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## International Humanitarian Law and America's Drone Policy

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### Abstract

This work examined America's Drone Policy and International Humanitarian Law. The aim of the work was to determine how the use of the remotely controlled aircraft or Unmanned Aerial Vehicle (UVA) by America in her war against terrorism has violated International Humanitarian Law. Our theoretical framework was the "Just War" theory to analyze how, when and where war can be fought and for our study, the justification by America for her fight against terrorism that led her into the drone warfare. We discovered that International Humanitarian rules which states have accepted to regulate their relations in armed conflict and cushion the harshness of war have been violated by American in her drone strikes in Yemen, Somalia, Pakistan and Afghanistan, where civilian deaths have been largely recorded. These strikes by America have also infringed on the territorial sovereignty of these states as most have been without the express consent of the states. Based on our findings, we recommended that appropriate legal and operational structures be put in place by America to regulate the use of drone in a manner that complies with International Humanitarian Law to avoid or reduce high casualties recorded. The United Nations should also set up a New Drone War Technology Commission to provide over -sight functions on the drone warfare because armed drone could increase the possibility of military conflict especially in disputed areas where slightest provocation could lead to strife, more so with the rising wave of Islamic fundamentalism and the increasing interconnected world we leave today.

*Keywords: Insurgency, Nigeria's international relations,  
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### **Background to the Study**

The evolution of the modern society from kingdoms and the subsequent development of an international order founded upon a growing number of independent and sovereign territorial units inevitably gave rise to questions of international co-operation. Law has played a central role in this process in “the idea that order is necessary and chaos inimical to a just and stable existence”. Every society whether large or small, powerful or weak have created for itself a framework of principles to guide it. Law is that element that binds members of the community together in their adherence to recognized values and norms as it consists of rules, regulating behaviour and reflecting to some extent the ideas and preoccupations of the society where it operates. Shaw (1977:1.2).

International law is the body of rules and regulations which have developed over time that states have accepted in their relationships with one another. According to Akindele(2000). International Law is an instrumentality, a social weapon for regulating and controlling relations among states which have been accepted as rules and regulations in all spheres of international relations, particularly in the military, political, diplomatic and economic spheres. These rules developed as customs, practices and conventions that states have expressly consented to and accepted as regulating their relations. International Humanitarian Law (IHL) is a collection of those international rules established by treaty or custom to solve problems from international and non-international armed conflicts. They are laws that limit the right of parties to a conflicts to use methods and means of warfare of their choice as well as protect persons or property affected by the conflict. It is a part of International law that safeguard human rights in war situations. International Humanitarian Law aims to cushion the harshness of war as it is inspired by considerations of humanity and the mitigation of human sufferings.

Drone is a remotely controlled aircraft, an Unmanned Aerial Vehicle (UAV). The idea of using a remotely -controlled, unmanned, or pilotless aerial vehicle, emerged more than 50 years ago. The use of drone as a weapon first emerged in world war II in the German Fx -1400 or “Fritz” which consisted of a 2,300 Pound bomb. After world war II, little developments occurred in drone technology but most remotely piloted vehicles were used for target practice. According to Spires (2012), the U.S military's first major expenditures on UAV began after the Vietnam war when the Air Force used small, long ranged experimental drones called Fireflies in conducting reconnaissance over Southeast Asia. However, the Israeli Air force use of weaponised drone; the Pioneer, in the 1982 war in Lebanon reinvigorated America's interest in armed UAV. Impressed with the Israel Pioneer, the Navy purchased more and the Reagan administration began increasing UAV procurement and research in 1987. Powered by a 26 -horse power Stew mobile engine and equipped with 16 inch guns, the Pioneer made its American debut during the Persian Gulf War and its success in Operation Desert Storm, led the Department of Defense spend over 3 billion dollars on UAV programmes in the 1990s. Extensive use of UAVs began with the Global War on Terror (GWOT), Operation Enduring Freedom (OEF) and Operation Iraqi Freedom (OIF) both U.S operations in the first and second Gulf war.

The first hellfire missile test –fired from a drone in February 2001 and the terrorist attacks of September 11 2001 suddenly created a new demand for hellfire-equipped drones to hunt down terrorist in remote areas of Afghanistan and Pakistan. The Air Force put the weaponries Predator into immediate use in the OEF and hit approximately 115 terrorist targets in Afghanistan during the first year of its combat operations. The CIA also began to use predators to targeted Al-Qaeda operatives elsewhere in the middle East. while the U.S military employs a wide variety of UAV's, there are only 3 currently in use with offensive capabilities; they include the MQ-1 predator, the MQ-1c Sky Warrior and the MQ-9 Reaper. The Predator, the most commonly used drone in the American arsenal can loiter at 25,000 feet for nearly 40 hours and is equipped with 2 hellfire missiles and 2 cannons, one infrared and one regular that can read a license plate from 2 miles above the earth.

The Army's Sky Warrior is a slightly larger version of the Predator that can fly slightly higher, loiter for a shorter moment of time, and carry 2 more missiles than the Predator. The Reaper also known as the Predator B, is the largest and most powerful of the 3 drone models. It can fly at twice the altitude and speed of the Predator and can carry eight Hellfire missiles or 4 missiles and two Laser –guarded bombs. It also carries an improved camera and software package that can “recognize and categorize humans and human –made objects, such as improvised explosive devices. Although the Defence Department's budget doubles spending on the Reaper, the Predator has remained the prime UAV in use. [https:// en.wikipedia.org/UAV's](https://en.wikipedia.org/UAV's) in the U.S military As plausible as this analysis on the UAV generally and their adoption into the U.S warfare strategies, Law and by extension International Law from where International Humanitarian Law took its root cannot be overlooked in the deployment of this technology.

### **Objectives of the Study**

The major objective of this study is to determine how the use of the UAV has violated International Humanitarian Law. The Specific objectives include the following:

- a. To analyze the evolutionary trend of International Humanitarian Law (IHL)
- b. Ascertain the previsions of IHL in the various Conventions on International Humanitarian law.
- c. Examine the U.S Drone policy and its operations
- d. Determine the provisions of the IHL that have been violated or promoted in the operations of the U.S drone policy

### **Theoretical Framework**

The theoretical framework for this study is the “Just War Theory” which generally deals with the justification for war. Such justification can either be theoretical or historical. Theoretically it is concerned with the ethical and moral justification and the forms of warfare's, while historical aspect or the Just War tradition is the historical body of rules or agreements that have applied in various ways across the ages from thefour Geneva and Hague Conventions Mosley & Richard 2001; 8). The Just War tradition is as old as war itself as clearly portrayed in the Bible as moral codes of behaviour in war and of just cause. The Just War theory is in two parts: the right to go to war (jus ad bellum) and “right

conduct in war" (jus in bello). Recently, there have been calls for the inclusion of a third category; jus post bellum which deal with the morality of post-war settlement and reconstruction. Saint Augustine of Hippo was the first theologian to relate Just War with Christianity. He based his claim on the Bible in Romans 13:4 that God has given the sword to government for good reason. According to him "those who have waged war in obedience to the divine command or in conformity with God's laws have represented in their persons the public justice or the wisdom of government, and in this capacity have put to death wicked men; such persons have by no means violated the commandment; Thou shall not kill. Building on Augustine's idea, nine centuries later, Thomas Aquinas propounded the conditions under which a war could be justified. Aquinas's writings became the model for later writers, scholars and jurists to expand and universalize the doctrine. Such writers include;

Francis de Vitoria (1486-1546)  
Francisco Suarez (1548-1617)  
Hugo Grotius (1583-1645)  
Samuel Pufendorf (1632-1704)  
Christian Wolff (1679-1754)  
Emerich de Vattel (1714-1767)

By the twentieth century, with the invention of nuclear and other weaponry, the First and Second World Wars and the American involvement in Vietnam, Just War theory was revived and brought to the front burner. Scholars like Michael Walzer, Thomas Nagel and Nicholas Wheeler had contributed significantly to the development of the Just War theory. In addition, by the September 11 2001 terrorist attacks on multiple targets in the U.S.A, scholars once again turned attention to the just war theory. The field has become an area for scholarly studies in international relations, political science, philosophy, ethics and military history. Globalization processes have also given popularity to the theory.

According to Gonzalez (1984), the three conditions for the Just War theory are: proper authority, just cause (rather than selfish gain) and a right intention. For the Salamanca School, war being one of the worst evils suffered by mankind is the last resort, only when necessary in order to avert an even greater danger. The general principles or standard for the Just War theory are:

- a. Just cause or the threshold principle
- b. Last Resort but with utmost care
- c. Good over harm, whereby means employed must not exceed the harm it wants to stop.
- d. Proportionality, where lives must be protected under International Humanitarian Law (IHL)
- e. Right intention, for humanitarian purpose.
- d. Reasonable Prospects where intervention must have a reasonable chance of ending the human rights abuses.

All these are moral guidelines for waging war that in theory normatively address the conduct of war but in practice are neither unrestricted nor too restrictive. The problem of ethics in their applications in particular war situation has remained an issue. However, the just War theory insist that all these criteria's must be fulfilled. This obviously creates room for violation when we relate it to America's use of Drone in her battles against terrorism. The just war doctrine is just an idea and moralistic philosophy which can be defended to justify action as displayed by America in her drone warfare.

### **Conceptual Framework**

The conceptual analysis for this study will be focused on international law, International Humanitarian Law (IHL), Terrorism and Drone warfare.

**International Law** is the law that regulates international relations. It sets out series of principles and create frameworks that clarify, moderates, balances and harmonizes "interests". Though International law may not be a source of instant solution to problems of conflict and confrontation because of its inherent weaknesses in structure and content but it gives caution to such situation whenever it arises. With increase in contacts and relations among states, mandatory rules no doubt became necessary than ever for the promotion of international co-operation and development to avoid conflicts and chaos since the absence of rules is an invitation to anarchy. International Law filled this gap and has continued to develop in accordance with the prevailing courses of international relations and in harmony with the realities of the age. Thus, it has evolved from its primary concern for the maintenance and preservation of peace to embrace all aspects of contemporary international life. Its developments placed it above religion, race and continents, as new problems arose in the international community, international law has faced up to them by finding at least immediate, if not lasting solutions. Such problems include, the use of the outer space, the exploitation of the Deep Sea bed as the Common heritage of all mankind, apartheid, fascism, neo-colonialism, the new International Economic Order, Weapons of Mass Destruction, International co-operation and development and the increasing globalization processes. Nations have come to embrace the idea of sovereignty and equality and the principle of non-aggression and non-intervention within the frame of a commonly accepted legal framework for international relations. (Umozuruike 1999;1-15)

These revolutionary developments in the structure of the international society that have intensified the alternatives of international co-operation and international conflicts have created profound changes in the structure and functions of international law. This has manifested in the gradual emergence of an international law of cooperation, adopted by international organizations pursuing common interests including economic and social development, health, communication and other matters of human welfare. International law is the basis on which International Humanitarian law is founded.

**International Humanitarian Law (IHL)** or Promotion and Protection of humanitarian norms is as old as the human society. Even in the midst of the carnage of history, there have been frequent expressions and invocation of humanitarian norms for the protection



of victims of armed conflict. In the Bible, Prophet Elisha spared his enemies when he said “you shall not slay them. Would you slay those whom you have taken captive with your sword and with your bow? Set bread and water before them, that, they may eat and drink and go to their master” . (11 king 6:21-23).Islamic law also forbid molestation and killing of non-combatants including women, children, monks and hermits, the aged, blind and insane who did not take part in war.

According to Shaw (1977), International Humanitarian Law can be traced to the role of Hugo Grotius in his book *De Jure Belli ac, Pacis* in the 18<sup>th</sup> century during the 30 Years war of 1618-1638. However, efforts at treaty making with respect to rules of warfare, dates back to the 1860s when two international conferences were held to conclude a treaty dealing with war in 1864 at Geneva on the fate of wounded soldiers in the battle field and another in 1868 at St Petersburg which prohibited the use of explosive rifle bullets. It was from these developments that the law of Geneva on the condition of war victims and the law of the Hague on the conduct of war proper and permissible means and method of war evolved. The efforts of Henry Dunant and Francis Lieber in these regards contributed to present day International Humanitarian Law.

The works of Jean Jacques Rousseau in his *The Social Contract* also aided the development of International Humanitarian Law. Rousseau's *Social Contract* and Henry Dunant's proposal led to the establishment of the International Committee of the Red Cross (ICRC) where the 1864 Convention for the Amelioration of the Condition of Wounded in Armies in the field was made. All other Conventions took cue from this “Mother of Conventions” in the history of IHL, among which were;

1. The Lieber Code.
2. The 1868 St. Petersburg Declaration.
3. The law of the Hague or the Law of Armed Conflict.
4. The Oxford Manuel adopted in 1880.
5. The 1899 first International Peace Conference at the Hague
6. The 1907 Hague Conference

The Regulations from these Conferences actually governed many wars in the 20<sup>th</sup> century and some of their provisions are still in force. They continued to direct the issues of war until they were reversed or repealed by the 1949 Geneva Conventions and their Additional Protocols of 1977. (Shaw: 806-822).

As earlier stated on IHL, *Jus in bello* regulates the conduct of force in war or armed conflict, while *jus ad bellum* regulates the right of engaging in war. These are the two strands of the laws of war governing all aspects of International armed conflicts. These laws are mandatory on states bound by the appropriate treaties. Modern IHL is covered in the law of the Hague or law of war proper and the law of Geneva or humanitarian law. These two laws came up from international conferences that drew up treaties on war and conflict which are the Geneva Convention of 1864 and the Hague Conventions of 1899 and 1907. The Geneva Conventions are the result of a process that developed in a number of stages between 1864 and 1949. These Conventions include;

- i. 1864 Geneva Convention for the Amelioration of the Condition of the Wounded and Sick of Armed Forces in the field.
- ii. 1906 Geneva Convention for the Amelioration of the condition of the wounded, sick, shipwrecked members of Armed forces at sea.
- iii. 1949 Geneva Convention relative to the treatment of Prisoners of War.
- iv. The 1949 Geneva Convention relative to the Protection of Civilian Persons in time of War.

Additional Amendments, and Protocols to these Conventions include:

- v. Protocol I (1977) Relating to the Protection of Victims of International Armed Conflicts
- vi. Protocol II (1977) Relating to the Protection of Victims of Non-International Armed conflicts
- vii. Protocol III (2005) Relating to the Adoption of an Additional Distinctive Emblem.

These Conventions have received universal consent with 194 Parties but the Additional Protocols are yet to receive universal acceptance as the United States and other significant military powers like Iran, Israel, India and Pakistan have not acceded to them, (<https://en.wikipedia.org/wiki/Geneva-Convention>).

### **Terrorism**

Defining terrorism has been a major problem for researchers, scholars and law enforcement agencies. There is no international legal consensus on the definition of terrorism because it is a term that has real political and emotional attachment from the common saying that "one man's Terrorist is another's Hero". The word terrorism came up during the French Revolution when the French government instituted the "Reign of Terror" to execute political opponents, seize their property, and force the rest of the population into submission. In literature, there are over one hundred definitions of terrorism, yet there appears to be none that is generally accepted.

Since October 2001, the United Nations (UN) has been debating on the need to adopt a universal definition of terrorism. By July 2005, the UN Secretary General Kofi Anan urged world leaders to agree on a universal definition with the conviction that "Terrorism... constitutes one of the most serious threats to international peace and security, and "the targeting and deliberate killing of civilians and non-combatants cannot be justified or legitimized by any cause or grievance" on any "side". Notwithstanding all this definitional disparity, we shall take a few.

- i. The United States Department of Defence defined terrorism as the calculated use of violence or threat of violence to inculcate fear, intended to coerce or intimidate governments or societies in the pursuit of goals that are generally political, religious or ideological.
- ii. The United Nations General Assembly (Resolution 49/60) describes terrorism as criminal acts intended or calculated to provoke a state of terror in the general public.

- iii. The United Nations Security Council (UNSC) defines terrorism also as “criminal acts, including acts against civilians committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization against terror”.
- iv. The Arab convention for the suppression of terrorism defines terrorism as “any act or threat of violence that occurs in the advancement of a criminal agenda and seeking to sow panic among people, causing fear by harming them or placing their lives, liberty and security in danger, or seeking to cause damage to environment or to public institutions and property”.
- v. The United Kingdom Terrorism Acts 2000, sees terrorism as the use or threat of action, or the use, or threat which is designed to influence the government, intimidate the public or a section of the public and the use or threat made for the purpose of advancing a political, religious or ideological cause. These threats or actions in the Act include:
  - a. Serious violence against a person
  - b. Serious damage to property

Actions that endanger a person's life, other than of the person committing the action. Actions that create serious risk to the health or safety of the public or a section of the public or is designed seriously to interfere with or seriously to disrupt an electronic system.

The African Union Convention on the Prevention and Combating Terrorism article 1(3) defines terrorism as any act which is a violation of the criminal laws of a state or party which may endanger the life, physical integrity or freedom of, or cause serious injury or death to any person, or any number or group of persons or causes or may cause damage to public or private property, natural resources, environment or cultural heritage and is calculated or intended to:

- a. Intimidate, put in fear, coerce or induce any government body, institution, the general public or any segment thereof to do or abstain from doing any act, or to adopt or abandon a particular standpoint or to act according to certain principles; or
- b. Disrupt any public service, the delivery of any essential service to the public or to create a public emergency; or
- c. Create general insurrection in a state.

The common features in all these definitions in line with Gus, M. (2006) view are:

- a. Use of illegal force
- b. Sub-national actors,
- c. “Motives”
- d. Attacks against “soft” Civilian and passive military targets.
- f. Acts aimed at purposefully affecting an audience



The United States of America has severally been a victim of these features. According to Wm. Robert Johnston (2000-2015) terrorist attacks and related incidence in the U.S, show's that between 14<sup>th</sup> April 1865 and Feb 2016, the U.S has witnessed more than 400 attacks of these features above. It is not in doubt that the frequency and magnitude of these attacks have forced America to devise appropriate measures to tackle the attacks; hence the resort to drone warfare but the implication of the adoption and the use of this strategy has remained unresolved.

### **The United States of America and Drone Warfare**

In response to foreign and domestic terrorist's attacks, the U.S government implemented new policies, created new departments and developed highly specialized counter terrorism military force to combat the menace. The First Special Forces Operational Detachment-Delta, simply known as Delta Force was formed in 1977 to conduct counter terrorism operations and hostage recovery and urban warfare. The use of unmanned aircraft in response to terror was when President Bill Clinton deployed cruise missiles to strike at Al-Qaeda sites in Afghanistan and bomb a factory in Sudan on August 20 1998 in retaliation for the bombing of two American Embassies in Kenya and Tanzania. Even when it was established that Osama bin Laden's network was actively seeking to acquire Weapons of Mass destruction (WAD) and chemical weapons against American citizens and interests over the world, President Clinton still sought to indicate that his strikes against Al-Qaeda were against identified training camps and chemical factories; clearly attempting to distinguish them from planned assassination.

Both President Clinton and Bush initially shied away from the use of drones, but Clinton was only convinced when it was made known to him that drone was the only weapon to find Osama bin Laden. It was upon this conviction that Clinton gave orders to create an armed drone force after amending the Ban on Assassination Act? Under President George W. Bush, the CIA and Defence Department balked at using drones to target bin Laden even in the days leading to 9/11. The creation of the department of Homeland Security was a response to the 9/11 to assess America's vulnerability. However, the most outstanding response by the U.S to terrorism was in the Patriot Act signed after 9/11. This Act gives the government broad authority in fighting the war on terror. After 9/11, the CIA was empowered to kill members of Al-Qaeda and their confederates anywhere in the world. [www.cfr.org/counterterrorism/targetd-killings/P9627](http://www.cfr.org/counterterrorism/targetd-killings/P9627)

With all these, the U.S government had given themselves the legal right to use lethal force against suspected terrorist in “anticipatory” self-defense. Terrorism By these moves became now classified as an act of war rather than a crime such that government was no longer bound by legal constraints or International Human law to tackle terrorism..

The development of UAV's offensive capabilities is burdened with three issues including:

- a. Suppress enemy air defense
- b. Support counterinsurgency operations
- c. Find and eliminate enemy targets.

All these have their attendant consequences that what began as a tactics to combat terrorism has gained credence as a strategy to extend American influence without committing troops. However, the question still remains: Is this strategy in conformity with international protection of human dignity and rights?

### **The United States Drone Warfare and International Humanitarian Law (IHL)**

We will examine the basic rules of IHL and the extent of the promotion or violation of these rules by America in her deployment of drones or UGV in their fight against terrorism. These basic rules include the following:

1. Persons who are hors de Combat (outside combat) and those who are not taking part in hostilities shall be protected in all circumstances.
2. The wounded and the sick shall be cared for and protected by the Party to the conflict which has them in its power. The emblem of the “Red Cross” or of the Red crescent shall be required to be respected as a sign of protection.
3. Captured persons must be protected against acts of violence and reprisals. They shall have the right to correspond with their families and to receive relief.
4. No one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment.
5. Parties to a conflict do not have an unlimited choice of methods and means of warfare.
6. Parties to a conflict shall at all times distinguish between combatants and non-combatants. Attacks shall be directed solely against legitimate military targets (<http://en.Wikipedia.org/wiki/IHL> Accessed 10/5/16].

We must restate that actions of war are prohibited under article 2(4) of the UN charter. International Humanitarian law is only the exceptional framework that serve as a guide in armed conflict whenever it occurs. However, targeted killing with the sole purpose of eliminating anybody can never be lawful under the legal frame in peace time. In this regard then, the determination, whether an armed conflict is in hand will be crucial for the legality of each specific drone strike. Targeted killings according to a United Nations Report 2010, is defined as “the international, premeditated and deliberate use of lethal force by states or their agents acting under color of law or by an organized armed group in armed conflict, against a specific individual who is not in the physical custody of the perpetrator” Under IHL, targeted killing is only lawful if

- i. The target is directly participating in the hostilities, or
- ii. The use of force is proportionate and
- iii. Precautions is taken to minimize harm to civilians.

Under the law of inter-state force also, a targeted killing directed by a state in a territory of another state does not violate the second states' sovereignty if the second state gives consent or the state is using force in an act of self -defense when the second state is unwilling or unable to stop armed attacks against the first state launched from her territory. The U.S government runs two Drone Programmes; the Military version and the CIA's programme. The Military version operates in the recognized war zones of

Afghanistan and Iraq and targets enemies of U.S troops stationed there, while the CIA programme is aimed at terror suspects around the world including in countries where U.S troops are not based. Common Article 2 of the Geneva Convention (GC) insists an armed conflict must be between 2 or more states. The determination of a non-international armed conflict is covered in common Article 3 of the GC which lays down the lowest threshold for such a conflict; (armed conflict not of an international character"). For states that are party to the Additional Protocol II, Article 1, adds the preconditions that the non-state party to armed conflict must have a certain degree of organizational structure, exercise control over a certain territory, and be able to conduct sustained and concerted military operations, as well as respect IHL. Also, a level of intensity of the conflict beyond internal disturbances is a prerequisite.

In its tacit decision, the Appeal Court at the International Tribunal for the former Yugoslavia formed a comprehensive definition of armed conflict where it held that "an armed conflict exists when there is a resort to force between two states or protracted armed violence between government authorities and organized armed groups or between such groups". Where a conflict arises between a state and a non-state actor, the unresolved question remains on the obligation, to only target direct participants to the hostilities. The mere application of common Article 3 of customary law provides a minimum protection for those involved in the conflict and also specify the possibility for the armed forces to conduct target killings which IHL prohibits. Targeted killings with combat drones are only permissible where there is an armed conflict, but the U.S justify its resort on the right of self-defense against the Al-Qaeda, the Taliban and Associated force. The unwarranted killing from this strategy is unjustifiable from IHL and the law of interstate force as stated above.

From May 5 2011 when the first U.S Drone struck in Yemen and killed Anwa A. Awlaki, a U.S citizen suspected to have recruited Islamist militants for terrorists attacks and his son, several others have occurred with civilian casualties. According to the New American Foundation Report 2014, between 2004 and 2013 more than 639 civilian deaths were recorded in Somalia alone with 2006 having a total of 171 deaths. Somalia recorded over 368 casualties between 2004 and 2012 with 128 persons in 2010 alone. U.S drones have equally undertaken both surveillance and strike missions in Iraq, Syria and Afghanistan where several deaths were also recorded. According to Zonko and Kreps 2014, the proliferation of unmanned aircraft carries an increased risk of lethality because drones are in many ways perfect vehicle for delivering biological and chemical agents that is a faster killer. Pakistan has recorded about 114 drone strikes between 2004 and early 2016, the latest on May 22 that killed Mullah Mansour, the leader of the Taliban and his two aides and over one million deaths recorded, two third were militant while one third are civilians.

The United States Department Adviser Harold Koh has justified drone strike as a right of self-defense because the U.S is involved in an armed conflict with Al-Qaeda, the Taliban and their Affiliates and therefore may use force consistent with self-defense under International law. President Obama also in his first extensive explanation on drone

-strike policy in April 2012 concluded that drone strike was legal, ethical and wise" As much as these defense may appear, it is still obvious that there was no armed conflict in the territories where these strikes were launched and these states; Yemen, Somalia, Pakistan, Afghanistan have not given express consent to terrorism. Pakistan's reaction to the strike of 22 May 2016 is seen as a violation of her sovereignty . The civilian deaths recorded cannot be morally justified by International Humanitarian Law and the attacks in these territories also violates the law of Inter State Force.

The UN has opened a major new investigation into the U.S drone warfare and the leader of the team, Ben Emmerson has already acknowledged it as a "... real challenge to the framework of established International law". Human Rights observers have long objected to the use of drones to target suspected terrorists because of the resultant civilian deaths.

### **Conclusion**

Law as the element that binds society together in their adherence to recognized values and norms regulating behaviour have been tampered with by the United States of America in her resort to the use of Drones against terrorists. International Humanitarian Law (IHL) as collection of International rules which states have accepted, to regulate their relations in armed conflict and cushion the harshness of war have been violated by the U.S in her Drone strikes where civilian deaths have been unwarranted especially in Yemen, Somalia, Pakistan and Afghanistan. Drone as a remotely controlled aircraft, an Unmanned Aerial Vehicle (UAV) is obviously a perfect vehicle for delivering biological and chemical agents that cause easy deaths. The number of civilian deaths from the deployment of the Drone technology is the major violation of IHL by the U.S. In as much as America can justify its war against terrorism that necessitated her resort to the Drone, the civilian casualties it has produced cannot be ethically and morally justified.

America's battles against terrorism especially since 9/11 justify her right to war (jus ad bellum) but the deployment of Drones in this battle contradicts "conduct in war" (Jus in bello) from the high casualties recorded in the drone strikes. The Six principles on which the "just War" theory is based upon were not rightly adhered to by America in her drone warfare, despite her being a serious victim of terrorist activities. According to record, between April 1865 and February 2016, America alone has faced more than 400 terrorist attacks, that warranted her resort to drone but the consequences have greatly impinged on IHL.

There has been wide disagreement with America's claimed authority to secretly declare people enemies of the state and kill them and civilian bystanders. Not surprising that she constituted a committee to reassess her drone warfare whose recommendation report has declared that drones are not and cannot be a strategy in and of themselves. When used effectively it can only be at most a useful and pragmatic tactic or tool of a larger, more clearly articulated strategy for counter terrorism purposes and accomplish other military objectives.

## Recommendations

As a Result the grave implications the United States drone warfare poses on the promotion of International Humanitarian Law, we make the following recommendations:

- a. In line with the UN investigation team on the U.S use of drones and targeted assassins, it is most necessary that appropriate legal and operational structures be put in place to regulate its use in a manner that complies with International Law including International Human Rights, International Humanitarian law and International Refugee Law. The legal and operational structures should also determine the criteria and principles that would guide exports of drone and present a set of norms and practices to govern their use.
- b. There should be real transparency on the United States drone strike practices and targeting decision that must be consistent with her long term national security goals, foreign policy ideal and commercial interests.
- c. The International Committee of the Red Cross (ICRC) must have at its disposal, information on Drone technology and work with the UN and the global community so that it can properly assess the proportionality of each strike.
- d. A New Drone War Technology Commission should be set up by the UN to provide over-sight functions on the drone warfare. Armed drone could increase the possibility of military conflicts especially in disputed areas where the slightest provocation could lead to strife more so in the rising wave of Islamic fundamentalism. Drone strike may create more war, and with the inter-connected, interdependent and interrelated nature of the world society today drone strike in one state could have spill -over effects that can endanger world peace and security.

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