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Use of Drone and Sovereignty of the State

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ABSTRACT

Almost halfway through the 2020s decade, the world has seen a massive increase in armed conflicts. Wars combined with the influx of new technology has birthed an era of technologically superior weapons which are seen as the next milestone in the arena of war. This research project aims to critically examine the rapid advancement of technological innovation in weapons, specifically drones and how, as unmanned aerial weapons, they can affect a state's sovereignty.

The paper hopes to delve into the various facets of drone use, ranging from its advantages to the implication of the same in international law. In order to effectively analyze the consequences of using such unmanned aerial vehicles, the research also studies the cases study of USA's drone use under the Obama administration, owing to the widespread use, criticisms and it being so extensively covered globally by subject matter experts.

Moreover, the increased usage of drones by states in global conflicts has uncovered a major issue regarding the targeted states' sovereignty and how such drone attacks can affect the security of the citizens in a grave manner. In order to provide a comprehensive review of the aforementioned, the paper highlights the legal framework already in place and the role of noted international judicial bodies which can help adjudicate any international conflict regarding the usage of drones between two nations. The laws in place are also evaluated, keeping in mind the ethics behind drone strikes in order to reach a conclusion about the crux of the research paper.

In conclusion, this study emphasizes on the loopholes that are being exploited by drone usage and underscores the urgent need to address those in order to guard state sovereignty and the safety of its citizens. Given the frequent usage of drones in recent wars such as Russia-Ukraine and Israel-Palestine, it's extremely important to implement reforms which effectively address every issue highlighted in the research paper.

Keywords: *Drone, State Sovereignty, USA, International Law, Legal Framework, International Judicial Bodies.*

I. INTRODUCTION

The arena of war is ever-changing, the landscape complex and laden with complexities. Technological innovation is just one of the many facets which helps this arena to evolve, such

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as the extended use of drones, also known as Unmanned Aerial Vehicles, in recent times. Drones are now among the most widely used, sought-after, and effective military innovations in contemporary history, completely changing the nature of warfare.

In recent years, the rapid advancement and widespread deployment of drone technology have brought about significant changes in various sectors, given the marked advantages they offer such as efficiency, cost-effectiveness, and the ability to operate in challenging environments, without the loss of human lives at the operator's end. However, drone use, especially in the military and for surveillance, frequently cuts across international borders, creating difficult moral and legal quandaries about issues that include a state's sovereignty and the possibility of illegal incursions into sovereign airspace.

This research project tries to investigate the relationship between state sovereignty and drone technology, investigating at how the spread of drones affects national sovereignty as well as what laws and policies are being created or should be implemented to deal with these issues. This project aims to deliver an in-depth grasp of the consequences for the usage of drones on state sovereignty and propose possible approaches for preventing disputes caused by this technological evolution. To achieve this, it will analyse case studies by looking at real countries' actions and investigating the opinions of subject matter experts, under various sub-headings.

II. BACKGROUND

Unmanned aerial vehicles, or drones, are operated by humans from a distance and in actual time. Drones can be used tactically and militarily in three distinct manners: firstly, they can be called upon to deploy bombs and missiles, just like other military aircraft, when ground forces attack or are attacked; second, some drones can be used for the purposes of surveillance, monitoring human activity and foreign skies around the clock; and third, they can be used on missions intended to eliminate terrorist suspects, a practice known as "targeted killings." Countries like the United States of America and Israel are good examples of those who extensively use drones.

The aforementioned usage of drones, thus, also brings forward the crucial question of how it affects the sovereignty of a state. If one country can transcend borders and engage in killings through drones, what prevents them from projecting more of their power on what is essentially another country's sovereign space?

State sovereignty is significantly impacted by the use of drones, particularly in military settings and for reconnaissance. Traditional ideas of territorial integrity and non-intervention are challenged by drones, which readily traverse borders and are frequently piloted remotely. When

military actions are carried out without the affected governments' express permission, they bring to light the conflict between state sovereignty and the idea that preventive defence against non-state actors is necessary. Furthermore, as states attempt to strike a balance between the preservation of their right to sovereignty and technological innovation, the growth of drones poses questions regarding domestic aviation control and regulatory oversight.

III. IMPLICATIONS OF THE USE OF DRONES IN INTERNATIONAL LAW

On paper, the use of drones is strictly regulated through careful norms and prescription of operating states to international guidelines and standards of humanitarian law. However, actual implementation brings forth an array of complexities which threatens state sovereignty, civilian rights and violation of international rules of warfare.

The very first perspective to be examined should be the consequences drones have on civilians. How do we make sure that the operating State is legitimately only attacking military targets or terrorists? Who do we hold accountable for civilians who are killed as "collateral damage"? With the coming of autonomous drones, which do not require a human pilot to operate the vehicle at all times, are we reducing human life just to an algorithm to be fed into a machine? Who is to answer for the deaths which will result from this callousness?

The tremendous challenges involved in applying the principle of distinction in these situations may lead to careless oversimplifications, like the alleged US policy of "signature strikes," which appears to approve drone strikes towards unidentified people who are suspected of being "terrorists" or "jihadists" based on their interactions, personal conduct, or other traits - legally ambiguous terms that are wholly unrelated to legitimate targets. These policies not only compromise the essential differences that form the basis of the legal framework of hostilities, but they also significantly fail to meet the safeguards and assumptions that need to be implemented when the circumstances are uncertain.

It is therefore of utmost importance that the State operating the drones, must at all times, practice accountability and be transparent about the usage of their drones given the fact that they are technically using lethal force. The consequences of the drone attacks must be faced by their Country, who should be absolutely sure that any accidental killing was done on the basis of the minutest form human error rather than conducted on mere suspicion against the target. The country will also have to face legal accountability and the duty to investigate and analyse as well as reparations for violations will fall upon them.

IV. CASE STUDIES

Drone strikes gained prominence in mainstream media due to the prolonged usage by the Obama administration, particularly against Pakistan, in the USA's "War on Global Terrorism" and have recently come under scrutiny again by communities around the world as we watch Israel's ruthless attacks on Gaza escalate. That isn't to say that other countries around the world haven't utilised drone technology in order to further their own agendas and foreign policy.

A recent example of drone technology's purpose shifting from just targeted killings to penetrating another State's sovereignty and gaining an upper hand in theatres of war without the advancement of human armies and weaponry like tanks, is the 2020 Nagorno-Karabakh war. Due to their strategic use of drones, Azerbaijan was able to acquire an advantage in the battle. After a month and a half of warfare, Azerbaijan maintained control over the areas it had occupied throughout the conflict. Their deployment of drones had a direct impact on Armenia's sovereignty. It aptly illustrates how drones have progressed from being used for assaults to competing with military hardware².

The USA's utilisation of drone attacks challenged the conventional ideas surrounding a sovereign State's security and right to defence by US seeking to attack citizens without focusing on the state (Pakistan) itself; as a result, although the state appeared safe, the populace wasn't. The US may argue that every strike they conducted was legal given the fact that the state of Pakistan was allied with them in the war to eliminate non-state actors who were partaking in terrorist activities, from the confines of the country but it still doesn't answer the question of how drone machinery contributed in killing large numbers of civilian population, including children as a result of mere suspicion and their personal behaviour on USA's end. It is safe to assume, like much of the global community has, that the USA's drone strikes, though aided in elimination of High Value Targets and helped in surveillance prior to attacks also killed civilian population indiscriminately and just on the assumption of them being "associated" towards terror groups without any concrete proof.

The USA's extensive utilisation of drone technology hinges on its belief that it must do so for self-defence, with their policies extremely motivated towards eradicating terrorism in the aftermath of 9/11. Based on the belief that the deadly terrorist leaders and their affiliates pose an immediate threat, the US defended its drone operations in Afghanistan, Pakistan and Iraq. Through this defence, The USA technically created theatres of war all across the world, in

² Singh, Shwetabh. (2021, April 26). *Drones – Security, Sovereignty and Identities*. Air Power Asia. <https://airpowerasia.com/2021/04/26/drones-security-sovereignty-and-identities/>

multiple countries, thereby infringing on their sovereignty and conducting military operations resulting in fatalities wherein they had no jurisdiction, while saving on the cost of human lives and deployment of armies. Many experts believe this to be in contravention of the principles of international law and humanitarian standards. Given their influence on global politics though, many states have either refrained from commenting on the legality of such strikes or taken the middle path and preferred neutrality by only expressing superficial concern.

This case has also brought to light the fact that international law is not properly equipped to deal with the complexities that drone strikes have brought forth. It has exposed glaring loopholes in the legal system; an indication that international law cannot serve as a guidepost for transgressions committed by drone attacks since itself doesn't contain explicit rules to hold the concerned parties as accountable. Moreover, it is easy to understand why majority of the countries would be unwilling to explicitly deny USA consent to carry out drone operations within their territory as they may not want to make an enemy out of such a powerful nation who could decide to attack the whole populace instead of some specific targets that they're asking permission for. In response to any denial, the USA can always cite the security of its massive population a prime defence and assert that the sovereignty of the attacked state cannot serve a complete barrier to intervention.

V. THE QUESTION OF SOVEREIGNTY & SAFETY

While questions may always arise about the legitimacy of drone strikes, it is essential to make sure that they conform to international standards of law as much as possible. This refers to protection of attacked state's sovereignty and to stave off any potential violations of that state's territorial integrity.

The most crucial question to be asked regarding the legality of the drone assault would be to the State wherein it was carried out about whether consent was given by them or not. International law along with principles like *jus ad bellum* holds that sovereignty would not be considered to have been violated if the host state, where the drone was targeted to, gave its consent. This justification has been used by the USA in order to assuage global audiences that its drone strikes in the republic of Iraq were legal where it concerned sovereignty of the state since the latter had granted explicit consent.

This same case becomes murky when we explore USA-Pakistan relations since Pakistan publicly claimed to not have given consent and the USA was adamant it supported the strikes but covertly since, the government didn't want public opinion and morale of the country to turn against them due to allying with the West. Since there is no way to confirm either side of the

allegations, whether or not the sovereignty of the state was violated, owing to indiscriminate killings, elimination of terrorists along with civilians and more remains a mystery.

VI. ETHICS BEHIND DRONE STRIKES

As discussed above, through various examples of countries like USA, it is understood that legality and ethics behind drone strikes are essential and must be adhered to. In the mainstream media, the USA since the Obama Administration has put up a good front of conducting drone strikes only after adhering to every law, citing the security of their country and elimination of terrorism on a global scale as their prime belief behind carrying out these attacks. According to them, the drone strikes have been hugely successful in eliminating terrorists, leading to dissolution of terror groups and destruction of madrasas where recruits were trained, all with minimal to no civilian casualties involved.

However, it is important to note that several whistle-blowers and anonymous officials have come forward since leaving their governmental posts to divulge that all may not have been within the legal boundaries when it came to the USA carrying out these drone assaults in Pakistan. The New York Times carried their statements, as early as 2012, wherein they said that the standards held by US for attacking targets was in stark contrast to what is legally mandated in international law. They believed that all males who fell in an age bracket befitting the military were to be treated as combatants and strikes against them would be valid, unless concrete intelligence could confirm them as not guilty, posthumously³. Thus, their previous claim of less civilian casualties stands to be challenged since this classification may lead to innocent civilians being inadvertently killed for the reason of being combatants, even though there was a lack of information on the ground to justify this.

Experts concur that though collateral damage and mistaken civilian casualties are an unfortunate by-product of war, drones with their superior technology and better accuracy were supposed to help in reducing collateral civilian deaths. Therefore, while approving the usage of drones from an ethical perspective, the truth about the extent of collateral damage is crucial.

VII. LEGAL FRAMEWORK & ROLE OF INTERNATIONAL JUDICIAL BODIES

Human rights law and all international humanitarian standards will be applicable in any situation wherein drones are being used at all times, to ensure maximum protection for all innocent civilians who may get caught in the crossfire. International lawfulness of these strikes,

³ Coll, S. (2014, November 17). *Obama's Drone War*. The New Yorker. <https://www.newyorker.com/magazine/2014/11/24/unblinking-stare>

though, will not only be governed by humanitarian law but also law which dictates the standards of using interstate force, such as the United Nations Charter.

The Charter's Article 2(4) prohibits threat or interstate force, including the use of robotic systems like drones, which can be used extra-territorially as weapons inside another State's territory, thereby threatening their sovereignty and territorial integrity. Thus, use of drones is subject to this prohibition of force and every utilisation of drones, for the purposes of assaults, should be justified in accordance with law, and are subject to certain conditions like the consent of the State wherein the drones are being launched/sent to as well as a UN Security Council authorisation, among other criterion.

Regarding the role of international judicial bodies, it is ideally agreed upon that governmental activities which have transgressed beyond boundaries of law, should be investigated through national procedures, and only upon their inability to solve the same, should international mechanisms be brought into play as a secondary option. At the international level, any dispute will be handled by the International Criminal Court (ICC) or the International Court of Justice (ICJ), and individual victims seeking justice or compensation due to drone attacks can approach international human rights bodies. Both the international courts can be tasked with solving any contentions between States regarding the drone technology or its attacks as well as concerns about personal criminal liability in connection with deployment of drones in warfare.

VIII. CONCLUSION

Theatres of war are ever-changing and every conflict between States brings forth a new way to attack and assert dominance or protect its own people. With the coming of superior technology like drones, the well-known idea of war being conducted on battlefields with human armies and military weaponry like tanks had dissipated into the past.

The advantages of drones are vast, from its lethal accuracy and protection of human lives who would've been deployed instead. It allows the aggressor to partake in a theatre of war miles away from its own territory since violence in return against them would be very less in proportion and this jurisdiction to conduct extra-territorial strikes offers a great way to penetrate another, more vulnerable state's sovereignty.

Though drone technology may offer great advantages, it doesn't come without some serious consequences. As seen above, in the case of USA-Pakistan, the high incidence of civilian deaths as a result of the collateral inflicted from drone assaults casts major doubts on the validity of drone attacks and additionally, spurs inquiries into their legality. This unfortunate legacy has only been continued by the State of Israel towards Gaza, wherein footage has been released of

drones targeting unarmed, innocent civilians, not partaking in any activity which could classify them as a combatant or legitimate target.

An extensive look into the research, while drafting this paper, has made it quite clear that the existing legal framework has loopholes, which are exploited by States launching drones, who use these to validate their actions as “within the boundaries of law”. It should be clearly understood that the usage of drones should be restricted within legal framework, such as the law of hostilities, which explicitly lays down guidelines, and should only be targeted towards legitimate targets, with all states observing fundamental international legal norms.

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