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A Consideration of the Legality of U.S. Targeted Killings in Pakistan Under International Human Rights Law

By Catherine Zortman

Introduction

International legal frameworks governing war were created in reaction to the most horrific acts within World War II and continued to develop as war continued to rage on in different areas of the world. It is within that legacy that all legal assessments of the Global War on Terror (WOT) operate. The WOT is riddled with legal debates that question if states themselves are “criminals”.⁶³ The U.S. government justified its actions as legal under International Humanitarian Law (IHL). It is important to distinguish morality and effectiveness from legality. What is legal is not always the most moral or effective means of operation. By focusing on WOT operations within Pakistan, this article can engage with legal debates surrounding American action as well as drone strikes.

The United States’ response to 9/11 prompted various legal scholars that both question or justify the WOT. American action within Pakistan has remained a contentious area of debate. Jonathan Masters has emerged as a proponent of American legal justification arguing that the United States can conduct operations in limited circumstances legally because the Pakistani government was not willing to deal with imminent threats.⁶⁴ On the other hand, Kenneth Roth asserts that the United States stretches the term “war” to justify overreach into alternative jurisdictions.⁶⁵ Maira Hayat’s scholarship further criticizes American action through by pointing to faults within American military institutions carrying out targeted killings.⁶⁶ Additionally, Yolandi Meyer’s scholarship focus on targeted killing provides a good basis to assess how lethal modern technology challenges the application of international law on powerful states.⁶⁷

Despite the substantial legal scholarship surrounding U.S. action within Pakistan, few scholars draw from both International Humanitarian Law (IHL) and International Human Rights Law (IHRL) in their analysis. Micheal Ramsden’s “Targeted Killings and International Human Rights Law: The Case of Anwar Al-Awlaki” is an exception, however, he only limits the application to a single case of a targeted killing.⁶⁸ This response addresses the longstanding questions of the legality of American targeted killing in Pakistan through

⁶³ National Archives, “Global War on Terror,” accessed December 16, 2024, <https://www.georgewbushlibrary.gov/research/topic-guides/global-war-terror>.

⁶⁴ Jonathan Masters, “The Target Killings Debate,” *Council on Foreign Relations*, June 8, 2011, <https://www.cfr.org/expert-roundup/targeted-killings-debate>.

⁶⁵ Kenneth Roth, “The Law of War in the War on Terror: Washington’s Abuse of ‘Enemy Combatants,’” *Foreign Affairs* 83, no. 1 (2004): 2-3, <https://doi.org/10.2307/20033823>.

⁶⁶ Maira Hayat, “Empire’s Accidents: Law, Lies, and Sovereignty in the “War on Terror” in Pakistan,” *Critique of Anthropology* 40, no. 1 (2020), 54, <https://journals-sagepub-com.ezproxy.st-andrews.ac.uk/doi/pdf/10.1177/0308275x19850686>.

⁶⁷ Meyer, “The Legality of Targeted-Killing Operations in Pakistan,” 233-235.

⁶⁸ Michael Ramsden, “Targeted Killings and International Human Rights Law: The Case of Anwar Al-Awlaki,” *Journal of Conflict and Security Law* 16, no. 2 (2011), 385. <https://doi-org.ezproxy.st-andrews.ac.uk/10.1093/jcsl/krr015>.

assessing the implications of the rules and regulations of IHRL versus IHL. Through emphasizing border jurisdiction, this article illuminates the illegality of U.S. action within Pakistan. I will argue that the use of drone strikes for targeted killings in Pakistan is illegal under International Human Rights Law (IHRL) because it does not meet the necessary legal criteria. First, I will illustrate that conflict with Pakistan does not meet the criteria for International Humanitarian Law (IHL) and therefore, is governed by IHRL. Secondly, I will demonstrate that U.S. drone strikes within Pakistan were not legal under IHRL because they have become the default policy, violate *Just War* principles, and do not seek less lethal means.

1. Legal Jurisdiction of U.S. Force

While the rhetoric used by both Obama and Bush emphasized a “Global” War on Terror, legal frameworks separate on state boundaries.⁶⁹ The 2001 Authorization for Use of Military Force (AUMF), passed by Congress, authorized U.S. military operations against al-Qaeda in Afghanistan.⁷⁰ However, it has been implemented by four different Administrations for operations in 22 countries, including Pakistan, resulting in calls from Congress to end the AUMF (House Foreign Affairs Committee 2023).⁷¹ While this is a domestic legal setting, it demonstrates the tendencies of legal frameworks to limit their laws within tangible state boundaries. International law’s current mechanism considers terrorism a “criminal phenomenon” governed under domestic law, rather than under IHL.⁷² This distinction is important because states can use more force under IHL than IHRL.⁷³

The U.S. has sought to change this legal framework, arguing that terrorism law should account for “new” forms of terrorism.⁷⁴ The academic discourse of the “new” terrorism thesis broadly contends that modern terrorism is distinct from previous forms.⁷⁵ This “new” form of terrorism is not bound by borders or land claims, but has an international focus and reach.⁷⁶ Through the reinvention of terrorism law, the U.S. would face fewer limitations on their use of force. The International Committee of the Red Cross (ICRC), the governing body that assesses conflict jurisdiction, maintains that terrorism is not a “new” phenomenon and should be framed as an

⁶⁹ Roth, “The Law of War in the War on Terror,” 2.

⁷⁰ Hayat, “Empire’s Accidents,” 54; “Meeks Introduces Landmark 2001 AUMF Repeal and Replace Bill.” House Foreign Affairs Committee. Last modified April 7th, 2023. <https://democrats-foreignaffairs.house.gov/press-releases?ID=49AE7BD4-CF43-4428-8308-BE42A316D9A6>.

⁷¹ Hayat, “Empire’s Accidents,” 54.

⁷² “ICRC, IHL and the Challenges of Contemporary Armed Conflicts,” International Committee of the Red Cross.

⁷³ *Ibid.*

⁷⁴ *Ibid.*

⁷⁵ Alejandra Bolanos. “YES: The ‘New Terrorism or the ‘Newness’ of Context and Change,” in *Contemporary Debates on Terrorism*, ed. by Richard Jackson and Samuel Justin Sinclair (Routledge, 2014), 57-65.; Bruce Hoffman, “Rethinking Terrorism and Counterterrorism Since 9/11,” *Studies in Conflict and Terrorism* 25, no. 5 (2002), 303, <https://doi-org.ezproxy.st-andrews.ac.uk/10.1080/105761002901223>; Walter Laqueur, “Postmodern Terrorism,” *Foreign Affairs* 75, no. 5 (1996), 36, <https://www.jstor.org/stable/20047741>.

⁷⁶ Isabelle Duyvesteyn. “How New is the New Terrorism?,” *Studies in Conflict & Terrorism* 27, no. 5 (2004), 443. <https://doi-org.ezproxy.st-andrews.ac.uk/10.1080/10576100490483750>.

illegal domestic criminal act.⁷⁷ Therefore, the ICRC only looks within domestic bounds rather than transnational and abstract ideas.⁷⁸ Terrorism is not a justification for IHL jurisdiction, but when the conflict amounts to an “armed conflict”, IHL can be applied.⁷⁹ Therefore, the jurisdiction of the conflict in Afghanistan and Pakistan must be considered separately.⁸⁰ There must be a minimum level of organization and intensity to be classified as an “armed conflict” and transition from IHRL to IHL.⁸¹

Organization of Actors in Pakistan

To be classified as an “armed conflict” all actors must reach a certain threshold of organization. This threshold is met within Afghanistan but falls short within Pakistan.⁸² While Al-Qaeda had structures that were sophisticated and coordinated enough to orchestrate 9/11, they did not have control over the territory that the law requires to be classified as an organized actor in an “armed conflict”.⁸³

The September 11th attack illustrated the capabilities of Al-Qaeda in choreographing such a lethal attack. Bruce Hoffman describes Osama bin Laden’s Al-Qaeda as “a large multinational corporation: defining specific goals and aims, issuing orders, and ensuring their implementation”.⁸⁴ However, this structure changed in the wake of 9/11 and has evolved in reaction to the WOT counterterrorism strategies.⁸⁵ Al-Qaeda has adapted by forming smaller groups and emphasizing diffuse structures that are more difficult to detect.⁸⁶ Additionally, the U.S. strategy of decapitation, which targets heads of organizations, has eliminated many of the top officials resulting in a power vacuum.⁸⁷ U.S. strategy in Pakistan has led to a decrease in a centralized structure, prompting many to scatter across numerous countries.

According to Article 51, “armed conflict” is between at least two organized actors and to be organized, they must have effective control over the land.⁸⁸ Al-Qaeda does not have effective control over land in Pakistan.⁸⁹ Authorities in Afghanistan tolerated Al-Qaeda within its borders until the WOT which prompted the group to seek refuge in Pakistan.⁹⁰ Top officials – including Khalid Sheikh Muhammad, Ramzi Bin al Shibh, and

⁷⁷ “ICRC, IHL and the Challenges of Contemporary Armed Conflicts,” International Committee of the Red Cross.

⁷⁸ Heinze, “The Evolution of International Law in Light of the ‘Global War on Terror,’” 1069.

⁷⁹ “ICRC, IHL and the Challenges of Contemporary Armed Conflicts,” International Committee of the Red Cross.

⁸⁰ United Nations Office on Drugs and Crime, “Module 6: Military / Armed Conflict Approaches to Countering Terrorism,” accessed December 16, 2024, <https://www.unodc.org/e4j/en/terrorism/module-6/key-issues/categorization-of-armed-conflict.html>.

⁸¹ Roth, “The Law of War in the War on Terror,” 2-3.

⁸² “Module 6: Military / Armed Conflict Approaches to Countering Terrorism,” United Nations Office on Drugs and Crime.

⁸³ Heinze, “The Evolution of International Law in Light of the ‘Global War on Terror,’” 1069.

⁸⁴ Hoffman, “Rethinking Terrorism and Counterterrorism Since 9/11,” 309.

⁸⁵ Maryam Azam, “Transnational Militant Network in Pakistan: An Analysis of Al Qaeda and Islamic State,” *Pakistan Perspectives* 26, no. 1: 4 (2021), 4, <https://search.ebscohost.com/login.aspx?direct=true&AuthType=shib&db=edb&AN=154748891&site=eds-live&authtype=shib&custid=s3011414>.

⁸⁶ Bolanos, “YES,” 32.

⁸⁷ Jenna Jordan, “Attacking the Leader, Missing the Mark: Why Terrorist Groups Survive Decapitation Strikes,” *International Security* 38, no. 4 (2014): 37, <https://www.jstor.org/stable/24481099>.

⁸⁸ Heinze, “The Evolution of International Law in Light of the ‘Global War on Terror,’” 1078.

⁸⁹ *Ibid.*, 1079.

⁹⁰ Imdad Ullah, *Terrorism and the US Drone Attacks in Pakistan: Killing First* (Routledge, 2021), 17.

Abu Badr – who were responsible for orchestrating the 9/11 attack, were found within Pakistan’s borders.⁹¹

Despite the evidence of the Pakistani government’s lack of action concerning Al-Qaeda, the government was not involved enough in Al-Qaeda operations to be legally characterized as an organized adversary to an “armed conflict”.⁹² Al-Qaeda is present within Pakistan, but there is no evidence that they have effective control or colluded with the Pakistan government enough to be labeled an “armed conflict”.⁹³

Intensity of Conflict in Pakistan

There are no quantitative standards for “intensity”, however, we can look to the International Criminal Tribunal for the Former Yugoslavia for guidance.⁹⁴ “Intensity” is measured through the analysis of duration, gravity, number of troops, type of government forces, kinds of weapons, number of casualties, and extent of the damage caused by the fighting.⁹⁵ The law requires consideration of “intensity” through a culmination of different facets, but it is important to note that categorizing tragedy is problematic, and individual experiences are important to collective understanding.

Through the comparison of “intensity” in Afghanistan and Pakistan, this section will discern why the ICRC classified Afghanistan as an “armed conflict” and Pakistan as not.⁹⁶ While the U.S. had a small number of ground forces in Pakistan, it largely relied on the Pakistani Army to reinforce the Afghani border.⁹⁷ Specifically, around 9,500 troops were sent by the Pakistani army to domestic regions of Baluchistan and the Northwest Frontier Province.⁹⁸ Comparatively, there were 19,000 American military personnel sent to Afghanistan.⁹⁹ The number of casualties or direct deaths since 2001 attempts to quantify the impact of the conflict on the populations. Between 2001 and 2011, there were 176,000 direct deaths in Afghanistan and 67,000 direct deaths in Pakistan.¹⁰⁰ The extent of damage can also be measured through those displaced by the conflict. In Afghanistan, 5.3 million people were displaced as opposed to 3.7 million people in Pakistan.¹⁰¹ Those who are displaced have cited “air strikes, bombings, artillery fire, drone attacks, gun battles, and rape” as the reasons for their fleeing.¹⁰² The conflict had undeniably devastating impacts on the community.

⁹¹ *Ibid.*, 105.

⁹² *Ibid.*, 107.

⁹³ *Ibid.*, 105-110.

⁹⁴ “Module 6: Military / Armed Conflict Approaches to Countering Terrorism,” United Nations Office on Drugs and Crime.

⁹⁵ International Committee of the Red Cross, “Internal conflicts or other situations of violence – what is the difference for victims?,” last modified November 10, 2012, <https://www.icrc.org/en/doc/resources/documents/interview/2012/12-10-niac-non-international-armed-conflict.htm>.

⁹⁶ “Module 6: Military / Armed Conflict Approaches to Countering Terrorism,” United Nations Office on Drugs and Crime.

⁹⁷ “U.S. Military Operations in the Global War on Terrorism: Afghanistan, Africa, the Philippines, and Colombia.” Congressional Research Service, last modified January 20, 2006. <https://crsreports.congress.gov/product/pdf/RL/RL32758/5>.

⁹⁸ *Ibid.*

⁹⁹ *Ibid.*

¹⁰⁰ Watson Institute of International & Public Affairs, “Human Cost of Post-9/11 Wars: Direct War Deaths in Major War Zones,” last modified March 2023, <https://watson.brown.edu/costsofwar/figures/2021/WarDeathToll>.

¹⁰¹ *Ibid.*

¹⁰² “Human Cost of Post-9/11 Wars: Direct War Deaths in Major War Zones,” Watson Institute of International & Public Affairs.

Consideration of these factors led the ICRC to determine that Afghanistan is an “armed conflict” within the jurisdiction of IHL, while Pakistan falls short and within the jurisdiction of IHRL.¹⁰³

2. Legality of Drone Strikes under IHRL

Drone strikes embody the U.S. counterterrorism approach in Pakistan with 420 drone strikes carried out between 2006-2016.¹⁰⁴ IHRL does not explicitly mention the use of drones, however, they do have guidelines surrounding targeted killings.

American drones used in Pakistan are highly sophisticated, they are very effective tools for hitting their targets without risking American soldiers' lives.¹⁰⁵ However, legality and effectiveness do not always align. Drones fall within the military model and arguably against the law enforcement model because of the lack of due process associated with the weapons. As established within the first section, U.S. action falls within IHRL jurisdiction which clashes with the American military model.

Legal Restrictions of IHRL

The key documents forming the basis of IHRL are the International Covenants on Civil and Political Rights 1966 and customary law.¹⁰⁶ IHRL was created to regulate law enforcement, but found itself regulating the military in the WOT.¹⁰⁷ Counterterrorism efforts are divided into different “models” that group together tools of statecraft.¹⁰⁸ The military model provides advantages in gathering and employing intelligence as well as better equipment to handle specific terrorist threats.¹⁰⁹ Comparatively, the law enforcement model is ideal for preventing terrorist activities with the proper investigative powers to arrest and prosecute terrorists.¹¹⁰ While many of these models are blended to form diverse counterterrorism strategies, the legal field separates them and regulates state action in different ways.¹¹¹

¹⁰³ “Module 6: Military / Armed Conflict Approaches to Countering Terrorism,” United Nations Office on Drugs and Crime.

¹⁰⁴ Rafat Mahmood and Michael Jetter, “Gone with the Wind: The Consequences of US Drone Strikes in Pakistan,” *Economic Journal* 133, no. 650 (2023): 787, <https://eds.p.ebscohost.com/eds/detail/detail?vid=0&sid=5c29ec62-4263-4080-bc77-ef5ebd38efd4%40redis&bdata=JkF1dGhUeXBIPXNoaWlmc2loZT1lZHMtG2ZQ%3d%3d#AN=161902303&db=buh>.

¹⁰⁵ Casey Fitzpatrick, “Drone Strikes on Citizens: Ensuring Due Process for U.S. Citizens Suspected of Terrorism Abroad,” *Case Western Reserve Journal of Law* 4, no. 1 (2012), 133, <https://heinonline.org/HOL/P?h=hein.journals/caswestres4&i=137>.

¹⁰⁶ International Committee of the Red Cross, “International Humanitarian Law and International Human Rights Law: Similarities and Differences,” last modified January, 2003, https://www.icrc.org/en/doc/assets/files/other/ihl_and_ihrl.pdf.

¹⁰⁷ Meyer, “The Legality of Targeted-Killing Operations in Pakistan,” 234.

¹⁰⁸ Michael Boyle, “The Military Approach to Counterterrorism,” In *Routledge Handbook of Terrorism and Counterterrorism*, ed. by Andrew Silke (Routledge, 2020), 384.

¹⁰⁹ *Ibid.*

¹¹⁰ *Ibid.*

¹¹¹ *Ibid.*; Meyer, “The Legality of Targeted-Killing Operations in Pakistan,” 234-235.

IHRL does not protect the military counterterrorism model in the same way IHL does.¹¹² According to IHRL, lethal force is only permissible if the threat is imminent, “strictly necessary to save human life”, and when less lethal tactics are exhausted.¹¹³ IHRL was created with the law enforcement model in mind to allow authorities a minimum amount of force to maintain order.¹¹⁴ Lethality is only permitted in very narrow circumstances and under intense scrutiny because “life cannot be considered arbitrary”.¹¹⁵ When lethal action is taken it must follow the *Just War* principles of necessity and proportionality.¹¹⁶ Despite these regulations under IHRL, the U.S. has developed systemic practices surrounding drone strikes in Pakistan.¹¹⁷ This combined with the lack of engagement with Pakistani authorities demonstrates that U.S. action with Pakistan is illegal under IHRL.

Systemic Drone Strikes

Drones have become a defining feature of U.S. counterterrorism efforts in Pakistan, especially under the Obama administration.¹¹⁸ President Obama authorized 542 drone strikes, killing an estimated 3,797 people.¹¹⁹ According to Gabriel Rubin, Obama replaced the Bush administration’s “enhanced interrogation” in Guantanamo Bay with an increase in lethal drone strikes.¹²⁰ The tactic took a systemic form within the Obama administration, becoming a standardized counterterrorism tactic.¹²¹

In 2010, the “disposition matrix” was created by John Brennan, who was the Administration’s counterterrorism advisor.¹²² The “disposition matrix” combined various lists across American agencies to centralize intelligence on suspected terrorists.¹²³ The database was named the “kill list” because the names within the matrix were often the targets of drones.¹²⁴ The “kill list” centralized intelligence and created a streamlined system that provided the necessary information to target and kill on a large scale.¹²⁵ The effectiveness of these systems depends on the correct gathering of information.¹²⁶ The worry of potentially

¹¹² Meyer, “The Legality of Targeted-Killing Operations in Pakistan,” 234.

¹¹³ Office of the United Nations High Commissioner for Human Rights, “Human Rights, Terrorism and Counter-terrorism,” <https://www.ohchr.org/sites/default/files/Documents/Publications/Factsheet32EN.pdf>; “Q & A: US Targeted Killings and International Law,” Human Rights Watch, Last modified December 19, 2011, <https://www.hrw.org/news/2011/12/19/q-us-targeted-killings-and-international-law#2.%20What%20international%20law%20is%20applicable%20to%20targeted%20killings?>. Ramsden, “Targeted Killings and International Human Rights Law,” 385.

¹¹⁴ Meyer, “The Legality of Targeted-Killing Operations in Pakistan,” 234.

¹¹⁵ “Human Rights, Terrorism and Counter-terrorism,” Office of the United Nations High Commissioner for Human Rights.

¹¹⁶ *Ibid.*

¹¹⁷ *Ibid.*

¹¹⁸ Fitzpatrick, “Drone Strikes on Citizens,” 117.; Gabriel Rubin, *Presidential Rhetoric on Terrorism under Bush, Obama and Trump: Inflating and Calibrating the Threat after 9/11* (Springer, 2020), 83.

¹¹⁹ Rubin, *Presidential Rhetoric on Terrorism under Bush, Obama and Trump*, 97.

¹²⁰ *Ibid.*, 83.

¹²¹ Fitzpatrick, “Drone Strikes on Citizens,” 117.

¹²² Jutta Weber, “Keep Adding. On Kill Lists, Drone Warfare and the Politics of Databases,” *Environment and Planning D: Society and Space* 34, no. 1 (2016): 108, <https://search.ebscohost.com/login.aspx?direct=true&AuthType=shib&db=edselc&AN=edselc.2-52.0-84957807462&site=eds-live&authtype=shib&custid=s3011414>.

¹²³ Weber, “Keep Adding. On Kill Lists, Drone Warfare and the Politics of Databases,” 108.

¹²⁴ *Ibid.*

¹²⁵ *Ibid.*

¹²⁶ *Ibid.*, 111.

missing terrorist threats drove data collection too broadly resulting in false positives.¹²⁷ The lack of scrutiny and mistakes of the systemic process is deadly, with false positives paying the ultimate price. The “disposition matrix” demonstrates that rather than in an exceptional case, the U.S. government has created a drone strike system that is convenient and problematic for determining targets and is against IHRL.

In 2011, a U.S. drone falsely struck a *jirga*, a meeting of tribal elders, because the intelligence mistook them for militants.¹²⁸ At least 40 people were killed because of the American military’s mistake.¹²⁹ The intelligence and due diligence required under IHRL were not followed.¹³⁰ The airstrikes did not follow the principle of necessity or proportionality because they were not militants and did not provide an advantage. The families of those killed began a legal battle questioning U.S. action which ended in the Peshawar High Court.¹³¹ The court ruled that U.S. action was against the UN Charter and the Geneva Convention.¹³² This story is not an original one but highlights the result of faulty information and systemic practices that value efficiency over necessity and morality.

The Principle of Proportionality

The principle of proportionality dictates that the damage caused by force must be commensurable to the advantage sought and meet the standards under IHRL.¹³³ Effectiveness and legality have an important intersection under proportionality. Effectiveness in this section is the best operation to achieve the goal with the most limited amount of loss. However, the tactic of drone strikes is not very effective at achieving the overarching goal of eradicating terrorism.¹³⁴ The practice of decapitation has infiltrated the U.S. counterterrorism strategy. Decapitation strategy refers to the idea that killing the heads of a terrorist organization will “kill” the organization and therefore save future lives.¹³⁵ This practice is not very effective at eradicating terrorism, but instead provides a disadvantage.¹³⁶

Rafat Mahmood and Michael Jetter’s 2022 study connects drone strikes to the emotional impact and motivation of terrorists.¹³⁷ Their findings highlight the ineffectiveness of U.S. drone strikes between 2006 and 2016, attributing 19% of terror attacks to the emotional impact of 3,000 drone strike deaths.¹³⁸ Mahmood and

¹²⁷ *Ibid.*, 111.

¹²⁸ Hayat, “Empire’s Accidents,” 60.

¹²⁹ *Ibid.*

¹³⁰ *Ibid.*

¹³¹ *Ibid.*, 63.

¹³² Hayat, “Empire’s Accidents,” 63.

¹³³ “Proportionality,” International Committee of the Red Cross, accessed December 16, 2024, https://casebook.icrc.org/a_to_z/glossary/proportionality#:~:text=The%20principle%20of%20proportionality%20prohibits,and%20direct%20military%20advantage%20anticipated%E2%80%9D.

¹³⁴ Mahmood and Jetter, “Gone with the Wind,” 787-808.

¹³⁵ Jordan, “Attacking the Leader, Missing the Mark,” 37.

¹³⁶ *Ibid.*, 37-39.

¹³⁷ Mahmood and Jetter, “Gone with the Wind,” 787-808.

¹³⁸ *Ibid.*, 788.

Jetter's scholarship demonstrates the discrepancy between the use of force and the goals of the WOT.¹³⁹ Therefore, the use of drone strikes in decapitation missions cannot be viewed as proportional because rather than eliminating threats, it significantly expands the number of threats and casualties.

Necessity and Pakistani Sovereignty

The principle of necessity states that the use of force is only acceptable if it is the last resort or necessary.¹⁴⁰ According to IHRL and international sovereignty law, the use of drone strikes within Pakistan should be the last option to both respect Pakistani authority and the principle of necessity.¹⁴¹ Advocates of U.S. drone strikes in Pakistan argue that the Pakistani government was not sufficiently cooperative making the only plausible tactic drone strikes.¹⁴² To fulfill its obligations under IHRL, the U.S. must draw upon the Pakistani authority's less lethal means before resorting to drone strikes. Still, the U.S. and Pakistan hold different goals and counterterrorism strategies.¹⁴³

The U.S. approach is framed by decapitation policies, the conflict in Afghanistan, and 9/11.¹⁴⁴ Pakistan's strategy is shaped by geopolitics, its rivalry with India, and domestic turmoil.¹⁴⁵ May 2011 marked a significant development in the WOT, the U.S. conducted an operation within Pakistani territory to kill Bin Laden.¹⁴⁶ The lack of communication with the Pakistani authorities undermined the sovereignty of the government and the people's confidence in the government's potential to evade military operations by India.¹⁴⁷ Later that same year tensions between the U.S. and Pakistan became worse after a NATO airstrike killed 24 Pakistani soldiers mistakenly, leading to a halt of supplies for the U.S. in Afghanistan and a re-examination of U.S. operations by Pakistan.¹⁴⁸

The misalignment of political objectives has cultivated a lack of trust, having implications on how operations are conducted and under what legal grounds.¹⁴⁹ While conducting drone strikes without the cooperation of the Pakistani government is effective for the U.S. government, it violates state sovereignty that applies within IHRL.¹⁵⁰ The law requires the U.S. to engage with Pakistani authorities because Pakistani interests are protected under sovereignty laws, and they have the resources within the Pakistani law

¹³⁹ *Ibid.*, 808.

¹⁴⁰ "Military Necessity," International Committee of the Red Cross, accessed December 16, 2024, https://casebook.icrc.org/a_to_z/glossary/military-necessity.

¹⁴¹ *Ibid.*

¹⁴² Christine Fair, "Pakistan in 2011: Ten Years of the 'War on Terror,'" *Asian Survey* 52, no. 1 (2012), 100, <https://www.jstor.org/stable/10.1525/as.2012.52.1.100>; Masters, "The Target Killings Debate."

¹⁴³ Fair, "Pakistan in 2011," 100.

¹⁴⁴ *Ibid.*, 105.

¹⁴⁵ *Ibid.*

¹⁴⁶ Fair, "Pakistan in 2011," 103.

¹⁴⁷ *Ibid.*

¹⁴⁸ *Ibid.*, 112.

¹⁴⁹ *Ibid.*, 100.

¹⁵⁰ Meyer, "The Legality of Targeted-Killing Operations in Pakistan," 233.

enforcement model.¹⁵¹ The lack of regard for IHRL led to widening divisions between the U.S. and Pakistan, further violating international law.

Additionally, Drone strikes leave no room for other measures of statecraft to take place.¹⁵² This is demonstrated through the comparison of the SEAL team's Bin Laden operation to the drone strike of Ayman al-Zawahiri.¹⁵³ Both were high-level targets within al-Qaeda connected to 9/11, but the tactics used to kill them differed.¹⁵⁴ According to IHRL, all other means must be exhausted before a targeted killing operation occurs.¹⁵⁵ Within a SEAL team operation, there is a potential to apprehend a suspect if they surrender, but that is not an option within drone strikes.¹⁵⁶ Al-Zawahiri was not given the chance to surrender immediately before his targeted killing, so it is not compliant with IHRL.

3. Conclusion

The WOT rhetoric and legal arguments implemented by the American leadership sought to bridge the gaps between armed conflicts and terrorism. The current legal frameworks place counterterrorism within the law enforcement model, resisting this transition. Within the jurisdiction of IHRL, the U.S. government's drone strikes in Pakistan are illegal. The "disposition matrix" embodies the systemic processes developed to kill more effectively, and the drone strike killing the *jirga* illustrates the deadly faults of this system.¹⁵⁷ Increased scrutiny of actors with immense power is important to ensure that only imminent threats are being killed in compliance with IHRL. Despite rulings from domestic Peshawar courts and the ICRC, the U.S. has not been held accountable for their lack of scrutiny.¹⁵⁸ This is partly due to the political nature of legal questions and the U.S. rejection of the Rome Statue (International Criminal Court. *n.d.*).¹⁵⁹ The WOT has pushed new debates to the forefront of legal discussion, contributing to the wider understanding of both the benefits and pitfalls of international law.

¹⁵¹ *Ibid.*

¹⁵² Ramsden, "Targeted Killings and International Human Rights Law," 385.

¹⁵³ *Ibid.*

¹⁵⁴ *Ibid.*

¹⁵⁵ *Ibid.*

¹⁵⁶ *Ibid.*

¹⁵⁷ Hayat, "Empire's Accidents," 60-63.; Weber, "Keep Adding. On Kill Lists, Drone Warfare and the Politics of Databases," 108.

¹⁵⁸ Hayat, "Empire's Accidents," 60.

¹⁵⁹ International Criminal Court, "The US-ICC Relationship," accessed December 16, 2024, <https://www.aba-icc.org/about-the-icc/the-us-icc-relationship/>.

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