



# Legal Implications of Targeted Killing Using Unmanned Aerial Combat Vehicles (UCAVs) or Drones in Anti-terrorism War

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**Abstract.** The development of modern war has advanced swiftly, especially in using modern guided missiles and unmanned combat aerial vehicles (UCAVs) or drones that could help precise artillery fire. The use of guided missiles or drones is indeed effective in minimizing military casualties. Nevertheless, on the other hand, a lack of information about the enemy position and a less accurate attack to the coordinate point may kill civilians and lead to unlawful killing. This study aims to elaborate further on how international regimes, particularly in the laws of armed conflict, regulate the condition where it is permissible or illegal for the armed forces to launch guided missiles or operate UCAVs during the belligerent time. This research method uses the normative method with a statute and case approach.

**Keywords:** guided missiles · drones · unlawful killing · attack · armed conflict

## 1 Introduction

In the development of the current anti-terrorism war, the country that suffered from the terrorist attacks has the right to prevent more damage and to conduct a counterattack against terrorist defense bases. The state often involves its military forces in combating terrorist groups. The concern that is circulating in the authors' minds is whether terrorism is classified as an ordinary crime or a crime against state sovereignty so that the use of force is lawful. Therefore, in the development of modern defense equipment today, countries' militaries are striving to develop weaponized drones or Unmanned Combat Aerial Vehicles (UCAVs) technology because they can accurately hit targets while minimizing military casualties.

However, launching attacks with insufficient information about the actual enemy position and less accurate coordinate points are potentially mistargeted and could lead to innocent civilians and unarmed terrorist group members dying. As a result, the unlawful killing could be taken into account according to the basic principle stated in the Geneva Conventions; killing or targeting armless combatants in armed conflict could violate individual fundamental human rights and international humanitarian law (law of armed conflict).

On 4 September 2020, The Bureau of Investigate Journalism released a report that in five months in 2020, 11 US military airstrikes killed at least 117 people in Afghanistan.

Dozens of victims were children. The report adds to the list of civilians killed in anti-terrorism actions led by the US military in Afghanistan and several other countries in the Middle East. (Purkiss, 2020)

The most recent example, in the last days of the United States withdrawing its troops from Afghanistan in August 2021, a U.S. drone strike targeting the Taliban hit a vehicle in a residential neighborhood of Kabul, Afghanistan. In the attack, a whole family of ten people was killed, including seven children. Initially, that mistargeting drone strike was a retaliation move against the dual explosions outside Kabul International Airport as withdrawing U.S. forces rushed to evacuate thousands of civilians after the Taliban took Kabul on Aug. 15. At least 12 U.S service members and 60 Afghans were killed in the blast (Smith, 2021).

Therefore, we need to strictly regulate the use of UCAVs and reformulate the concept when armed forces are allowed to arrange targeted air raids against suspected terrorist members using weaponized drones or guided missiles so that the abovementioned mistargeted attacks, which cause civilian casualties, can be avoided.

Furthermore, are those suspected terrorists truly terrorists? In this case, if terrorism is perceived from the point of view of law enforcement, targeting killing against them is prohibited, and the presumption of innocence principle must be applied where the suspected terrorist is treated as a criminal and cannot be punished unless sufficient evidence proves them guilty. However, if terrorism is perceived as a threat to state sovereignty, the use of force may be legitimate under non-international armed conflicts (NIACs).

## **2 Research Method**

The research method used in this article is normative legal research. The statutory and the conceptual approach are employed in this article. The legal materials used are primary and secondary legal materials. The procedure for collecting legal materials has been conducted through a gradual process; the steps that must be taken are (1) identifying legal facts and eliminating irrelevant matters to determine legal issues/problem formulations to be solved; (2) collecting legal materials deemed relevant, as well as non-legal materials in this case primary and secondary legal materials; (3) conduct a study on legal issues/problem formulations based on the materials that have been collected; (4) interpreting, systematizing, analyzing and drawing conclusions in the form of arguments that answer legal issues; and (5) giving prescriptions based on the arguments that have been built in the conclusions. (Marzuki, 2017)

### 3 Findings and Discussion

#### 1. International Legal Instrument on War against Terrorism.

Before we discuss whether terrorist groups could be subjected to targeted killing, we must first define what is meant by “terrorism” itself. It refers to whether or not deploying military force in the war against terrorism is lawful under international legal instruments.

Etymologically, Terrorism derives from the Latin word *Tersere*, which later became *Terrere*. The latter form first arose in European languages in the early 12th century. Then, in 1160, it was assimilated into French, which has a horrendous meaning. The word *terreur* was first used in 1356. During France’s Revolution (1789–1799). It was used to characterize violent revolutionaries who rose up in opposition to governments. *Terreur* is derived from the Middle English phrase *terroure*, which was eventually shortened to “terror.” (Fine, 2020)

After World War II (1939–1945), the meaning of terrorism changed again. When people revolted against European world domination, nationalists were perceived as terrorist groups. From 1964 until the early 1980s, the term terrorism was also applied to acts of violence by left-wing groups. Pro-communist groups in Latin America were labelled as terrorists by pro-western regimes. In the mid-1980s, the meaning changed again. In the United States, some hate group violent activity is defined as terrorism. Terrorism today also refers to a pro-independent group such as dissident Palestinians against Israel’s rules in the West Bank or violent religious fanatics groups such as al-Qaeda, which was responsible for the 9/11 attacks, and the Islamic States, which has carried out mass executions of innocent civilians in Iraq and Syria.

The UN Security Council, through its resolution 1566 on Threats to international peace and security caused by terrorist acts (2004), implicitly defined terrorism as criminal acts committed with the intent to cause death or serious bodily injury, taking of hostages, which has the purpose of provoking a State or terror in the general public or a group of persons or particular persons, intimidating a population, or compelling a Government or an international organization to do or to abstain from doing any act.

However, some scholars argue that there is no clear legal definition of terrorism. The definition of terrorism remains ambiguous because of the divergent backgrounds of the actor. The acts of violence can be legitimate if they are carried out by government personnel. The same action is considered an act of terrorism if rebel groups carry it out against government personnel (Hence, it became a common saying that “One man’s terrorist is another man’s freedom fighter”). Laqueur (1977, p.7) is among the experts who argue that there is no single legal definition of terrorism that can encompass all the varieties of terrorism throughout history: peasant conflict, labour disputes, and brigandage have all been accompanied by systemic and organized terror, as have general wars, civil wars, and revolutionary wars, national liberation wars, and resistance movements against foreign occupiers somewhat can be defined as terrorism, too.

Major John Anderson, for instance, was a federal soldier sent to destroy Confederate railroads during the American Civil War. The Confederacy arrested Anderson and accused him of spying, yet he remained a hero in the North. He was not wearing a uniform and was not fighting by the rules. In times of combat, soldiers utilize comparable techniques, yet their actions are never characterized as terrorism. In guerrilla warfare,

guerrillas use terrorist methods against their opponents and may intimidate their opponents and followers into submission. The air force can launch a strike to destroy an entire city in total war. The German Luftwaffe did so at Stalingrad in 1942, while the British and American air forces did so in Dresden in 1945. Neither side thought they were committing acts of terrorism (J. White, 2009, p.8).

J. White (2009, p.3) further defines terrorism as a pejorative term. What is meant as pejorative is a term loaded with negative and derogatory meanings. It infiltrates our homes via the media, assaults us in newspapers and magazines, and occasionally has a more direct impact on our lives. At such moments, people are unconcerned about the definition of terrorism. They simply feel terror when they witness the violence. At times, it seems as though the occurrence itself defines terrorism. For example, when a bomb detonates in public facilities, it might be called terrorism, but it is an unfortunate mistake when military forces strike public places.

Another instance is when the United States launches missiles at a suspected terrorist base and claims it is defending its national interests. Nevertheless, It may point the finger at another country for doing the same thing in a different part of the world. When the term “terrorism” is employed, it is met with double standards and contrarinesses, which leads to misconception.

The difficulty in defining “terrorism” is identifying when the use of force (against whom, by whom, and for what reason) is legal; thus, the modern definition of terrorism is inherently disputed. Confusing definitions of terrorism circulating among experts Following the 9/11 attacks carried out by terrorist group Al-Qaeda where the United States used its armed forces in response to the attacks. Under Chapter VII of the United Nations Charter, the UN Security Council may impose binding measures against states or authorize the use of military force where it finds that international peace and security are threatened. Furthermore, the UN Security Council Resolution 1368 (2001) also denounced the terrorist attacks on the USA and declared that such acts were a threat to international peace and security. However, does Resolution 1368 recognize the USA’s right to exercise the use of force against states that may be considered to have contributed to terrorism?

If the use of force in such a case is legal, this must be based on the right of self-defense under Article 51 of that charter. However, there has been debate about whether terrorist acts give rise to the right to self-defense. Article 51 outlines that the right of self-defense may be exercised if a state has suffered an armed attack. Here, we must consider whether the attacks of 11 September were directed against the USA as a state or not. Hijacking planes, directing them at buildings, and causing thousands of deaths perpetrated by private individuals is usually considered a criminal act, not an armed attack on the state. G. Ulfstein (2003, p.159) claims that the 11 September attacks were directed against the USA as a state. The claims are based on the targets of the attacks. In this regard is the Pentagon, which is the USA’s defense ministry. The attack on the World Trade Center may, in a certain sense, also be seen as directed against the USA as a state because of the symbolic significance of those buildings for the country’s economic power. Therefore, the USA’s use of force against Al-Qaeda was lawful.

Parallel with G. Ulfstein’s assertion, Delbrück says the attacks of 9/11 were of such magnitude that the United States responded with extensive defense measures in their

wake. Due to its nature and extent, it indicates that the offense by Al-Qaeda is considered an armed attack under Article 51 (Delbrück, 2001, p. 16; Mégret, 2002, p. 372).

What Obama said to congress in a six-month consolidated War Powers Resolution report in 2015 supports the experts' claims above-mentioned. Obama stated that the US is currently still engaged in an armed struggle with Al Qaeda, the Taliban, and affiliated forces, and active hostilities against those groups remain ongoing (Jha, 2015). Therefore, Obama's assertions legitimate the US's use of force against those groups. It is understandable because the threat of Al Qaeda and its affiliated groups can target US interests at any time, even government facilities abroad. However, this is a paradox with the character of non-international armed conflicts (NIACs), which generally occurs in particular areas in a certain country, such as domestic rebellion, separatist groups, etc.

Based on the findings above, the authors assume that acts of terrorism, such as murder, violence, and robbery, are within the scope of criminal conduct. Therefore, domestic law is more dominant, and the settlement is through the court proceeding. On the other hand, if acts of terrorism endanger state security and threaten state sovereignty, then the *ius ad bellum* is legal under common Article 3 of the Geneva Convention.

However, two requirements are necessary for such terrorism offense to be classified as non-international armed conflicts:

- The hostilities must reach a minimum level of intensity. For example, when the hostilities are collective or when the government is obliged to operate military force against the insurgents instead of mere police forces;
- Non-governmental groups involved in the conflict must be considered “parties to the conflict,” meaning that they possess organized armed forces. For example, these forces have to be under a certain command structure and have the capacity to sustain military operations. (ICRC, 2022)

In addition, Additional Protocol II to the Geneva Convention of 12 August 1949 develops and supplements common Article 3 by introducing a requirement of territorial control. It stipulates that non-state armed groups must exercise such territorial control “as to allow them to carry out sustained and coordinated military operations and to implement this Protocol.”

## 2. Targeting Killing against Terrorist Using UCAVs

As previously stated, the use of force against terrorist groups is lawful as long as their activity threatens state sovereignty. Therefore, they may be subjected to targeted killing if the *bellegerency* requirements are met. However, International Humanitarian Law limits, in a non-international armed conflict, only civilians taking a direct part in hostilities considered as combatants. What constitutes “hostilities” is explained in the Commentary on Article 51(3) of API, “hostilities” include situations when a civilian undertakes hostile acts with or without the use of a weapon. Hostile acts are “acts which by their nature and purpose are planned to render actual harm to the personnel and equipment of armed forces.”

D. Schindler (1979) gives a more detailed definition “The hostilities have to be undertaken by force of arms and exhibit such intensity that, as a rule, the Government

is compelled to use its military forces against the rebels rather than only police forces. Secondly, as to the rebels, the hostilities are meant to be of a collective character, i.e., it has to be carried out by collective groups. In addition, the rebels must demonstrate a minimal level of organization. Their armed forces should be under responsible command and capable of addressing the most basic humanitarian requirements”.

Article 50 of Additional Protocol (AP) I notes civilians “as not armed forces members.” Another definition of civilians, In its judgment of the Blaškić case, in 2000, the International Criminal Tribunal for the Former Yugoslavia (ICTY) defined civilians as “persons who are not, or no longer, members of the armed forces.” While the criteria of armed forces, according to Article 1 of APII, include dissident armed forces or other organized armed groups that, under responsible command and exercise such control over a part of their territory to enable them to carry out sustained military operations. According to (Bothe, Partsch, and Solf, 1982), the status of the civilians is also applicable to non-international armed conflicts. In addition, both international armed conflicts (IACs) and non-international armed conflicts (NIACs) vividly distinguish between combatants and civilians and prohibit targeting civilians. Reaffirming the only legitimate object that States should endeavor to accomplish during war is to weaken the military forces of the enemy (St. Petersburg Declaration, 1868).

The Inter-American Commission on Human Rights (IACHR) has reaffirmed that civilians who directly participate in fighting can be subjected as legitimate military targets only for such time as they actively participate in combat. To the extent that members of armed opposition groups can be considered civilians, this rule appears to create an imbalance between such groups and Governmental armed forces. Applying this rule would imply that an attack on members of armed opposition groups is only lawful for “such time as they take a direct part in hostilities,” while an attack on members of Governmental armed forces would be lawful at all times (See Juan Carlos Abella v. Argentina, para, 189). Therefore, such targeted killing against terrorist groups’ individuals, typically usingUCAVs or guided missiles, is lawful.

The IACHR again sought to distinguish “direct” from “indirect” participation in a report on human rights in Colombia: Civilians whose activities merely support the opposing party’s war or military effort or who otherwise only indirectly participate in hostilities cannot be considered combatants on these grounds alone. Indirect participation, such as selling goods to one or more of the armed parties, expressing sympathy for one of the parties’ cause, or failing to act to prevent an incursion by one of the armed parties, does not constitute acts of violence that pose an immediate threat of actual harm to the adverse party (ICRC, 2022).

As a result, we must first identify individuals legally subject to targeted killing, whether they are combatants or civilians. For instance, a wife whose husband is part of a terrorist group and is directly involved in hostilities does not include an individual who is lawfully subject to a targeted killing. A targeted killing against his family members who are not directly involved in hostilities might result in an extrajudicial killing.

The norms of law regulating the conduct of war (*Jus in Bello*) must be observed and applied, especially while utilizing deadly unmanned aerial vehicles (UCAVs). When conducting an assault, the proportionality principle should be followed to the greatest extent feasible. It should be concerned about the consequences ofUCAV attacks. Agus

Pramono (2022), two justifications are frequently stated as the grounds for carrying out attacks: self-defense and military necessity. Self-defense justifications must be supported by criteria relevant to the principles of necessity and proportionality. While the military necessity of the strike must weigh the casualties and any collateral damage. Military necessity must also be prioritized over collateral damage. Therefore, to minimize excessive collateral, it is vital to conduct precautionary attacks using precise positive identification (PIN) before launching an attack.

L. Acaralp (2018) underlines the implementation of the precautionary principle when launching attacks using UCAVs. Her research is on how UCAVs met the criteria for the principle of proportionality. That is by using the quantitative method of 733 drone attacks by the US military in four countries (Afghanistan, Yemen, Somalia, and Pakistan). The study noted that the amount of collateral damage in the four countries varied greatly. At the end of the research, She concluded that considering the number of civilian casualties when deciding on an attack, in this case, depends on the military's decision-making and the state policy.

## 4 Conclusion

1. Based on international law, states are not always permitted to employ the use of force in the war on terrorism. Use of force should only be carried out when the existence of a terrorist group has reached a scale that threatens state sovereignty;
2. Targeted killing of terrorist groups using UCAVs must implement the proportionality principle, which includes the principle of self-defense and military necessity by considering victims and collateral damage when launching an attack;
3. Precautionary principles such as collecting sufficient information and accurate coordinate points about enemies' positions should be implemented;
4. The high contracting party is obliged to adopt the general principle of the Geneva Convention and their Additional Protocols, particularly by identifying combatants and non-combatants so that mistargeted attacks can be avoided.

## References

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