



Wisdom at the source of the Blue Nile

THE USE OF DRONES AND ITS IMPACT ON THE PRINCIPLE OF DISTINCTION UNDER INTERNATIONAL HUMANITARIAN LAW

MITIKU CHANE

School of Law,
Bahir Dar University

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THE USE OF DRONES AND ITS IMPACT ON THE PRINCIPLE OF DISTINCTION UNDER INTERNATIONAL HUMANITARIAN LAW

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By
Mitiku Chane

Advisor
Tefera Degu (LL.B, LL.M.)

School of Law,
Bahir Dar University

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Thesis Approval Page

The thesis titled *“The Use of Drones and Its Impact on the Principle of Distinction under International Humanitarian Law”* by Mitiku Chane is approved for the degree of Bachelor of Laws (LLB).

Board of Examiner

Name

Signature

Advisor:

Examiner:

Date 10th January 2018

Declaration Page

I, the undersigned, declare that the thesis comprises my own work. In compliance with the widely accepted practices, I have duly acknowledged and referenced all materials used in this work. I understand that non-adherence to the principle of academic honesty and integrity, misrepresentation/fabrication of any idea/data/fact source will constitute sufficient grounds for disciplinary action by the University and can also evoke criminal sanction from the state and civil action from the sources which have not been properly cited or acknowledged.

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Mitiku Chane

Id. No. 0603739

Date,

24/05/2010 E.C

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Table of Contents

Title	Page
.....	i
Thesis	approval
page.....	ii
Declaration	
page.....	iii
Acknowledgement	
page.....	iv
Table	of
contents.....	v
List	of
abbreviations/acronyms.....	vii
Abstract	
.....	viii

CHAPTER

ONE.....1

INTRODUCTION.....

...1

1.1	Background of the study.....	1
1.2	Statement of problem.....	4
1.3	Objective of the study.....	5
	1.3.1 General Objectives.....	5
1.3.2	Specific Objectives.....	5
1.4	Research Questions.....	5
1.5	significance of the Study.....	5
1.6	Scope of the Study.....	6
1.7	Literature Review.....	6
1.8	Research Methodology.....	7
1.9	Limitation of the study.....	8
1.10	Organization of the study.....	8
	Chapter Two: General Overview of IHL and Its Major Principles.....	9
2.1	Introduction.....	9

3.1	
Introduction.....	2
1	
3.2 Nature and Definition of Drone Warfare.....	21
3.3 The Impact of Drone on the Principle of Distinction under IHL.....	22
3.4 Drone Strikes and the Principles of Distinction.....	24
3.5 Drone Warfare And Its Implication on the Life of Civilian Population.....	25
3.6 The Legality of Using Drone Weapons in the Armed Conflict.....	27
3.7Case Study Documented on the Impact of Drone warfare on the Principle of Distinction and Civilians Population.....	29

CHAPTER FOUR: CONCLUSION AND RECOMMENDATION.....31

4.1 Conclusion.....	31
4.2 Recommendation.....	33
BIBLIOGRAPHY.....	36

Abstract

During armed conflict parties must abide by the principle of distinction. They should draw a clear distinction between combatants and civilians and between military objectives and civilian objects during the conduct of hostilities. The principle of distinction emphasizes the protection of civilians and their objects so long as they do not actively participate in hostilities. However, Modern armed conflict poses challenges to this principle as a result of changes in the means and methods of warfare. This principle is not always observed during armed conflict as civilian objects that should enjoy protection are sometimes used for military purpose. The other problem comes from the use of drone warfare in the armed conflict, because since drone warfare is an unmanned weapon it cannot clearly distinguish between combatants from civilian and civilian objects from military objectives, this in turn leads to the violation of the principle of distinction and it can damage the life of civilians and their objects. But these problems are not difficult to solve. In this case the commitment of states to enact specific provisions that govern armed drones, awareness creation for parties to the conflict and establishment of legal training centers can solve this problem easily.

Acronyms(abbreviations)

USA.....	United States of America
IHL.....	International Humanitarian Law
UAV.....	Unmanned Arial Vehicles
ICRC.....	International Committee of the Red cross
UN.....	United Nations
AP I.....	Additional Protocol First
AP II.....	Additional Protocol Second
IACs.....	International Armed Conflict
NIAC.....	Non- International Armed Conflict
TBTIJ.....	the Bureau of Investigation Journalism
ICJ.....	International Court of Justice
ICTY.....	the International Criminal Tribunal for the former Yugoslavia

Chapter One

General Overview of the Research

Introduction

1.1 Background of the Study

Since conflict is inevitable nature of human being, states use different mechanisms to solve such conflict during war times. Among such mechanisms weapon is vital tool to solve the conflict during war times. Through the development of technologies the type and nature of weapons law become extremely changed. The advancement of technologies has contributed a vital role for the change of modern warfare systems and it forced states to propose a new regulation for this technological result.¹

Even though the advancement of technologies has changed the nature and type of weapons, it has two main categories of weapon; unmanned weapon and man oriented weapons. Man oriented weapons are a type of weapons that do its task through a direct involvement of human beings in the place where the conflict is break out. Whereas unmanned weapons are a type of weapons that operates its function through remotely controlled electronic devices. In this case unlike that of man oriented weapons, direct involvement of human being in the war place is not expected. Because, all the tasks are done through remotely controlled electronic devices.²

Due to the complicated nature of conflicts, the desire for weapons has been increased and a new and modern type of weapon has been invented to launch armed attack when conflict is arising. That new weapon which invented to launch an armed attack is called drone weapons. As previously

¹ Dr. Rain Livoja, A senior Lecturer at Mel Bourne University School of Law: Technological Change and the Law of War.

² Back ground Paper by the International Bar Association's Human Right Institute, the Legality of Armed Drones Under International Law, 25 May 2017, available at < [www.ibanet.org/human rights institute/council-resolution.aspx](http://www.ibanet.org/human%20rights%20institute/council-resolution.aspx)>

explained in the first paragraph drone weapon is a type of weapon which is remotely controlled material to do its task.

Drone is unmanned aerial machine which is controlled remotely by an operator of that machine from a long distance.

Currently the uses of drones by the states increase in alarming rate. The reason for this is that, the presence of civilization and the advancement of technologies in every aspect of human life has contributed for the development of drone weapons in different countries of the world.

Drones have a long history having been developed during the First World War (1914-1918). Since then this was presented in numerous conflicts like in Korea 1950-1953), Vietnam (1955-1975) and in the Arab/Israel conflict of 1973, as well as in the many armed conflicts that marked the breakup of the former Yugoslavia³. Currently there are some powerful countries that use drone technology for armed attacks in the battle fields among those powerful states United state is the world's most active user of armed drones and its program is rapidly expanding: In 2000, it comprised fewer than 50 drones. But by 2012, this figure had risen to over 19,000 and is set to rise further as the Pentagon seeks to increase its daily drone flights by 50 percent⁴.

Like United States Israel has extensive experience in using drone technology in the battle fields; having used them for decades in an ISR capacity.⁵ And then Israel has become a huge exporter of drone technology to different countries of the world.⁶ The other powerful state in using drone technology in warfare is China⁷; the people's republic of China has began to invest heavily in drone production to export this drone technology in many

³ Ibid

⁴ M. Benjamin, Drone warfare; killing by remotely controlled drone, (2013) available at <http://www.ibanet.org/humanrightinstitutions/councils-resolution.aspx> last accessed on 27 October 2017

⁵ Robert Farley, <https://www.nationalinterest.org.com> the five most deadly drone powers of the world

⁶ Ibid

⁷ Ibid

countries of the world especially for Middle east and African countries in cheaper price compared to other powerful drone exporter countries like USA and Russia. from African countries Nigeria is the most powerful state to use drone weapons for operation of military attack on militant group of Boko Haram.⁸According to a report of the new American foundation which is released in 2016; list of countries that possess armed drone technology in the battle fields include; United States, United Kingdom, China Israel, Pakistan, Iran, Iraq, Nigeria, Somalia and South Africa are the most prominent users of drone weapons during war times.⁹

Drones have many categories based on different aspects; for instance based on their application drones can be classified into two main categories. These are: Commercial drones and armed drones. Armed drones a type of drones which are used for different military operations in the battle fields. Whereas Commercial drones are the other type of drones used for different commercial purposes.¹⁰Many different business men and companies have modified drones to fit their needs.¹¹They have a long been used in the agriculture sector to scan, fertilize and watering crops. In addition to this Film makers and photographers use those to take smooth shots from heights that normal camera can't reach. Drone also used to deliver packages, messages, internet services and advertisements.

The principle of distinction is one of the most important aspects of international humanitarian law. Its main objectives are protecting civilian population from unnecessary military attacks. This principle imposes an absolute obligation on parties to the armed conflict always to distinguish between the civilian population and combatants and between civilian

⁸Clay Dillow;fortune.com [accessed on February 12, 2016]

⁹ Ibid

¹⁰ "types of drone" available at ,<<https://www.prophotouav.com>> [visited on October 27, 2017]

¹¹ Ibid

objects and military objectives, and accordingly military operations should be directed ones against the military objectives.

Distinction as a principle is one of the most fundamental protections afforded to the civilian population at the times of hostilities. Additionally, the law of war documents requires that before launching an armed attack the parties to the conflict must distinguish combatants from civilian and civilian objects from military target¹².

The International Court of Justice (ICJ) in its advisory opinion on the nuclear weapons case has decided that the distinction between combatants and non combatants is one of the cardinal principles that constitute the fabric of humanitarian law¹³. Similarly, in the case of prosecutor Vs Martić, the international criminal tribunal for the former Yugoslavia (ICTY) stresses the rule that the civilian population as well as individual civilians shall not be the subject of attacks as a fundamental rule of fundamental humanitarian law applicable to all armed conflicts¹⁴.

This all writings, decision and principles propose that the principle of distinction must be protected from violation during war times. Because the protection of the life of civilian population from unnecessary hostilities. Even though, different rules of IHL state this assertion, many powerful states are on the verge of violating his principle. Because, most countries use drone as a means of weapon in the armed conflict.

Of course, the use of drones in military attack is not a prohibited or permitted act because there is no any international law that prohibits or permits the use of drone weapons in armed conflict. But practically states use drone weapons for different military attack by disregarding the

¹² Abdulrashid Lawan Haruna, Dr. Laminu Bukar, and Babagagna Karumi, Principle of Distinction in Armed Conflict: An Analysis of the Legitimacy of Combatants and Military Objectives as a Military Target, 31 March 2014.

¹³ International Court of Justice, Advisory opinion on the legality of the Threat or Use of Nuclear Weapons, Report 1996, Para 76

¹⁴ *ibid*, supra note 12

principle of distinction. Since drone is unmanned aerial weapon it cannot properly distinguish civilian from combatants and as a result it can cause serious damage on civilian life and property.

1.2 Statement of the Problem

The principle of distinction is governed under international humanitarian law. As per to the 1977 additional protocol I, in order to ensure respect for and protection of the civilian population and civilian objectives, the parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objectives and military objectives and accordingly shall direct their operations only against military objectives.¹⁵ This implies that the law gives high protection for the civilian population from unnecessary hostilities driven from combatants and also under article 44(3) of the 1977 Geneva protocol I, combatants are obliged to distinguish themselves from civilian population while they are engaged in an attack or in military operation preparation to an attack, in order to promote the protection of civilian population from the effects of hostilities¹⁶. But the crucial problem here is that when using drones in war time it cannot clearly distinguish the civilians from combatants. Drone is remotely controlled material without pilot board. Due to this reason it lacks accuracy to distinguish civilian objectives from military objectives and also despite the fact that the law gives high protection for the civilian population from unnecessary hostilities driven from combatants, there is no comprehensive rule that governs the use of drones in war time

1.3 Research Objectives

1.3.1 General Objective

¹⁵ Adam Robbarts and Richard Guelff, Documents on the Laws of war, Oxford University Press, reprinted on 2010, 3rd edition Additional Protocol I, article 48

¹⁶ Ibid

The general objectives of this research are justifying the impact of drone on the principle of distinction under international humanitarian law.

1.3.2 Specific Objectives

- Assessing the use of drone weapons and its real impact on the civilian population.
- To identify the problem of using drones and to find a solution for the protection of the life of civilian population.
- To discuss the manner of regulation of drone weapons in the battle field.

1.4 Research Questions

The study will attempt to come up with an answer to the main research questions;

- Does drone affects the principle of distinction?

The researcher framed the following sub questions to arrive at a meaningful answer to the main research question.

- What distinguish drone from other types of conventional weapons?
- Do we need separate laws that govern drone weapons?
- Is it legal to use armed drones during war times?

1.5 Significance of the Study

The study is all about the need to know the impact of drone on the principle of distinction in general and its impact on the civilian population in particular. And the study is intended to find better solution for above mentioned problems.

Hence, it may hopefully contribute much for the academicians and legal practitioners to have a meaningful understanding on the impact of drone on the principle of distinction. And also it may contribute for the states to have full awareness about drone weapons and its real impact on the principle of

distinction, as it clearly shows the impact of drone weapons on civilian life. Finally the study will serve as a base and could incite further research on the areas.

1.6 Scope of the Study

The whole study focuses on the use of drones and its impact on the principle of distinction under international humanitarian law and sources of international humanitarian law. Though, not in detail it also touches the concept of international humanitarian law along with its basic principles. In addition the concept of civilian vs. combatants and civilian objectives vs. military objectives will be discussed in the paper. Additionally, the legality of using drones in armed conflict including state practices will be discussed.

1.7 Literature Review

Since the concept of drone weapons has emerged, different debatable issues are raised by different scholars concerning the use of drones in war time. There are writers and researchers who tried to announce the impact of drone on the principle of distinction. Among those writers Luis Figueroa argue that the level of information and decision making abilities of drone weapon is not as great compared to human missions, potentially it may lead to higher error rate¹⁷. So, this has the potential for inflicting higher civilian casualties.

However the others like Professor CH Heyns argue that, even though the use of drone is not comply with the principle of international humanitarian law like distinction, proportionality and precautions, we can use it in the battle field, since they are not illegal weapons in themselves¹⁸. The other author Mark Patterson argued that drone by its nature not tactically flexible or adaptable to the emergencies, due to its limitations to adaptable and flexibility it may cause to unnecessary civilian casualties¹⁹.

¹⁷ Luis Figueroa, argument on the use of drone technology

¹⁸ Professor CH Heyns, drone and the principles of distinction

¹⁹ Mark Patterson, argument on the nature of drone and its limitation to distinguish civilian object from combatants

There are also some public debates on the issue of whether drone strikes make a perfect target or not in war times.²⁰In this case many writers argue that; Drone strikes have a strong impact on the life and socio-economic status of the civilian population.²¹Because these drone strikes cause serious damage on life, property and mental state of the civilians. So according to those writers using drone strikes in war times violate the principle of distinction which is stated under international humanitarian law.²²

Furthermore, the researcher argues for a separate or independent regulation of drone weapons in the battle field so as to protect the civilian population from unnecessary military hostilities and to protect the principle of distinction in general. Because even though the above scholars argued about the impact of drone weapons on the principle of distinction in general and in the civilian population in particular, they are not tried to find a better solution for this problem.²³So, the researcher will attempt to find better solution by recommending whether to have a new separate rule or to regulate drone weapons through the interpretation in favor of protecting the principle of distinction and the civilian population.

1.8Research Methodology

The research methodology in which the researcher will apply is that qualitative research method, why because this type methodology is important for answering my research questions based on analyzing the document. The other reason for using this method is that the researcher will not interview either judges or other personalities and organs to collect data.

The data collection mechanism in which the researcher will apply is both primary secondary sources.

²⁰ Konij Fatima, use of drones and private military companies in modern warfare: effect on international humanitarian law, *journal of the Asiatic society of Bangladesh*, vol.59 No. 2, (2014), pp.367-384

²¹ Ibid

²² Ibid

²³ Ibid

Among the primary sources the researcher will use international legislations and additional protocols related to the study. In the case of secondary sources the researcher will assess literatures, published & unpublished books, academic thesis & other relevant materials.

Furthermore, the researcher will also refer online sources through internet services. Additionally the researcher will also assess the appropriate books in Bahir Dar University, Gish Abay Campus main library and law school digital library.

1.9 Limitation of the Study

Even if this research paper comes up with relevant findings and recommendations, it will suffer by some limitations. Among such limitations the shortage of time and resources, the presence of exit exam and lack of well organized sources that support the working of this thesis are the main factors that are considered as an obstacle to do this thesis.

1.10 Organizations of the Study

The research paper will be organized into FOUR chapters.

The first chapter deals with the background of the study and essential structure of the study including the research objectives, the main and supplementary questions, the significance of the study, methodology, literatures and limitations of the study.

The second chapter discusses about the concept of international humanitarian law, its basic principles, and the sources of international humanitarian law and also the study will attempt to show the concept of civilian objectives and military objectives, civilian population and combatants.

The third chapter investigates the general overview of drone weapons, the impact of drone on the principle of distinction under international humanitarian law and also the study will attempt to show consequences of

drone on the civilian population. Finally the study will assess the legality of using drones in the battle field and its practice by the states.

The fourth chapter presents the researchers conclusion and recommendations on the use of drones and its impact on the principle of distinction and civilian objectives.

Chapter Two

General Overview of IHL and Its Major Principles

2.1 Introduction

Since war is inevitable phenomenon in this real world, it is better to analyze international humanitarian law principles. Because international humanitarian law is every essential concept to regulate wars that break out between states and states with non state armed groups. So due to this reason , in this specific chapter the researcher will try to assess the nature of international humanitarian laws, the sources of international humanitarian law, the scope of international humanitarian law will be discussed in a brief manner. Hence the researcher will also try to discuss the concepts of civilians, combatants, civilian objects and military objectives. At the end the major principles of IHL like the principle of distinction, proportionality and precaution measures will be discussed briefly.

2.2 Nature of International Humanitarian Law

International humanitarian law is one part of public international law that regulates the relationship between states during war times. It has originated from a serious international treaties consisting of different rules and principles in order to limit the effects of war on people and property and also particularly to protect vulnerable group of person in a given area. This law gives some legal boundaries to regulate war during war times.²⁴

What distinguish international humanitarian law from other international laws is that it applies to armed conflicts in war times and it regulates the conflict between states and states with other non state groups that launch war in battle fields.²⁵ Due to this reason it is named as the Law of war or the law of armed conflict. International humanitarian law seeks to reduce the consequences of war and limits the choices of means and methods of conducting military operations. This body of law also obliges the military groups to distinguish persons who do not or no longer participate in hostile actions in the course of conducting armed conflict.²⁶

The major function of international humanitarian law is to create a balance between concerns of humanity and military necessity. Basically, war is prohibited under existing international law.²⁷ Because war by its nature seriously affects the human life and it creates civil unrest in the society and also causes serious destruction of property in a given locality by which that war is emerged. However, even though war by its nature has a full of negative consequences over the life of society and the property of society, it

²⁴ *ibid*

²⁵ Bereket Bashura Alaro (L.L.B, Lecture) and Demelash Shiferaw (L.L.B, L.L.M, Assist. Prof.), International Humanitarian Law Teaching Material, Prepared under the Sponsorship of the Justice and Legal System Research Institute), 2009), pp. 1-33

²⁶ *Ibid*

²⁷ *Ibid*

is allowed to conduct war by the way of exceptions.²⁸ Meaning in exceptional circumstances states or nations have a right to launch armed attacks in case of individual and collective self defense, Security Council enforcement measures, and arguably to enforce the right of people to self determination or national liberation wars.

The notion international humanitarian law is to regulate armed conflicts that breaks out among states or nations by whatever means it breaks out rather it (IHL) is not a law that prohibits the occurrence of war or armed conflict unlike that of other laws of the nation.²⁹ This is the main features of international humanitarian law that distinguish it from other international laws of the nation.

IHL is ready to step in, when war breaks out, whether or not there is any justification for that war.³⁰ Meaning international humanitarian law is a readymade law when war is breaks out. And it is only applicable when armed conflict is created among states and states with other non state groups that are participated in the armed conflict to conduct armed attacks.

In ancient times, there were different rules to regulate the conflict between states. We find some rules of war in different religious textbooks and in the writing of different scholars and philosophers. Later on these ancient rules that regulate the conduct of war fare have developed to customary laws. Thus, humanitarian law becomes the product of customary international law that developed from ancient rules which are present in various religious textbooks.³¹ Finally modern international humanitarian law has been drafted and adopted in The Hague and Geneva conventions. The main bases of this law are the Hague laws and the Geneva laws.

²⁸Ibid

²⁹ Ibid

³⁰ Ibid

³¹ibid, Supra note 32

The Hague convention of 1899 and 1907 contains Hague laws that discuss the permissible means and methods of war. The four Geneva conventions of 1949 and the three additional protocols to the Geneva conventions are known as the Geneva laws which aim to protect the victims during armed conflicts.³²

Generally, the main aim of adopting and drafting of these conventions in comprehensive way is to protect the civilians who are not directly participated in hostilities during war times. There are four different principles of international humanitarian law which regulates the areas of targeting, detention and treatment of persons.³³

According to the principle of distinction, all parties to the conflict must make distinguish between civilians and combatants during war times.³⁴ This principle gives high protection for civilians from unnecessary military attack. The principle proportionality sets some limitations upon the use of means and methods of warfare. The main aim this principle is protecting civilians from unnecessary military attacks during war times.³⁵ Thirdly, the principle of military necessity authorizes the armed forces to use all the weapons which are permitted under international humanitarian law and which are essential to fight against the opponent. Lastly, according to the principle of humanity, unnecessary sufferings are prohibited and the weapon which causes unnecessary military attacks is forbidden.³⁶ This thesis argues that the nature of modern warfare goes against those principles and also violates other principles of international humanitarian law. Those principles of international humanitarian law will be discussed later on in detail. Modern warfare includes those concepts, methods and technologies which are used during war times to conduct armed attack over opponents of the war.

³² Ibid

³³ Ibid

³⁴ Ibid

³⁵ Ibid

³⁶ Ibid

The technological developments have changed different notions of international humanitarian law and also it has changed the nature, characteristics and locations of the battle fields in the twenty first century. Currently the Unmanned aerial vehicles(UAV) like drones, robots and robotic devices are increasingly used for the conduct of war fare, a task that previously involve only traditional foot soldiers and vehicles.³⁷ This paper states that the modern laws of war are challenged due to the growth of technologically advanced weapons and the use of it in armed conflict, seriously affects the notion of international humanitarian law in general and the principle of distinction in particular.

2.3 Scope of International Humanitarian Law

The application of international humanitarian law is not dependent on formal declaration of war that nowadays occurs only occasionally. Rather it is applicable in any international and non international armed conflicts.³⁸ ICRC has provided a definition of international humanitarian law in a comprehensive manner enabling the reader to understand the scope of application of the law. It defines it as those international rules established by treaty of custom which are specifically intended to solve humanitarian problems directory arising from international or non international armed conflicts.

Generally speaking international humanitarian law is applicable in an armed conflict, whether or not that conflict is regarded by the parties as a war or not. In addition, the application of humanitarian law international armed conflicts does not depend on whether an armed conflict has been started in violation of provision of international law. It shall apply equally to all the parties in an armed conflict.

³⁷ ibid

³⁸ibid, supra note 33

2.4 Sources of International Humanitarian Law

There are different sources that contribute for the emergence of international humanitarian law.³⁹ These sources include:

- Treaties: it is an agreement between states on common terms to resolve conflicts which arise in an armed conflict.⁴⁰ For instance the four Geneva conventions are a form of treaties between states that are relevant to regulate the conduct of hostilities and provide protection for civilians. So treaties are one of the most important sources of international humanitarian law. Because without treaties nothing has been happened and the existence of international humanitarian law depends on treaties.
- Customary international humanitarian law: It is the most important sources of humanitarian law as it is a general practice and accepted by international community.⁴¹ Generally customary international law is relevant because it will serve as an interpretation factor and supplement when assessing the use of drones in targeted killings.
- General principle of law: It is a law which is recognized by civilized nations.⁴²
- Judicial decisions: are also relevant sources of humanitarian law because courts will examine previous decisions in order to distinguish relevant cases. This contributes to create both predictability and consistency in legal system.⁴³
- The writings of scholars: scholarly or an academic literature is an important source of international humanitarian law, due to the fact that it contributes to focus on structure and form of

³⁹The statute of the international court of justice, article 38(1)(a-d)

⁴⁰ Ibid

⁴¹ Ibid

⁴² Ibid

⁴³ Ibid

international law. Since the system of international humanitarian law is still quite young writings of scholars will contribute to highlighting and identifying areas where international law should be introduced as well as making suggestions for the future.⁴⁴ The later is important here, as drones are a new means of war fare, and may not have been considered when drafting the main IHL treaties.

- Resolutions from the United Nations (UN): although legal status of resolutions from the General assembly remains somehow uncertain, it is important to take its wording in to consideration. Only those resolutions which are adopted by General assembly, with regard to either procedural or budgetary questions are legally binding upon members.⁴⁵ All other resolutions that are recommendations or statements given on specific issues are called soft laws they are not binding among members.⁴⁶ But it is important to keep in mind that those resolutions will give an indication on the General consensus in the international community as what the law is. Generally even though these resolutions are soft laws, they are serving as the sources of humanitarian since they are made from the General consensus in the international community.

2.5 The Concept of Combatants and Civilians and Civilian Objects and Military Objectives under International Humanitarian Law.

2.5.1 Who are combatants?

There is no clear definition for the term combatants in law of war. But according to the current international law documents, combatants are all members of the armed forces with the exception of medical and religious

⁴⁴ Ibid

⁴⁵ United Nation Charter, article 24 and 25

⁴⁶ Ibid

personals.⁴⁷ The term armed force incorporates all the organized armed forces, groups and units as well as militias and voluntary corps integrated in armed forces.⁴⁸ Membership of the armed force is an important requirement to gain the status of combatants and armed forces in the meaning of international humanitarian law.

As per to article 43 of the 1977 Geneva protocol, combatants are an armed forces of a party to the conflict consisting of all organized armed forces, groups and units which are under a command responsible to that party for the conduct of it subordinates, even if that party represented by a government or an authority not recognized an adverse party.⁴⁹ And these armed forces shall be subject to internal disciplinary system which inter alia, shall enforce compliance with the rules of international law which is applicable in armed forces. This provision implies that participating in hostilities directly or join the armed forces in the armed conflict may gain combatant status, and subject to internal disciplinary rules and international humanitarian law principles.⁵⁰

According to the principles of distinction law parties to the conflict are under obligation to distinguish themselves from civilians. For instance, as per to 45 of the 1977 Geneva protocol first, parties to the conflict are under obligation to distinguish between civilians and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against the military objectives.⁵¹ The reason for this is that to respect and protect the civilian population from unnecessary sufferings.

2.5.2 Who are Civilians?

⁴⁷ Ibid

⁴⁸ API article 43

⁴⁹ Ibid

⁵⁰ Ibid

⁵¹ API article 45

Civilians are all those persons or population who are not members of the armed forces and also civilians are those people who are highly protected by international humanitarian law from unnecessary military attacks by the armed forces.⁵² According to the principle of international humanitarian law, civilians are highly protected from armed attacks unless otherwise they are directly participated in hostilities.⁵³ Meaning if civilians participate in hostilities directly, they lose civilians rights and protection from unnecessary military attacks. And in turn they take combatant status, so in order to gain protection from international humanitarian law rules; civilians must be refraining from taking part in hostilities directly in armed conflict. Additionally rule of international humanitarian law on the protection of civilians, states that civilians are protected from attacks unless and for such time as they take part in hostilities directly. This gives a kind of warning for civilians saying that they lose their rights of protection against attacks when and for such time as they take part in hostilities directly. Generally speaking, the civilian population and individual civilians shall enjoy general protection against dangers arising from military operations.⁵⁴

2.5.3What are Civilians Objects?

Civilian objects are a kind of objects that are normally dedicated to civilian purpose such as a place of worship, a house or other dwellings or school, clinic, are being used to make an effective contribution to military actions are not subjected to military attacks, since they are civilian objects.⁵⁵ As per to article 52 of API, civilian objects are not subjected to military attacks. So they need protection from directed attacks by military groups who are participated in armed conflict.⁵⁶

⁵²API article 50

⁵³API article 51(3)

⁵⁴API article 51(1)

⁵⁵API article 52(3)

⁵⁶API article 52(1)

2.5.4 What are Military Objectives?

Military objectives: are objectives which are limited to their nature, location, and purpose or used to make an effective contribution to military actions.⁵⁷ Generally military objectives are objectives are essential for effective military operations during conflict.

Generally, the rule of international humanitarian law in general and the principle of distinction in particular proposes that armed groups must distinguish civilians from combatants and civilian objects from military objectives in launching an armed attacks in armed conflicts.⁵⁸

2.6 Basic Principles of International Humanitarian Law

There are three main principles of international humanitarian law which are very essential to protect the life and property of civilians from unnecessary military attacks. These principles include: the principle of distinction or the principle of discrimination, the principle of proportionality and the principle of precautions or prevention measures.

2.6.1 The Principle of Distinction or the Principle of Discrimination

The principle of distinction is one of the most important concepts in the law of armed conflict. This principle serves as an umbrella for the protection of human life and their property. Because these principles prohibit parties to the conflict not to target their military attacks on civilian population and

⁵⁷API article 52(2)

⁵⁸API article 48

civilian objects. Additionally the principle of distinction gives high value for the protection of civilians and civilian objects.

The principle of distinction mandates that any military action must distinguish between combatants and civilians as well as between civilian objects and military objectives.⁵⁹ This distinction between person and an object that possesses a military character as opposed to one that is of a civilian character therefore takes on crucial importance. Importantly, international humanitarian law operates under the assumption that an individual who does not qualify as a combatant is to be considered as a civilian.

The 1977 additional protocol I, states that in order to ensure respect for and protection of the civilian population and civilian objects, the parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives.⁶⁰ This definition of the principle of distinction is considered to be customary international law, despite the fact that a number of states have not ratified additional protocol first.

The main objective of the principle of distinction is to protect the life of civilians and civilian objects from unnecessary military attacks during war times. According to this principle indiscriminate attack in the battle fields without making clear distinction between civilians from military groups is highly prohibited under international humanitarian law. Even though, this principle gives high concentration for the respect and protection civilian population and civilian objects from unnecessary military attacks, it has sets a condition where by the civilian population may lose their civilian status

⁵⁹Ibid

⁶⁰Ibid

and rights in the eyes of international humanitarian law. Accordingly, this principle declares that civilians may lose their civilian status when they take part in hostilities directly.⁶¹ Meaning direct involvement of civilians in the armed conflict may lead to losing different rights of protection and respecting as a civilian.

Generally, when we look the implementation of this principle it is somehow not fully implemented by states. Because nowadays different countries use new weapons that are remotely controlled and not clearly distinguish between civilians and combatants during war times. This implies that currently countries do not give more focus for the principle of distinction. Concerning this principle and its relationship with New weapons like drones will be discuss in next chapter briefly.

2.6.2The Principle of Proportionality

The second important rule regarding the conduct of hostilities is the principle of proportionality. In terms of IHL civilian casualties are not forbidden. However when military objectives are attacked, civilian objects must be spared incidental or collateral damage to the maximum extent possible and incidental damages must not be excessive in relation to the direct and concrete military advantage that is anticipated from the operation.⁶²

Although APII does not contain an explicit reference to the principle of proportionality in armed attacks, it has been argued that it is inherent in the principles of humanity which was explicitly made applicable to the protocol in its preamble, and thus the principle of proportionality cannot be ignored in the application of the APII.⁶³ This rule ultimately means that when an operation is planned or carried out, disproportionate attacks are prohibited even with regard to combatants and military objectives. The

⁶¹supra note 61

⁶²API article 51(5) (b)

⁶³ ICRC customary international humanitarian law study note 121rule 14

likely effect that the attack will have no civilians and their property must be considered and if it is apparent that the harm that might be caused to them in attacking a military objectives with a particular weapons would be disproportionate in relation to the military advantage anticipated, then either different weapon which would not cause disproportionate harm to civilians or their property should be used, or the attack should not be carried out altogether.

As per article 35 of API, in an armed conflict, the right of the parties to the conflict to choose means or methods of war fare is not unlimited.⁶⁴ Meaning parties are under obligation to choose means or methods of war fare in the battle fields. Because if parties are allowed to use any means or methods of war fare in the armed conflict, they can cause serious damages on the life of civilians and civilian objects. And they may violate the principle of humanity which is designated under international law. So parties to the conflict can only launch an armed attack which is proportional and must not violate the human values.

Additionally this principle argues that, it is prohibited to employ weapons, projectiles, materials and methods of war fare that causes superfluous injury or unnecessary sufferings and also it is prohibited to employ methods or means of war fare which are intended or maybe expected to cause widespread, long term and severe damage to the natural environment.⁶⁵

Generally, the aim of this principle is to balance military necessity with humanity and to protect the life of civilians from unnecessary military attack that is launched by parties to the conflict during war times. Because this principle proposes that the military attacks must be done in a proportional manner without disregarding the concepts of humanity. Rather the notion of this principle does not prohibit all the civilian deaths and also it does not intend to weaken the military forces but it says when launching

⁶⁴ AP I article 35(1)

⁶⁵ API article 35(2)

an armed attack, the parties to the conflict must choose the means and methods of war far in order to protect the concepts of humanity in general and the civilian life and civilian objects in particular. And also additionally, as a rule of international humanitarian law it is prohibited to launch a direct military attack on civilian population intentionally. However, practically this principle is not effective to protect the life of civilians and civilian objects from unnecessary hostilities. Because, currently, countries use new weapons like drones to launch an armed attack in war times by disregarding the principle of proportionality and humanity.

2.6.3 Precaution Measures

Precaution measure is the third and most important principle of international humanitarian law, which is a prevention measure or mechanism before launching an armed attack in order to save the life and objects of civilians. This principle elaborates; the duty of each party to the conflict to take all feasible precautions to protect the civilian population and civilian objects under its control against the effects of attacks is set forth in article 57 of API, Which provides a list of precautions which must be taken by states with respect to attacks. The article provides that parties must do everything feasible to verify that the objectives to be attacked are neither civilians nor civilian objects and must take all feasible precautions in the choice of means and methods of attacks with a view to avoiding, and minimizing the incidental loss of civilian life, injury to civilians and damage to civilian objects.

Furthermore, article 57 provides that an attack shall be cancelled or suspended if it becomes apparent that the objective is not military one or is subject to special protection; or that the attack may be expected to cause incidental loss of a civilian life, injury to civilians or damage to civilian

objects, which would be excessive in relation to the concrete and direct military advantage anticipated.⁶⁶

Although APII does not explicitly require precautions against the effects of an attack, article 13 (1) of the same protocol requires that "the civilian population and individual civilians shall enjoy general protection against the dangers arising from military operations" and it would be difficult to comply with this requirement without taking precautions against the effects of attack. Furthermore, the ICRC submits that it is a rule of customary international law applicable to both IACs and NIACs that the parties to the conflict must take all feasible precautions to protect the civilian population and civilian objects under their control against the effects of attacks.⁶⁷

Regarding armed drones specifically, it is submitted that the surveillance capabilities of armed drones combined with the removal of the risk for pilots as well as intelligence, surveillance and reconnaissance staff, offers states the opportunity to take effective precaution measures before employing lethal force.⁶⁸

Chapter Three

Drone Warfare and Its Implication on the Principle of Distinction

⁶⁶API article 57(2) (a-b)

⁶⁷ ICRC customary international humanitarian law study note 121 rule 22

⁶⁸Rosen, drones control and legal responsibility journal of conflict and security law p. 1-16

3.1 Introduction

This is the main chapter of the thesis concerning the impact of drone warfare on the principle of distinction and in this chapter the researcher will try to discuss about drone weapons on the principle of distinction on the principle of civilian population in detail. Hence, the researcher will discuss the legality of using drone weapons in the armed conflict during war times. In this discussion the researcher will try to assess the main rules of IHL that are designated under the law of war documents. Different arguments of scholars will be analyzed in order to clarify the essence of this thesis and finally the researcher will try see relevant cases that show the impact of drone warfare on the principle of distinction and on the life of the civilian population.

3.2 Definition and Nature of Drone Warfare

Drones are unmanned air crafts run by external operators using a remote control technology.⁶⁹ Drones are aerial vehicles that are used for different purposes, whether for Commercial purpose or military attacks at the time of war in the battle field. At the beginning drones were used for surveillance purposes.⁷⁰

However, through the advancement of technology USA used drones technology for the purpose of military attacks in Afghanistan.⁷¹ And following this more than eighty countries including USA, Russia, Pakistan, India, Iran, China and Israel have expanded the use of drones' technology for military and surveillance purpose.⁷² Since drone is a machine, it needs an external operator who controls the operation of it remotely. Drones

⁶⁹ *ibid*, supra note 29

⁷⁰ Ahmad Qureshi, Waseem (2017, "The legality and conduct of drone strikes (attacks," *Notre Dame journal of international and comparative law*: Vol. 7 issue 2 article 5) available at <https://www.scholarship.law.nd.edu/ndjicl.vol.7/iss2/article/5/> last accessed on 23 December 2017

⁷¹ *Ibid*

⁷² *Ibid*

cannot operate properly without the assistance of external operator. Human beings can operate it either for Commercial purpose or for military attacks during war times. Early times, the concept of using drone either for Commercial purpose or military attacks was not known by the states or individual actors. Because early times, technology was not advanced to develop this machine. However, currently through the advancement of technologies use of drones, especially for military operation is highly expanded by the most powerful states of the world during war times.

There are so many reasons that contribute for the expansion of drone technology in the world. The first and the most important reason that contribute for the expansion of drone technology is the advancement of technologies to create drone machine either for military purpose or for other purposes.⁷³ The second reason that contributes for the expansion of drone technology among different states is that; the availability of drones in cheaper price as compared to other weapons.⁷⁴ Because in countries like China there is high production of drones and this high production, makes the drone market cheaper compared to other weapons. The third and the final reason is that contribute for the expansion of drone technology among different states is that; its convenience to apply either in the military attacks or commercial transactions.⁷⁵

These are main reasons that contribute for the expansion of drone technology among different states of the world; previously, I discussed about general overviews on drone technology. However, this time on wards this paper talks about drone weapons. Drone weapons are a kind of weapons that are used for military attacks in the battle field during war times. What distinguish it from other weapon is that, it is unmanned aerial

⁷³UiO: Faculty of Law: University of Oslo ; Game of drones: an assessment of the legal consequences of using drones in targeted killings, in non international armed conflict

⁷⁴ Rosa Brooks; George Town University of law center available at <http://www.scholarship.law.georgetown.edu/facpub/1287>)

⁷⁵ Ibid

vehicle that operate its task through externally controlled electronic devices.

In generally speaking, drone is a machine which runs through electrical operations without human pilot on board.⁷⁶ Due to this reason it is called as unmanned aerial weapon which is used for military purpose during war times.

3.3 The Impact of Drone on the Principle of Distinction under IHL

As previously explained in the literature review part there are so many debatable issues were raised by different writers of IHL concerning the impact of drone on the principles of distinction under IHL. Among these known writers Luis Figueroa: argues that the level of information and decision making abilities of drone weapons is not as great as compared to human missions and potentially it may lead to higher error rates.⁷⁷ So this has the potential for causing higher civilian death. Additionally, the other author Mark Patterson argues that drone by its nature not flexible and adaptable to emergencies.⁷⁸ Meaning it lacks flexibility in military attacks during war times due to its one directional military operational system and in turns this lead to causes of unnecessary civilian death.

There are also some public debates on the issue of whether drone strikes make a perfect target or not in war times. In this case many writers argue that drone strikes have a strong impact on the life and socio-economic status of civilians.⁷⁹ Because these drone strikes cause series damage on life, property and mental state of the civilians. However the other scholars like professor CH Heyns argues that even though the use of drone is not comply with the principles of international humanitarian law like distinction,

⁷⁶ibid, Supra note 79

⁷⁷ ibid, Supra note 26

⁷⁸ibid, Supra note 28

⁷⁹ ibid, Supra note 29

proportionality, and precautions we can use it in the battle field since they are not illegal weapons in themselves.⁸⁰

The researcher argues that all the explanations set by the above writers indicate that the impact of drone in the principles of distinction either expressly or impliedly. Because the above three writers explained the impact of drone on the principles of distinction in a clear manner though they have used different expressions to indicate the impact of drone on the principles of distinction. However the last writer among the above writers described the impact of drone on the principles of distinction impliedly. This writer interpreted drones as allowed weapon in the battle field during war times. But, in this case the law is silent whether using is drone allowed or not in the battle field, so the researcher tries to find a better solution to avoid unnecessary civilian casualties during war times through drone weapons.

The researcher argues that, even though the law is silent about the use of drones in the battle field it is better to interpreted the law in favor of protecting the life of civilian from unnecessary death. If we allow the use of drone weapons in the war times, we are violating principles of distinction in one hand and causing on the other hand. Additionally, the researcher argues that since drone weapon is remotely controlled weapon through miles, it lacks accuracy to distinguish civilian from combatants and civilian objects from military objectives. So the researcher argues that the current international humanitarian law rules are not adequate and relevant to govern drone strikes due to devastating use of technologically advanced weapons by the states during war times and the researcher believes that using drone in war times violate the rules of IHL in general and the principles of distinction in particular. So if those rules are violated by using drones in war times, civilian life became in danger of extinction easily.

⁸⁰ *ibid*, supra note 27

3.4 Drone Strikes and the Principles of Distinction

It is the responsibility of the parties to the conflict, to identify the civilian population and combatants make a difference between them and their activities.⁸¹ Different articles define the term combatant and military objectives. Under article 52 of the additional protocol, military objectives include these objectives that are contributing to the military action and destruction of that objectives bring military advantages for the parties.⁸² One of the fundamental notions of international humanitarian law is to protect the civilian population from unnecessary military sufferings. To comply with the principles of distinction, the target of the drone weapon should be the combatants or military objectives not the civilians.⁸³ however, even though the principles of distinction has set this limits regarding drone strikes the current new weapon (drone) violates the principles of distinction which is designated under international humanitarian law rules. To show the best evidence for this violation of the principles of distinction, it better to see previously statistics about drone strikes and its impact on the principles of distinction under IHL.

Previously, there are several cases of US. Drone strikes violated the principles of distinction.⁸⁴ Evidences show that there were many civilians who were killed by the US Drone strikes in Pakistan. The Bureau of investigation Journalism (TBIJ) reported that drone strikes killed 2,562-3,325 people in Pakistan, from this killed people 474-881 were civilians including 176 children and injured an additional of 1,228-1,362 individuals from June 2004 through mid September 2012.⁸⁵

⁸¹article 48 of API

⁸²article 52 of API

⁸³ ibid, supra note 27

⁸⁴The bureau of investigative journalism, covert war on terror: available at <<http://www.the.bureau.investigates.com/category/projects/drones>> [last accessed Jan 4 2018]

⁸⁵ ibid

The report of different international organizations, like Amnesty International and human rights watch, shows that in 2012 there were 18 laborers killed by drone attacks in north Pakistan when they were waiting for their dinner.⁸⁶ This organization claimed that none of them were involved in the military operation. Similarly, by the same year there was also a drone strike which caused too many civilian death and damages to property in Palestine by a drone strikes launched by Israel.⁸⁷

So, by analyzing these all the above evidences concerning drone strikes, the researcher believes that drone by its nature not capable to make a distinction between combatants and civilians as well between combatants and civilian objects and military objectives and in turn this shows that the impact of drone strikes on the principles of distinction of and on the life of civilian population.

As far as this, though the impact of drone strikes many international human rights law are violated, because this drone weapons causes serious human sufferings. As we have known in the human rights law documents, right to life is non-derogable rights. Meaning no one has the authority to violate these fundamental human rights. But drone strikes are violating this right by killing innocent criminals. This shows that using drone strikes in the battle field during war times not only affects the rules of international humanitarian law but also it affects the rules of international human rights document.

3.5 Drone Warfare And Its Implication on the Life of Civilian Population

As it is designated under IHL rules civilians cannot be made a deliberate target of military attack.⁸⁸ In order for the use of drones to be in accordance with the principles of distinction, the armed drones need to distinguish

⁸⁶ Ibid

⁸⁷ Ibid

⁸⁸ Ibid, supra note 27

between civilian and combatants or civilian objects and military objectives.⁸⁹For drones to fulfill this convection they must have an adequate sensory or vision processing system that separates combatants from civilian and civilian objects from military objectives. But evidences in different occasions show that drone is not capable enough to distinguish between civilian from combatants and between civilian objects from military objectives.⁹⁰In this case the law and the practice became contrary to each other. Meaning the law on the one hand protects innocent civilians from unnecessary military attacks through its rules of the principles of distinction, but on the other hand the states violate this principle practically. As a result many innocent civilians were killed and injured by the unnecessary military attacks caused by parties to the conflict.

Furthermore, the rule of drone weapons in the battle field during wartimes potentially affects both peace and stability in varies regions of the world as a result many civilians may choose migration to find a suitable for continuing their life. Meaning civilians become emigrants by leaving alone their home due to drone strikes and also different moral and property damages will occur in the life of civilians.

Generally, the researcher asserts that due to its incapability to distinguish between civilian and combatants and civilian objects and military objectives drone strikes seriously affects not only the principle of distinction, but also by stronger reason it affects the life of civilian population in the ways of morally physically, and economically.

The other issue that the researcher wants to raise is that; whether the laws of war broaden or limits the use of drone weapons in the battle field during war times? In this regard the researcher believes that the current rules of

⁸⁹ Ibid

⁹⁰ibid, supra note 79

IHL cannot limit the use of drone in the armed conflict during war times. Because drone weapon is a new armed weapon that cannot be included in the law of war articles and since it is a new concept for IHL rules, the law is silent about this new weapon, it is outside the scope of the law of war. As a result, based on the silent nature of the law concerning this new weapon, states become prominent users of this weapon to target their enemies and states use this drone technology during war times as they wish. Because there is no law that strictly governs (limits) the action of states in using drone weapons in the armed conflict.

As a result this lead to innocent civilian death and injury, due to its ineffectiveness to limit the action of states in using drone weapons during war times. Generally, regarding this issue the researcher concludes that the current rules of IHL cannot limit the problems caused due to the use of drone weapons in the armed conflict rather it widens the problem and caused to money civilian sufferings, the reason is that, the law has no adequate rule to limit and govern the use of this new weapon in the armed conflict. However, if there was strict rule that governs this new weapon in the armed current IHL documents, it can possibly limit the use of drone weapons in the armed conflict but in the current IHL rules there is no either permissive or prohibitive rule regarding drone weapons.

3.6The Legality of Using Drone Weapons in the Armed Conflict

The employment of drone weapons in the armed conflict lead to different arguments; whether it is legal or not in the current law of war documents. As to this issue whether it is legal or not, the current IHL rule is silent. It cannot recognize as a legal weapon like that of conventional weapons run by soldiers and also at the same time it is not prohibited strictly. Even though the law is silent regarding drone weapons legality or its illegality in the armed conflict, most writers argue that, it is not illegal to use drone weapons in the armed conflict. Their reasoning regarding the legality of

using drone in the battle field is that; the current IHL rule cannot strictly prohibited the use of drone weapons in the armed conflict. So, since it is not prohibited in the law of war documents, we can apply it like that of conventional weapons that are recognized as legal weapons in the current IHL. Similarly, Peter Maurer, the president of the ICRC, describes that, drones are not specifically mentioned in weapon treaties or other legal instruments of international humanitarian law.⁹¹

However, the use of any weapon system, including armed drones, in armed conflict situations is clearly subject to the rules of international humanitarian law. This means among other things that when using drones, parties to the conflict must always distinguish between civilians and combatants and between civilian objects and military objectives.⁹² They must take all feasible precautions in order to spare the civilian population and infrastructure and they must suspend or cancel an attack if the expected incidental harm or damage to civilian or civilian objects would be excessive in relation to the concrete and direct military advantage anticipated.⁹³ Similarly, drones can in no way be used to carry prohibited weapons such as chemical or biological weapons. On the other hand, from the perspective of international humanitarian law any weapon that makes it possible to carry out more precise attacks and helps to avoid or minimize incidental loss of civilian life, injury to civilians or damage to civilian objects should be given preferences over weapons that do not carry this task.⁹⁴

So, according to the notion of the president of ICRC," any weapon that full fill these conditions that are designated by the law of war documents can be recognized as a legal weapon and subject to international humanitarian

⁹¹the use of armed drones must comply with laws: at
<https://www.icrc.org/eng/resources/documents/interview/2013/05_10_drone_weapons_ihl>
[visited on January 7, 2017]

⁹² Ibid

⁹³ Ibid

⁹⁴ Ibid

documents". Additionally, the UN Special Rapporteur on extrajudicial, arbitrary or summary executions has been very vocal on the issue of humanitarian laws and their relevance in modern warfare. According to the argument of this Rapporteur" a missile fired from a drone is not different from any other commonly used weapons, including a gun fired by soldiers or helicopter gunship that fires missiles. Meaning drone strikes are not different from other forms of weapons used by soldiers.⁹⁵ So, it is legal to use drone weapons in the armed conflict. All the above arguments are asserting about the legality of using drone weapons in the armed conflict through different expressions.

However, the researcher argues contrary to those above arguments. Because even if drone weapon is not a prohibited weapon under international humanitarian document and it takes similar missiles that are commonly used by other types of weapons, it is not fair and legal to use drone in the armed conflict from legal and moral perspectives. From legal perspective using drone weapon in the armed conflict violates the rules of IHL in general and the principles of distinction in particular, because when we look all drone strikes that are launched by states in the armed conflict, many civilians were killed and injured by drone attacks and also civilian objects were damaged. This shows that drone is not capable to distinguish between civilians and combatants and between civilian objects and military objects and it may become a danger for the life of civilian population. So in this case if it is not distinguish between civilian and lawful targets it clearly violates the rules of IHL and specially the principles of distinction. Due to this reason it is not legal to use drone weapons in the battle fields.

Additionally, as per to article 35(2) of the Additional Protocol I it is prohibited to employ weapons, projectiles, materials and methods of warfare of a nature to cause Superfluous injury or unnecessary sufferings.

⁹⁵ *ibid*, supra note 29

So, it can be depicted from analyzing this provision and task of drone weapons in the battle field that it is illegal to use drones in the armed conflict. Unless, drones are accurately distinguished between civilians and combatants during war times they can be a cause to unnecessary civilian sufferings.

Finally the researcher concludes that mere interpretation of silent nature of the law is not enough to assess the legality of using drone weapons in the armed conflict, rather we must focus on the backward or forward consequences of drone weapons, since they are dangerous to civilian life.

3.7 Case Study Documented on the Impact of Drone on the Principle of Distinction and Civilians Population

Though the law is silent regarding the use of armed drones in the battle field, through positive interpretation in favor of themselves states use armed drones in the armed conflicts and they caused many unnecessary civilian sufferings up to death and many civilian objects were damaged due to these armed attacks.

In order to show the impact of drone weapon in the principle of distinction and its effect on civilian life and the practice of the states in general, the researcher wanted to present one important case for the readers to understand clearly about the impact of drone weapons both in the principle of distinction and on civilian life and civilian objects.⁹⁶

The Khashamir Case, August 29/2012

The US launched a drone attack consisting of three Hell fire missile against a group of five men, gathered behind a mosque. The strike killed four men instantly, and the fifth was killed by a fourth missile while he crawled away.

⁹⁶ *ibid*, supra note 79

Yemeni authorities stated that three of the men were members of Al-Qaeda, and they were gathered because of a meeting.

In retrospect, it was revealed that two of the men were respected members of their local community, being respectively a cleric, who openly preached against Al-Qaeda's violent methods and a police officer. The other three men were members of Al-Qaeda. The revealed relatives stated that the members demanded a meeting because the cleric had made a strong denunciation of Al-Qaeda. It should be noted that the attack is unacknowledged by the US.

This strike is in violation of basic IHL rules and specially the principles of distinction because US strike innocent civilians who did not take part in hostilities. The US did not take all feasible precautions to minimize civilians harm as well as insuring that the targets were lawful military targets. The mosque was further located near the city center, making the risk of civilian casualties imminent.⁹⁷ From this practical case, the researcher pointed out two major problems regarding the use of drone weapons in the armed conflict. the first one is drone incapability to distinguish between lawful target and civilian population, and the second one is that the practice of states in using drone strikes on the armed conflict in a careless manner without giving high concern for the life of civilian and the rules of IHL. Because the above case shows that states do not concern for the IHL rules rather they carry their attack as they wish and convenient to them only.

CHAPTER FOUR

CONCLUSION AND RECOMMENDATION

4.1 Conclusion

⁹⁷ Ibid

Drone is unmanned aerial machine which is controlled remotely by the external operator from a long distance. On the other hand the principle of distinction is one of the significant humanitarian principles governing the conduct of hostilities in armed conflict. The effectiveness of the obligation imposed by the principle of distinction depends largely on the ability of military personnel carrying out military operation to clearly separate combatants from civilians and military objectives from civilian objects. Combatants have the right to directly participate in conduct of hostilities and consequently they are legitimate military targets. While civilians on the other hand have no right to directly participate in conduct of hostilities and in such they are not legitimate military targets. Similarly military objectives are legitimate targets in military operations as they make effective contribution in military operations, while civilian objects are protected against the risk and effect of hostilities unless the object is used for military purposes in that case it loses its immunity against an armed attack.

Even though, the principle of distinction imposes an obligation on parties to the conflict to distinguish between civilians and combatants and also between civilian objects and military objectives, the foregoing discussion suggests that IHL and the principle of distinction faces different legal and practical challenges due to technological developments. Because, currently modern technology has changed the nature, character and boundaries of the battle field in the 21st century. So, the advancement of technology opened the door for the emergence of drone weapons and this weapon become a serious challenge for the principle of distinction and for the life of civilian population.

Regarding the impact of drone warfare on the principle of distinction there are some arguments forwarded by different writers and scholars. One argument is that, since the level of information and decision making abilities of drone weapons is not as great as compared to human missions,

potentially it can affect the principle of distinction and the life of civilian population. The proponent of this argument also adds that drone by its nature not tactically flexible or adoptable to the emergencies. As a result it can affect the principle of distinction and the life of civilian population. The other argument is that, even though the use of drone weapon is not complying with the principle of IHL such as distinction, proportionality and precautionary measures, we can use it in an armed conflict, since they are not illegal weapons by themselves.

But the researcher approves the first two arguments. Because since drone warfare is unmanned aerial weapon it lacks accuracy to distinguish combatants from civilians and civilian objects from military objectives. And also the researcher argues that, though the law is silent concerning the use of armed drones during war times, it is better to interpret the law in favor of protecting both the principle of distinction and the life of civilians. Because, arbitrary interpretation of this law can lead to the violation of IHL rules and civilian sufferings. However, despite the challenges of modern armed conflicts to the principle of distinction, it still remains a significant humanitarian principle which protects civilians and their objects. Thus, parties to the armed conflict must always respect and observe the principle of distinction in the conduct of hostilities.

Regarding the legality of using armed drones in the armed conflict, the International Court of Justice has given its advisory opinion. It proposes that "conflicting parties may not use weapons that are incapable of distinguishing between civilians and military targets." The advisory opinion added that, IHL is often violated due to the unwillingness to respect the rules like the principle of distinction and lack of awareness about IHL among combatants, civilians and other people. The researcher approves this argument. Because, though the law is silent regarding the legality of using drones in armed conflict, it is prohibited to use weapons that are not clearly

distinguish between combatants and civilians and between civilian objects and military objectives. Therefore, it is possible to conclude that using armed drone in the armed conflict can affect the principle of distinction and it can also in danger the life of civilians. And also the evidences presented in this paper propose that IHL is not adequate enough to govern drone weapons and other technologically advanced weapons and other new concepts and methods.

Based on the above findings the researcher would like to provide some important recommendations available for such findings.

4.2 Recommendation

Even if the principle of distinction imposes an obligation to distinguish between combatants and civilians and between civilian objects and military objectives in the armed conflict, the emergences of armed drones became a series challenge for its implementation in the armed conflict. Because, there is a gap between the notions of this principle and its practical application by states.

Therefore, in order to tackle this gap and enhancing its application in the armed conflict, the researcher recommends the following measures taken by states and other concerning organs.

i) To make legal reform on IHL

Currently, there is no adequate and a comprehensive legislation that can govern armed drones in the armed conflict. Because, the concept of armed drones not clearly included in the IHL rules and states use this weapon based on their own wish arbitrary and in turn this action can violate the principle of distinction as well as it can endanger the life of innocent civilians.

Therefore, in order to prohibit those dreadful weapons and controlling the arbitrary activities of the state's legal reform on IHL is indispensable mechanism to solve the above stated problems. The goal of such prohibition and control are to reduce unnecessary sufferings of civilian population and it can also protect the principles of distinction from violations. Additionally, it can ensure the accountability of all states using new weapons and methods of warfare during wartimes. In the absence of such legal reforms, drone strikes would be more dangerous to kill or injure innocent civilians, and technologically advanced weapons would become a killing machine in the hands of powerful states and terrorists.

Finally the researcher recommends that, states must design some legal categories and specific legal provisions that can govern armed drones during wartimes and that specific provision should protect the best interest of civilians and it must fully recognize and respect the principle of distinction.

ii) To create awareness for the parties to the conflict.

Even if they are recognized as a qualified combatants /militants in the armed conflict during wartimes, parties to the conflict do not have adequate knowledge about IHL rules and its basic principles specially the principle of distinction. Due to this reason they can violate the principle of distinction and this in turn can cause series damage to civilian population and their objects. Therefore, making awareness creation on militants can solve this problem easily.

Additionally, parties to the conflict must aware about the consequences of using armed drones on the principles of distinction as well as civilian life. So, if they can aware this consequences about using armed drones in armed conflict, they

can prohibit themselves from using armed drones and this can solve the above problem easily.

iii) To establish a training center

Since armed forces have no adequate knowledge about the concept of international humanitarian law and its basic principles especially on the principle of distinction, the establishment of training center is essential to train such armed forces about the principle of distinction in particular and the rules of IHL in general. To accomplish this task, there should be mandatory provisions that impose an obligation to train every state fighter about the concept of IHL, its basic principles and international humanitarian rights.

Furthermore, states and non-governmental organizations must be responsible for training armed forces by organizing regular workshops and seminars for the armed forces on the principle of distinction and IHL in general. Because, this would go on a long way to protect the principle of distinction and the life of civilian population and their objects during military confrontations. Additionally the researcher recommends that if this entire task is accomplished in a proper manner and states have a willingness to commit this task we can reduce the impact of drone warfare on the principle of distinction as well as on the life of civilians and their objects.

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iv) To enhance the capacity of human right commission

Even if the rules of IHL are designed in the international humanitarian documents its implementation is decreasing time to time. Because, now a day's most power full states use drone weapon as a means and method of warfare to kill their enemies by

disregarding the principle of distinction as a result the life of innocent civilians became in danger and their objects became damaged.

Therefore, the researcher recommends that, since the violation of the principle of distinction leads to the violation of the right of civilian population, it is better to enhance the capacity of human right commissions to solve this problem properly. Because the violation of civilian right is a human right issue.

Generally, the researcher believes that all the above mentioned recommendations can reduce or prohibit the impact of drone warfare on the principle of distinction as well as on the life of innocent civilians either directly or indirectly one by one.

BIBLIOGRAPHY

I) Books

1. Dr. Rain Livoja, A senior Lecturer at Mel Bourne University School of Law: Technological Change and the Law of War.
2. Abdulrashid Lawan Haruna, Dr. Laminu Bukar, and Babagagna Karumi, Principle of Distinction in Armed Conflict: An Analysis of the Legitimacy of Combatants and Military Objectives as a Military Target, 31 March 2014.
4. Luis Figueroa, argument on the use of drone technology.
5. Professor CH Heyns, drone and the principles of distinction
6. Mark Patterson, argument on the nature of drone and its limitation to distinguish civilian object from combatants
7. Bereket Bashura Alaro (L.L.B, Lecture) and Demelash Shiferaw (L.L.B, L.L.M, Assist, Prof.), International Humanitarian Law Teaching Material, Prepared Under the Sponsorship of the Justice and Legal System Research Institute), 2009), pp. 1-33
8. Back ground Paper by the International Bar Association's Human Right Institute, the Legality of Armed Drones under International Law, 25 May 2017, available at < [www.ibanet.org/human rights institute/council-resolution.aspx](http://www.ibanet.org/human%20rights%20institute/council-resolution.aspx)>

II) International Instruments

1. Adam Robberts and Richard Guelff, Documents on the Laws of war, Oxford University Press, reprinted on 2010, 3rd edition Additional Protocol I, article 48
2. The statute of the international court of justice, article38(1)(a-d)
3. United Nation Charter, article 24 and 25
4. ICRC customary international humanitarian law study note 121rule 14
5. Additional Protocol I and II.

III) Journal Articles

1. Konij Fatima, use of drones and private military companies in modern warfare: effect on international humanitarian law, *journal of the Asiatic society of Bangladesh*, vol.59 No. 2, (2014), pp.367-384
2. Rosen, drones control and legal responsibility *journal of conflict and security law* p. 1-16
3. Ahmad Qureshi, Waseem (2017, "The legality and conduct of drone strikes (attacks, "Notre Dame *Journal of international and comparative law*: Vol. 7 issue 2 article 5.
4. The bureau of investigative journalism, covert war on terror
5. Michael W. Lewis and Emily Crawford, Drones and Distinction: How IHL Encouraged the Rise of Drones, *George Town Journal of International Law*. Vol. 44, 2013.
6. Lise Kanner, *Journal of the Efficacy and legality of drones in modern warfare*, Bond University student Law Review: vol.4:Iss.1, Article 4, 2016

IV) Researches

1. UiO: Faculty of Law: University of Oslo; Game of drones: an assessment of the legal consequences of using drones in targeted killings, in non international armed conflict.
1. Laura Green (LLM), the UKs Use of Armed Drones: The Principles of Distinction between Civilians and Combatants, University of Leiden, 2014/2015.
2. Jenna Guest(LLM), *Advancing Weapons Technology and the Future of Warfare: Strategic, Legal and Ethical Perspectives*, University of Canterbury, 2011
3. Abdul Rehman, *Impact of Drone Attacks in Pakistan and the war on terror* :Malmo University: Department of Political Studies International RelationsIII(61-90,103E),October 2013
- 4.

V) Internet sources

1. M. Benjamin, Drone warfare; killing by remotely controlled drone, (2013) available at <http://www.ibanet.org/humanrightsinstitutions/councils-resolution.aspx> last accessed on 27 October 2017
2. Robert Farley, <https://www.nationalinterest.org.com> the five most deadly drone powers of the world
3. Types of drone" available at , <<https://www.prophotouav.com>> [visited on October 27, 2017]

4. Rosa Brooks; George Town University of law center available at <http://www.scholarship.law.georgetown.edu/facpub/1287>)
5. the use of armed drones must comply with laws: at
<
https://www.icrc.org/eng/resources/documents/interview/2013/05_10_drone_weapons_ihl> [visited on January 7, 2017]

VI) Cases

1. The Khashamir Case, US Vs Yemen, August 29/2012
2. Robert and Marion Short Professor of Law, Unlawful killing with Combat Drones, A Case Study of Pakistan, 2004-2009: University of Notre Dame School of Law, July 2010