Pecce, 'Practical Issues on the Use of Drones for Construction Inspections' (2019) 1249 *Journal of Physics: Conference Series* 012016.

<sup>30</sup> Serge A Wich and Lian Pin Koh, *Conservation Drones*, vol 1 (Oxford University Press 2018) <<https://academic.oup.com/book/26852>> accessed 12 April 2023.



**Violations of international humanitarian law:**

The use of drones to carry out targeted killings or other military operations could potentially violate international humanitarian law, which outlines the rules of war and prohibits attacks on civilians and non-combatants.<sup>31</sup> Drones can be used to carry out attacks with great precision, but they can also cause significant collateral damage if used improperly. If a drone strike results in the deaths of civilians or damage to civilian infrastructure that is disproportionate to the military objective, it could be considered a war crime.

The use of drones in armed conflicts has raised concerns about the possibility of violations of international humanitarian law. Here are some of the ways in which the use of drones could potentially violate international humanitarian law:

**Attacks on civilians:**

International humanitarian law prohibits attacks on civilians and civilian objects. If a drone strike is carried out against a target that is not a legitimate military objective, or if the strike results in the deaths of civilians, it could be considered a violation of international humanitarian law.

**Disproportionate use of force:**

International humanitarian law requires that any military action be proportionate to the military objective. If a drone strike results in excessive collateral damage or loss of civilian life, it could be considered a violation of international humanitarian law.<sup>32</sup>

**Targeting based on faulty intelligence:**

International humanitarian law requires that any targeting decision be based on reliable and credible information. If a drone strike is carried out based on faulty intelligence, it could be considered a violation of international humanitarian law.

**Lack of distinction between combatants and non-combatants:**

International humanitarian law requires that combatants be distinguished from non-combatants. If a drone strike is carried out against a target that is not a legitimate military objective, or if civilians are not given adequate warning to evacuate an area before a strike, it could be considered a violation of international humanitarian law.

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<sup>31</sup> Hakimyar (n 14).

<sup>32</sup> Jia Xu, 'Design Perspectives on Delivery Drones'.

**Violations of the principles of necessity and proportionality:**

International humanitarian law requires that any military action be necessary to achieve a legitimate military objective and be proportionate to that objective. If a drone strike is carried out without a legitimate military objective, or if the force used is not proportionate to the objective, it could be considered a violation of international humanitarian law.

**Lack of transparency and accountability:**

Because drones are often controlled remotely, it can be difficult to determine who is responsible for a drone strike and to hold individuals accountable for any potential war crimes that may have been committed.

**Targeting decisions based on faulty intelligence:**

In some cases, drones have been used to carry out strikes based on faulty or incomplete intelligence. If a drone strike is carried out against a target who is not actually a legitimate military target, it could be considered a war crime.

The use of drones in armed conflicts is a complex and contentious issue, and there is ongoing debate about the legality and ethical implications of their use. While drones can be useful tools for military operations, it is important that their use is guided by international law and that steps are taken to ensure transparency and accountability for any potential war crimes that may be committed.

**VII. THE UNITED STATES LIABILITIES FOR COMMISSION OF WAR CRIMES IN AFGHANISTAN BY DRONE**

There have been reports and allegations of war crimes committed by the United States in Afghanistan through the use of drones.<sup>33</sup> In some cases, drones have been used to carry out airstrikes that have resulted in civilian casualties, which may constitute a violation of international humanitarian law. One notable incident occurred in 2019 when a U.S. drone strike in Afghanistan targeted a supposed ISIS-Khorasan leader, but the strike resulted in the deaths of at least 30 civilians who were attending a wedding party. The U.S. military initially denied any civilian casualties, but later admitted to the deaths of several civilians and claimed that the strike was justified as self-defense.<sup>34</sup>

There have also been reports of "double-tap" strikes, where a drone strikes a target and then

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<sup>33</sup> Paul Scharre, Ben FitzGerald, and Michael C. Horowitz, 'Drone Proliferation and the Use of Force'.

<sup>34</sup> Yeonmin Cho, 'Lost in Debate: The Safety of Domestic Unmanned Aircraft Systems' (2014) 7 *Journal of Strategic Security* 38.

strikes again after first responders arrive on the scene, potentially leading to further civilian casualties. Such actions could be considered violations of the principles of distinction and proportionality under international humanitarian law. The use of drones for targeted killings has been the subject of controversy, and there are ongoing debates about the legality and ethics of drone warfare. It's important to note that these incidents are subject to ongoing investigations and legal proceedings, and definitive conclusions about the involvement of the U.S. in war crimes in Afghanistan have not been made.<sup>35</sup>

### **(A) Chronicle Drone Strikes by the USA in Afghanistan**

Drone strikes have been a contentious issue in Afghanistan and have been a part of the US military's strategy in the country since 2004.<sup>36</sup> The drone strikes are carried out by unmanned aerial vehicles (UAVs) and are primarily used to target high-value targets, such as senior Taliban and Al-Qaeda leaders. There have been many drone strikes in Afghanistan over the years, and various organizations and individuals have attempted to track the number and location of strikes. Here are a few lists of drone strikes in Afghanistan:

In 2015, there were several drone strikes in Afghanistan carried out by the United States. On January 1, one person was killed in a drone strike in Spera District, Khost Province.<sup>37</sup> On January 3, 25 people were killed in two separate drone strikes in Gayan District, Paktika Province, and Spera District, Khost Province.<sup>38</sup> On January 7, three people were reportedly killed in the eastern part of Logar Province. On January 8, six people were reportedly killed and three were injured in a US airstrike in Chikanawr area, Lal Pura District, Nangarhar Province.<sup>39</sup> On January 11, eight were killed and three were injured in the same area. On January 16, three people were killed in Nazyan District, Nangarhar Province. On January 17, one person was reportedly killed or injured in Lal Pura District, Nangarhar Province.<sup>40</sup> On January 19, one person was reportedly killed or injured in Khogyani District, Nangarhar Province. On January 29, four people were killed in Nazyan District, Nangarhar Province.<sup>41</sup> The following year, on

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<sup>35</sup> Derek Gregory, 'From a View to a Kill: Drones and Late Modern War' (2011) 28 *Theory, Culture & Society* 188.

<sup>36</sup> 'U.S. Absolves Drone Killers and Persecutes Whistleblowers' <<https://theintercept.com/2021/11/04/drone-attack-kabul-pentagon-report-whistleblowers/>> accessed 14 April 2023.

<sup>37</sup> 'NATO and Pakistan Troops Kill Taliban on Afghan Border' *Reuters* (1 July 2008) <<https://www.reuters.com/article/uk-afghan-violence-idUKISL31258620080701>> accessed 14 April 2023.

<sup>38</sup> 'List of Drone Strikes in Afghanistan | Military Wiki | Fandom' <[https://military-history.fandom.com/wiki/List\\_of\\_drone\\_strikes\\_in\\_Afghanistan](https://military-history.fandom.com/wiki/List_of_drone_strikes_in_Afghanistan)> accessed 14 April 2023.

<sup>39</sup> © Stanford University, Stanford and California 94305, 'MMP: Islamic State in Khorasan Province' <<https://cisac.fsi.stanford.edu/mappingmilitants/profiles/islamic-state-khorasan-province>> accessed 14 April 2023.

<sup>40</sup> 'IS Says It Has Captured E. Afghan District From Taliban' <<https://www.voanews.com/a/islamic-state-claims-to-have-captured-district-from-rival-taliban-in-afghanistan/3833364.html>> accessed 14 April 2023.

<sup>41</sup> 'Car Bomb Kills At Least 11 In Eastern Afghanistan' <<https://www.rferl.org/a/afghanistan-nangarhar-car-bomb>>

January 2, 2016, five former Pakistani Taliban fighters who pledged allegiance to ISIL were killed in a drone strike in the Shaltan Darra area, located in the Shegal district, Kunar province.<sup>42</sup> On January 5, 2016, a US Special Forces soldier was killed during a gun battle by Taliban militants in Marjah district, Helmand province, marking the first US casualty of 2016.<sup>43</sup> On January 6, 12 US air or drone strikes killed an unknown number of people in the Majah district, Helmand province. On January 8, AAF strikes hit and killed 23 ISIL militants in the Achin and Kot districts, Nangarhar province.<sup>44</sup> On the same day, a US air or drone strike killed 17–20 ISIL militants, including four senior commanders, who were executing seven men at the time in the Maktab village, Pekha area, Achin District, Nangarhar province.<sup>45</sup> There were also reports of civilian casualties. On the same day, a US air or drone strike killed an unknown number of people in the Kharkhez district, Kandahar province, and another strike killed an unknown number of people in the Bermal district, Paktika province. On January 9, 20 ISIL militants were killed in a drone strike in Achin District, Nangarhar province.<sup>46</sup> On the same day, 15 ISIL militants were killed in a US air or drone strike in the Janjal Gondai area, Kot district, Nangarhar province, and ten militants from Pakistan were killed in a US air or drone strike in the Shegal district, Kunar province.<sup>47</sup> In 2018, there were also several drone strikes carried out by the United States, resulting in the deaths of many militants and civilians.<sup>48</sup>

According to the New York Times, “*The strike on Aug. 29 killed ten innocent people, including seven children in a tragic blunder that punctuated the end of the 20-year war in Afghanistan.*”<sup>49</sup>

Accordingly, Amnesty International has submitted a report which says, “*Over the past 20 years, the United States has occasionally violated international human rights and humanitarian law*

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deaths/27726731.html> accessed 14 April 2023.

<sup>42</sup> ‘U.S. Drone Kills Islamic State Leader for Afghanistan, Pakistan: Officials | Reuters’ <<https://www.reuters.com/article/us-afghanistan-islamicstate-idUKKCN10N21L>> accessed 14 April 2023.

<sup>43</sup> ‘One U.S. Service Member Killed, Two Wounded in Afghanistan | Reuters’ <<https://www.reuters.com/article/uk-afghanistan-usa/one-u-s-service-member-killed-two-wounded-in-afghanistan-idUKKBN0UJ1K320160105>> accessed 14 April 2023.

<sup>44</sup> ‘US Drones, Afghan Forces Kill 28 IS Fighters’ <<https://www.voanews.com/a/us-drones-afghan-forces-kill-28-is-fighters/3179608.html>> accessed 14 April 2023.

<sup>45</sup> ‘IS Fighters Hid among Afghan Pine Nut Harvesters during U.S. Drone Strike: U.S. Official | Reuters’ <<https://www.reuters.com/article/us-afghanistan-attack-hospital-idUSKBN1W516F>> accessed 14 April 2023.

<sup>46</sup> ‘Country Reports on Terrorism 2019 - United States Department of State’ <<https://www.state.gov/reports/country-reports-on-terrorism-2019/>> accessed 14 April 2023.

<sup>47</sup> India TV News Desk and India TV News, ‘US Drone Strike Kills 4 Militants in Pakistan’ (26 May 2012) <<https://www.indiatvnews.com/news/world/us-drone-strike-4-militants-pakistan-7783.html>> accessed 14 April 2023.

<sup>48</sup> Christopher J Coyne and Abigail R Hall, ‘The Drone Paradox: Fighting Terrorism with Mechanized Terror’ (2018) 23 *The Independent Review* 51.

<sup>49</sup> Charlie Savage and others, ‘Newly Declassified Video Shows U.S. Killing of 10 Civilians in Drone Strike’ *The New York Times* (19 January 2022) <<https://www.nytimes.com/2022/01/19/us/politics/afghanistan-drone-strike-video.html>> accessed 14 April 2023.

when it has used airstrikes that have caused significant injury to large numbers of civilians.”<sup>50</sup>

The United States armed forces failed on the following provision of International Humanitarian Law.

**a) The Principle of Distinction**

International humanitarian law is built on the principle of distinction, which mandates all parties involved in a conflict to differentiate between combatants and civilians. This rule demands that any attack should solely target combatants and not civilians.<sup>51</sup> Moreover, it is essential to differentiate between civilian objects and military objectives. According to the principle, anyone who is not part of the armed forces is a civilian, and the civilian population consists of people who are not combatants. Civilians are immune to attacks unless they participate directly in hostilities. If there is any uncertainty, individuals should be considered civilians and protected against direct attacks. Targeting the civilian population or non-combatant individuals is considered a war crime.<sup>52</sup>

International humanitarian law strictly prohibits indiscriminate attacks that may hit both military targets and civilians or civilian objects without distinction. This prohibition is in place because such attacks either lack a specific military objective or involve a method or means of combat that cannot be directed at a specific military target or controlled as required by international law. In case an indiscriminate attack results in the death or injury of civilians, it is considered a war crime. Amnesty International reports show that in most cases, attacks examined involved civilian homes or objects that resulted in the loss of lives and injuries to civilians. These attacks can either be categorized as direct attacks on civilians or civilian objects, indiscriminate attacks, or lawful attacks with unintended negative consequences.

**b) Proportionality**

International humanitarian law forbids disproportionate attacks, which refer to attacks that are expected to result in excessive loss of civilian life, injury to civilians, damage to civilian objects, or a combination of these.<sup>53</sup> The expected loss and damage must be excessive concerning the

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<sup>50</sup> ‘Amnesty International USA Statement for the Record for February 9th Hearing on “‘Targeted Killing’ and the Rule of Law: The Legal and Human Costs of 20 Years of U.S. Drone Strikes”’ (*Amnesty International USA*) <<https://www.amnestyusa.org/our-work/government-relations/advocacy/targeted-killing-and-the-rule-of-law/>> accessed 14 April 2023.

<sup>51</sup> Hugh Gusterson, ‘Drone Warfare in Waziristan and the New Military Humanism’ (2019) 60 *Current Anthropology* S77.

<sup>52</sup> ‘Afghanistan: Weak Investigations of Civilian Airstrike Deaths’ (*Human Rights Watch*, 16 May 2018) <<https://www.hrw.org/news/2018/05/17/afghanistan-weak-investigations-civilian-airstrike-deaths>> accessed 14 April 2023.

<sup>53</sup> ‘Afghans Wonder If America Will Ever Acknowledge Its Alleged War Crimes’ <<https://foreignpolicy.com/2020/03/27/afghanistan-drones-america-legacy-taliban/>> accessed 14 April 2023.

direct military advantage expected from the attack. If an attack is intentionally launched with disproportionate effects, resulting in excessive incidental civilian loss, injury or damage, it is deemed a war crime. The Commentary on the Additional Protocols clarifies that the proportionality assessment must consider a "concrete and direct" military advantage, indicating that the advantage must be significant and relatively immediate. Advantages that are insignificant or only visible in the long term should be ignored.

### **c) Obligation To Investigate**

Under international law, states have the responsibility to investigate and prosecute individuals who are suspected of committing war crimes or human rights abuses. If the suspect is found within the territory of a state, that state is obligated to exercise jurisdiction over the individual and conduct an impartial and thorough investigation. The state can also decide to extradite the individual to another state or surrender them to an international criminal court. The United States is no exception to this obligation.<sup>54</sup> Individuals who commit or order war crimes are individually responsible, while military commanders and civilian superiors may also be held responsible if they were aware or should have been aware that crimes were being committed and failed to take necessary actions to prevent or punish them. The U.S. government is required to provide full reparations to victims of its violations of international humanitarian law and human rights.<sup>55</sup>

### **d) Failures To Address Civilian Casualties**

The US government often does not publicly argue that the military advantage of an air strike outweighs the predicted civilian harm caused by the strike, instead claiming that it took measures to prevent civilian casualties and that its motives should not be questioned. However, in some cases, US officials admit to individual instances of civilian casualties without acknowledging systemic failures.<sup>56</sup> Despite conducting air strikes for 20 years, there are concerns about the US government's lack of meaningful protective measures and genuine investigations. Moreover, the US government has been increasingly unwilling to compensate civilian casualties, even in cases where it has admitted responsibility.<sup>57</sup> In contrast, the US has paid claims in the past, although the process can be long and frustrating for victims and their

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<sup>54</sup> 'Amnesty International USA Statement for the Record for February 9th Hearing on "'Targeted Killing' and the Rule of Law: The Legal and Human Costs of 20 Years of U.S. Drone Strikes'" (n 48).

<sup>55</sup> 'Civilians Killed & Wounded | Costs of War' (*The Costs of War*) <<https://watson.brown.edu/costsofwar/costs/human/civilians>> accessed 14 April 2023.

<sup>56</sup> 'Deadly US Drone Strike in Kabul Did Not Break Law, Pentagon Says - BBC News' <<https://www.bbc.com/news/world-us-canada-59157089>> accessed 14 April 2023.

<sup>57</sup> 'Afghans Wonder If America Will Ever Acknowledge Its Alleged War Crimes' (n 51).

families. It remains to be seen whether the US will fulfil its international obligations to compensate civilian victims of drone strikes.

## **VIII. THE JUXTAPOSITION OF HUMAN RIGHTS AND INTERNATIONAL HUMANITARIAN LAW**

Human rights and international humanitarian law are two distinct but closely related bodies of law that deal with protecting human beings in different situations. Human rights refer to the basic rights and freedoms to which all human beings are entitled, regardless of their race, gender, nationality, religion, or any other status. These rights include the right to life, liberty, and security of person; freedom from torture and cruel, inhuman, or degrading treatment; freedom of thought, conscience, and religion; and the right to education, work, and health care.

International humanitarian law, also known as the law of war or the law of armed conflict, governs the conduct of armed conflict and seeks to limit the effects of armed conflict on civilians, combatants, and the environment. It includes rules on the treatment of prisoners of war, the protection of civilians and other non-combatants, and the prohibition of certain weapons and tactics. Both human rights and international humanitarian law are based on the principles of humanity, dignity, and equality, and aim to protect individuals and groups from harm and abuse. They are often invoked in situations where individuals are at risk of violence, discrimination, or other forms of abuse, and provide a framework for holding governments and other actors accountable for their actions. While these two bodies of law have different focuses and origins, they share many common principles and values, and are complementary in their efforts to protect human beings and promote human dignity.<sup>58</sup>

### **(A) Human Rights and International Humanitarian Law Tryst in Afghanistan**

The United States is bound by international human rights law to respect the right to life of individuals residing in countries where it conducts military operations. This obligation applies even in situations where the US is no longer involved in an armed conflict. For instance, following the conclusion of the non-international armed conflict in Afghanistan between the Taliban and the United States, and with the Afghan government no longer existing, the US is no longer part of any conflict within the borders of Afghanistan. Consequently, international humanitarian law is no longer applicable to any potential US military operations in the country. In case the US conducts drone strikes against the Islamic State Khorasan Province (ISKP) as part of its "Global War on Terror," it must adhere to the more stringent protections provided by

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<sup>58</sup> Michael J Boyle, 'Is the US Drone War Effective?' (2014) 113 *Current History* 137.

international human rights law rather than the comparatively relaxed protections on civilian life provided by international humanitarian law. This implies that the targeted killings of ISKP members would be regarded as extrajudicial executions, which is a criminal offense under international law. Additionally, the killing of other individuals caught in such operations would also amount to criminal conduct.<sup>59</sup>

The situation in Afghanistan with respect to human rights and international humanitarian law is complex and has been the subject of much attention and concern by the international community. Since the Taliban takeover of Afghanistan in August 2021, there have been reports of human rights abuses, including violence against women and girls, restrictions on freedom of expression, and persecution of ethnic and religious minorities. The Taliban have also been accused of committing war crimes, including summary executions and the indiscriminate targeting of civilians.<sup>60</sup>

International humanitarian law requires that all parties to a conflict respect the principles of distinction, proportionality, and humanity. This means that attacks must be directed only at military targets and that civilians and civilian objects must not be targeted. Additionally, parties to a conflict must take all feasible precautions to minimize harm to civilians and civilian objects.<sup>61</sup> The situation in Afghanistan poses significant challenges for the protection of human rights and international humanitarian law. The international community has a role to play in supporting the protection of human rights and promoting respect for international humanitarian law in Afghanistan. This may include providing humanitarian assistance, advocating for the protection of civilians, and holding accountable those responsible for violations of human rights and international humanitarian law. The use of drones in Afghanistan raises important questions regarding compliance with international humanitarian law.

Drones are unmanned aerial vehicles that are often used in military operations to gather intelligence, conduct surveillance, and carry out targeted strikes.<sup>62</sup> While drones can provide a means of minimizing harm to civilians by allowing for precision targeting, they also present a risk of harm to civilians and civilian objects if not used in accordance with the principles of distinction, proportionality, and humanity.<sup>63</sup> International humanitarian law requires that attacks

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<sup>59</sup> 'Kabul Drone Strike: Inspector General Finds No Criminal Negligence in Attack That Killed 10 Afghan Civilians - The Washington Post' <<https://www.washingtonpost.com/national-security/2021/11/03/kabul-drone-strike-inspector-general-report/>> accessed 14 April 2023.

<sup>60</sup> Crosston (n 18).

<sup>61</sup> Prem Mahadevan, 'The Military Utility of Drones' 3 p.

<sup>62</sup> David A Jaeger and Zahra Siddique, 'Are Drone Strikes Effective in Afghanistan and Pakistan? On the Dynamics of Violence between the United States and the Taliban' (2018) 64 CESifo Economic Studies 667.

<sup>63</sup> Alex Edney-Browne, 'The Psychosocial Effects of Drone Violence: Social Isolation, Self-Objectification, and Depoliticization' (2019) 40 Political Psychology 1341.



be directed only at military targets and that parties to a conflict take all feasible precautions to minimize harm to civilians and civilian objects. This means that the use of drones must be carefully targeted to avoid civilian casualties and damage to civilian objects.<sup>64</sup>

The use of drones in Afghanistan has been controversial, with reports of civilian casualties and damage to civilian objects. The United Nations has called for greater transparency and accountability in the use of drones, and for parties to the conflict to take all necessary precautions to protect civilians. The situation in Afghanistan underscores the importance of ensuring compliance with international humanitarian law in the use of drones. This includes ensuring that drones are used only in accordance with the principles of distinction, proportionality, and humanity, and that parties to the conflict take all necessary precautions to minimize harm to civilians and civilian objects.

### **(B) Role of the International Criminal Court in Afghanistan**

The International Criminal Court (ICC) has the authority to investigate and prosecute individuals for war crimes, crimes against humanity, and genocide, including those committed during armed conflicts in Afghanistan. With respect to the use of drones in Afghanistan, the ICC could potentially investigate and prosecute individuals for war crimes or crimes against humanity if there is evidence that the use of drones resulted in the intentional targeting of civilians or civilian objects in violation of international humanitarian law. The ICC has previously expressed concerns about the use of drones in armed conflicts, noting the potential for harm to civilians and the need for greater transparency and accountability in their use.<sup>65</sup> The ICC has also emphasized the importance of complying with the principles of distinction, proportionality, and humanity in the use of drones, and has called on parties to armed conflicts to take all necessary precautions to protect civilians. If there is evidence that the use of drones in Afghanistan resulted in war crimes or crimes against humanity, the ICC could investigate and prosecute individuals responsible for those crimes. However, it is important to note that the ICC's jurisdiction is limited to situations where national authorities are unwilling or unable to investigate and prosecute those responsible for such crimes. As such, it would be up to national authorities in Afghanistan or other relevant states to conduct investigations and prosecute those responsible for any potential crimes committed in the use of drones in Afghanistan.<sup>66</sup>

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<sup>64</sup> Michael J Boyle, 'The Race for Drones' (2015) 59 *Orbis* 76.

<sup>65</sup> Mirmojtaba Gharibi, Raouf Boutaba and Steven L Waslander, 'Internet of Drones' (2016) 4 *IEEE Access* 1148.

<sup>66</sup> Piotr Kardasz and Jacek Dorskocz, 'Drones and Possibilities of Their Using' (2016) 6 *Journal of Civil & Environmental Engineering* <<http://www.omicsgroup.org/journals/drones-and-possibilities-of-their-using-2165-784X-1000233.php?aid=73599>> accessed 12 April 2023.

### **(C) Implication of Rome Statute**

The Rome Statute is the treaty that established the International Criminal Court (ICC), which is the principal international judicial body responsible for investigating and prosecuting individuals for the most serious crimes of concern to the international community, including war crimes, crimes against humanity, and genocide. With respect to drone use, the Rome Statute is relevant in that it sets out the legal framework for investigating and prosecuting individuals who are alleged to have committed war crimes or crimes against humanity using drones. Under the Rome Statute, war crimes are defined as serious violations of the laws and customs of war, including intentional attacks directed against civilians or civilian objects, which are not justified by military necessity.<sup>67</sup> Crimes against humanity are defined as widespread or systematic attacks directed against civilian populations, including murder, enslavement, and other acts of inhumane treatment. In the context of drone use, the Rome Statute requires that all parties to a conflict comply with the principles of distinction, proportionality, and humanity in conducting military operations. This means that parties to a conflict must take all feasible precautions to minimize harm to civilians and civilian objects, and that attacks must be directed only at military targets.<sup>68</sup> If there is evidence that individuals have committed war crimes or crimes against humanity using drones, the ICC could potentially investigate and prosecute those individuals. However, as I mentioned earlier, the ICC's jurisdiction is limited to situations where national authorities are unwilling or unable to investigate and prosecute those responsible for such crimes. It would therefore be up to national authorities to investigate and prosecute any potential crimes committed using drones in accordance with the Rome Statute and other relevant international law. The situation in Afghanistan with respect to drone use raises important questions regarding compliance with the Rome Statute and other international legal frameworks.<sup>69</sup>

As mentioned earlier, under the Rome Statute, war crimes are defined as serious violations of the laws and customs of war, including intentional attacks directed against civilians or civilian objects, which are not justified by military necessity. Crimes against humanity are defined as widespread or systematic attacks directed against civilian populations, including murder, enslavement, and other acts of inhumane treatment.

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<sup>67</sup> Mahadevan (n 59).

<sup>68</sup> Avery Plaw, Matthew S Fricker and Brian Glyn Williams, 'Practice Makes Perfect?' (2011) 5.

<sup>69</sup> Réda Nouacer and others, 'Towards a Framework of Key Technologies for Drones' (2020) 77 *Microprocessors and Microsystems* 103142.

## **IX. CONCLUSION**

The use of drones in Afghanistan has been controversial, with reports of civilian casualties and damage to civilian objects. If there is evidence that individuals have committed war crimes or crimes against humanity using drones in Afghanistan, the ICC could potentially investigate and prosecute those individuals. However, it is important to note that the ICC's jurisdiction is limited to situations where national authorities are unwilling or unable to investigate and prosecute those responsible for such crimes. In addition to the Rome Statute, the use of drones in Afghanistan is subject to other international legal frameworks, including international humanitarian law and human rights law. These frameworks require that parties to a conflict take all feasible precautions to minimize harm to civilians and civilian objects, and that attacks be directed only at military targets. The situation in Afghanistan underscores the importance of ensuring compliance with international legal frameworks in the use of drones. This includes ensuring that drones are used only in accordance with the principles of distinction, proportionality, and humanity, and that parties to the conflict take all necessary precautions to protect civilians and civilian objects. If there is evidence of violations of international law, including the Rome Statute, national authorities and the ICC should investigate and prosecute those responsible.

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