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The Foggy Surroundings of Targeted Killings within the Realms of International Law

Akshar Aditya^a

^aHidayatullah National Law University, Raipur, India

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One of the most contentious issues in the contemporary world order is rising in the form of Targeted Killings. This article examines the controversy surrounding the subject that is becoming a prevalent practice to 'counter' terrorism. This piece will focus on the two main international legal mechanisms, i.e. the International Humanitarian Law and Human Rights Law, that relate to proportionality, necessity, and civilian casualties. The article is inspired by the need for a stricter international legal framework in light of the recent happenings including the India-Canada row over the killing of Hardeep Singh Nijjar, a designated terrorist and separatist in India as well as the increasing casualisation of low accountability drone strikes. The content advocates a middle path that has the potential to achieve a perfect balance between the non-negotiable state security as well as the need to protect inherent and virtuous human rights, along with ensuring accountability and transparency to further global cooperation.

Keywords: *killings, international law, target killings, terrorism.*

INTRODUCTION

In the current geopolitical situation of ongoing wars and inter-state 'cold conflicts', a pervasive tactic is going largely unnoticed, i.e. Targeted Killings. In the simplest form, it can be described as the use of targeted and deadly force by a state-authorized entity against an individual on foreign or national soil. This tactic is largely used as a strategy to promote the 'war on terror' and technologies like drone strikes or secret military infiltration are utilised to eliminate high-value targets who are suspected to cause significant security threats. Yet, the debate surrounds the topic regarding its legality within international law and the dilemma of prioritizing national security or the fundamental right to life.

International Law provides the mechanism to evaluate the use of force in the global arena in the form of International Humanitarian Law, also known as the Law of Armed Conflict. International Humanitarian Law or IHL offers a set of legal conducts during wars and differentiates between civilians and combatants, wherein combatants are designated as legitimate targets and civilians are protected from attacks. The issue deepens in the case of targeted killings because the black-and-white differentiation of the target as combatant or civilian is blurred.

Another relevant mechanism under international law is the Human Rights Law or HRL, which applies to peace and war scenarios. With certain limitations, the HRL grants the right to life to global citizens. It necessitates the conditions of absolute need, proportionality and imminent threat to life for the use of lethal force.

The problems arise due to the very dilemma over security and human rights. The absence of a universally unanimous mechanism over targeted killings leads to cases like the recent killing of Hardeep Singh Nijjar. Such incidents provide examples of misunderstandings that can be caused in the international arena. This article aims to critically analyze the efficacy of the controversial practice of targeted killings. Additionally, the article seeks to advocate a way forward that recognises legitimate security concerns and upholds the fundamental rights of global citizens.

INTERNATIONAL LEGAL FRAMEWORK

The twisted status of the legal framework regarding Targeted Killings poses an unforeseen challenge. As mentioned earlier, two of the most relevant mechanisms for the topic interest are International Humanitarian Law and Human Rights Law. Accessing the nuances of these laws is imperative in understanding their application in the present scenario.

International Humanitarian Law (IHL): IHL, also known as the Law of Armed Conflict, deals with the conduct on and off the battlefields during wars.¹ Primarily, it aims at reducing human injury done in the crossfire. Issues arise in this law as follows:

Defining ‘Armed Conflict’: IHL applies to inter-state as well as intra-state armed conflicts. Inter-state armed conflicts can be easily identified but the ambiguous definition of intra-state armed conflicts makes it hard to put the concept of ‘war on terror’ precisely in or out of the domain.

Legitimate Targets: As mentioned earlier, the IHL differentiates appropriately between the combatants and the civilians. Combatants, under the IHL, are considered as legitimate targets because of their direct participation in war hostilities. Whereas, civilians are protected under the mechanism from any hostilities to reduce the collateral damage of the war. However, such protection ends when any such protected civilian actively participates in the hostilities or poses an immediate threat to life. This standard requires situation-specific context and hence becomes subjective. This is where the distinction between the hostile combatant and innocent civilians ends and the issue of human rights and the surrounding debate starts.

Proportionality Principle: Despite the difficulties mentioned above, one of the principles within the IHL that indirectly opposes targeted killings is the Proportionality Principle. It states that the civilian casualties if there must be, should always be proportional to the military advantage and not excessive.² In this way, the targeted killings using drone strikes and other methods can be critically questioned.

Landmark Case: *Al-Aulaqi v US* is an important case in the current context since it shows how the complexities around targeted killings branch out.³ An American-born cleric named Anwar al-Aulaqi was killed in a drone strike conducted by the US Army in Yemen. He was killed because of his ties and links with the terrorist group al-Qaeda. Although he was a confirmed legitimate target, the killing was questioned because he was an American and was downed without due process and that too, outside a declared warzone.

¹ ‘What Is International Humanitarian Law?’ (*International Committee of the Red Cross*, 13 October 2014) <<https://www.icrc.org/en/document/what-international-humanitarian-law>> accessed 06 June 2024

² Anaïs Maroonian, ‘Proportionality in International Humanitarian Law: A Principle and a Rule - Lieber Institute West Point’ (*Lieber Institute*, 24 October 2022) <<https://lieber.westpoint.edu/proportionality-international-humanitarian-law-principle-rule/>> accessed 06 June 2024

³ *Al-Aulaqi v Panetta* [2011] 35 F. Supp. 3d 56

Unlawful Combatants: Another term that has been used in the context of targeted killings is the ‘Unlawful Combatants’. These individuals are not considered traditional soldiers and hence, are in a grey zone or a blindspot of protection provided under the IHL. This issue has been a topic of debate on its legality concerns.⁴

Human Rights Law (HRL): HRL is established as a part of the International Covenant on Civil and Political Rights or ICCPR within Article 6 and is applicable in times of peace as well as armed conflict.⁵ However, as discussed above, it does not provide any rights in absolution.

Limitations to the Right to Life: As per HRL, lethal force can be used by the states in the scenario of self-defence and for the enforcement of law if the criteria of necessity, proportionality and the existence of an imminent threat to life are fulfilled.⁶

The advent of Lethal Autonomous Weapons Systems or LAWS in some form or other raises questions over the outdated framework of HRL which is being left behind in its purpose as the future approaches. LAWS are an issue of concern since they lack human oversight and have higher chances of accidental killings that can be termed as unlawful.⁷

RECENT DEVELOPMENTS AND CONTROVERSIES

One of the defining features of the ‘war on terror’ around the globe is the killings outside the designated warzone. What complicates the matter even further is the absence of a universal mechanism to deal with the same. A few of the recent developments in the global arena have fueled the controversy surrounding Targeted Killings and are discussed below.

The Rise of Drone Strikes: Many technologies have appeared in the past decade for the purpose of military use. LAWS are one such example. Another example is the drone technologies that were developed for unmanned military missions. Countries like the US and Israel use their drones to aid their targeted killings. Though they are efficient in protecting the troops, their use is often shrouded in controversy.⁸

⁴ ‘Unlawful combatants’ (*How does Law Protect in War*)
<https://casebook.icrc.org/a_to_z/glossary/unlawful-combatants> accessed 06 June 2024

⁵ International Covenant on Civil and Political Rights 1966, art 6

⁶ ‘International Human Rights Law’ (*Office of the United Nations High Commissioner for Human Rights*)
<<https://www.ohchr.org/en/instruments-and-mechanisms/international-human-rights-law>> accessed 06 June 2024

⁷ Officer for Disarmament Affairs, ‘Lethal Autonomous Weapon Systems (LAWS)’ (*United Nations*)
<<https://disarmament.unoda.org/the-convention-on-certain-conventional-weapons/background-on-laws-in-the-cw/>> accessed 06 June 2024

⁸ Stephen Pomper, ‘Targeted Killing and the Rule of Law: The Legal and Human Costs of 20 Years of U.S. Drone Strikes’ (*Crisisgroup.org*, 9 February 2022)

Civilian Casualties: The major argument against the use of drones is the undesired number of casualties among civilians. Due to the developments that are yet to be done in drone tech, it is still not the most precise system and hence results in collateral deaths. Several cases are being documented by organisations such as the Human Rights Watch where the targeted killings have led to high collateral deaths.

Transparency and Accountability: Another issue of using such systems for targeted killings is the lack of accountability by the governments. The missions are surrounded by such secrecy that it is very hard to question the effectiveness of the mission or hold the authorities responsible for the death of civilians or breach of international law.

Effectiveness: Drone strikes and other methods are generally used to break the chain of terrorism and deter the hostiles from pursuing said terrorism. However, those who oppose such strikes argue that the resulting collateral damage creates a cycle of hatred and violence that goes against the objective of such strikes.

International Organizations and the Debate: The United Nations and other equivalent international bodies have an imperative role in discussing the issues related to targeted killings and bringing the facts to light. The UN Special Rapporteur on extrajudicial, summary or arbitrary executions has been vocal in criticizing targeted killings outside the framework of international law.⁹ Such actions from an international platform are evidence of the need for a stricter framework.

The India-Canada Dispute: The killing of Hardeep Singh Nijjar, who was a designated terrorist in India, in Canada provides an explicit example of how even a doubtful situation surrounding a targeted killing can cause international friction. In the present case, Canada blames Indian intelligence for killing Nijjar because he was a designated terrorist. The accusations are on the lines of HRL and IHL and related laws.¹⁰

Jurisdictional Issues: If indeed the incident is true, it does however raise certain queries concerning jurisdiction. Can one country pass on another's jurisdiction to carry out targeted

<<https://www.crisisgroup.org/united-states/targeted-killing-and-rule-law-legal-and-human-costs-20-years-us-drone-strikes>> accessed 06 June 2024

⁹ The Minnesota Protocol On The Investigation Of Potentially Unlawful Deaths 2016

¹⁰ 'Canada Parliament Honours Khalistani Separatist Hardeep Singh Nijjar with Moment of Silence' *The Times of India* (19 June 2024)

<<https://timesofindia.indiatimes.com/india/canada-parliament-honours-khalistani-separatist-nijjar-with-moment-of-silence/articleshow/111100598.cms>> accessed 19 June 2024

killings? This is one of the incidents that underline the necessity for international cooperation and provide legal frames for handling such situations.

Nijjar's Case Highlights Potential for Escalation: The case of Nijjar may be used as an example of how targeted killing can turn into a global clash. Therefore, the globe should continue looking for ways to achieve national security without violating international norms or interfering with nation-states' territorial integrity.

Public Response: Targeted killings have come under increased public scrutiny over the past few years. Ongoing media investigations as well as numerous leaks of classified documents have further agitated the general populace concerning civilian deaths and lack of openness. It is increasing public pressure that may finally force a change in the manner in which targeted killings are carried out.

THE WAY FORWARD

The complex dance between national security and basic human rights certainly requires a more nuanced approach towards targeted killing. However, protecting citizens from terrorists cannot be done at the cost of sacrificing basic rights and international law in the process. How then do we move forward?

Strengthening current frameworks: Though there exist legal regimes, namely IHL and IHRL, that form a basis for regulating targeted killings, there is still much scope for development.

Define 'Armed Conflict': There is an urgent need to define what 'armed conflict' means and encompasses in the context of counter-terrorism. It would ensure that, when it occurs outside declared wars, targeted killing happens only in exceptionally specific circumstances and with very strict adherence to the principles of IHL.

Reconceptualizing 'Imminence': There is a dire need to reconceptualize the notion of 'imminence' of threat under the HRL framework. Should the threat be immediate and inescapable, or can futurity justify such killings? The more vivid the interpretation, the lesser the chance that people will be killed based on speculation rather than fact.

New Guidelines: The existing frameworks might not address each aspect of targeted killings. New international guidelines or interpretations only for counter-terrorism operations would address the legality in a much better way.

Targeting Procedures: It would be clearly outlined, in any such guidelines, the procedures for targeting killings to be conducted, with a transparent process of decision-making and proper justifications.

Oversight Mechanisms: The establishment of independent mechanisms of oversight has to be undertaken for any government to be held accountable for its resort to lethal force. These mechanisms can effectively examine targeting decisions and investigate suspected violations of international law on their own.

Transparency and Accountability: A general lack of transparency relating to targeted killings is responsible for causing a lot of distrust and tends to delegitimize such operations. This requires increased transparency:

Information Disclosure: Publishing information on the number of targeted killings and civilian casualties, as well as details on the legal justifications behind each operation, would increase scrutiny among the public and thus boost responsible use of force.

Independent Investigations: There should be an independent investigation into civilian casualty allegations and suspected violations of international law, which will enhance accountability and deter further violations.

CONCLUSION

It is for the international community to remain steadfast in its commitment to finding a solution that retains safety considerations without violating basic rights. Improvements to legal frameworks, the development of new guidelines, and the establishment of robust transparency and accountability measures are some of the ways forward. At the very least, navigating the complexities of targeted killing must include a commitment to the upholding of international law and safeguarding the right to life for all people.

The legality of targeted killing, hence, is intricate and dynamic. It is in light of these contours that this article reviewed the legal framework, present controversies, and possible solutions to treading through this minefield. Further research on specific cases, legal interpretations, and the continuous debate regarding Lethal Autonomous Weapons Systems will, therefore, offer a better understanding of the subject under consideration. Through continued dialogue, fortified with respect for, and support of, international law, we can strive toward a future in which human rights and security are balanced against each other.

