

**“Float like a Butterfly, Sting like a Bee”<sup>1</sup>:  
A Discussion of the Tolerance Limits for  
Drone Attacks Under the International Norm**

Abstract .....	181
Introduction .....	182
I. Reviewing the Illegality of Drones’ Preemptive Strikes .....	185
A. Regulatory Structure of International Law .....	186
1. Armed Drone Policies of Opaque Countries .....	186
2. International Human Rights Law .....	187
B. Overview of First Strike .....	188
C. Review of Targeted Killing .....	190
1. Position to Assert the Legality of Targeted Killing .	191
a. Legal Action for the Country .....	191
b. Recognition of Legality Based upon the Theory of State Monopoly on Violence .....	192
2. Position to Assert the Illegality of Targeted Killing	194
a. Violation of Due Procedures .....	194
b. Disclosure of Information Related to Targeted Killing.....	195
II. Controversy over Drone Targeted Killings.....	196
A. Whether Targeted Killing Is Justified.....	196
1. Responsibility for Targeted Killing .....	197
2. Subjects of Targeted Killing .....	198
3. Effects of Targeted Killing.....	200

---

\* Professor of Law at Hoseo University, Ph.D. & S.J.D.

† Senior Researcher at Hoseo Law Institute, Ph.D.

<sup>1</sup> Hilary Whiteman, *‘Float like a Butterfly, Sting like a Bee’: Best Quotes from Muhammad Ali*, CNN (June 4, 2016, 10:48 AM), <https://edition.cnn.com/2016/06/04/sport/best-quotes-muhammad-ali/index.html> (describing the expression that Muhammad Ali, the late American heavyweight world boxing champion, used to describe his fighting strategy). This aphorism best describes a drone attack.

- B. Side Effects of Targeted Killing ..... 201
  - 1. Collateral Damage to Innocent Citizens ..... 202
  - 2. Friendly Fire..... 203
  - 3. Pilot Combat Stress (Whiplash Transition)..... 205
- III. Review of Drone Attack Limits ..... 206
  - A. Compliance with Due Process of Law..... 210
    - 1. Laws That Apply Due Process Principles ..... 210
    - 2. Legal Application for the Operation of UAVs That  
Civilians Pilot..... 211
  - B. Review of Targeted Killing Responsibilities..... 212
  - C. New International Regulatory Initiatives..... 214
    - 1. Lethal Autonomous Weapon Systems (LAWS) ..... 214
    - 2. Proliferation Prevention and Export Management... 215
  - D. Review of the Relationship Between Artificial  
Intelligence and Drones ..... 216
    - 1. The Concept of Artificial Intelligence and  
Autonomy..... 216
    - 2. Development and Operation of Autonomous  
Weapon Systems ..... 219
    - 3. Changes in the Way War Is Waged ..... 223
  - E. Review of the Findings of the U.N. Special  
Rapporteur’s Investigation..... 230
  - F. Implications of Soleimani’s Assassination ..... 232
    - 1. NSC’s Failure to Check the President..... 232
    - 2. Expansion of Anti-American Forces in the Middle  
East..... 233
    - 3. Strengthening Relations Between Russia and Iran .. 233
    - 4. Attempt for Reelection by Gathering Trump  
Supporters ..... 234
  - G. Review of the Biden Administration’s Policy Against  
Iran..... 235
    - 1. Difficulties in the Biden Administration’s Policy  
Against Iran ..... 235
    - 2. Foreign Policy Focused on the Restoration of  
Iran’s Nuclear Agreement ..... 237
    - 3. Arab and Israeli Policies to Support Détente ..... 242
- IV. Unmanned Aerial Vehicle Targeted Killing Practice in  
Korea..... 243
  - A. The Legal Basis for UAV Targeted Killing ..... 243
    - 1. Implementation by the State..... 243

2024]	<i>“Float like a Butterfly, Sting like a Bee”: A Discussion of the Tolerance Limits for Drone Attacks Under the International Norm</i>	181
	a. Necessity for Consent from the Relevant Country .....	243
	b. Whether Nonstate Actors Can Exercise Their Right to Self-Defense .....	244
	2. Action Against Terrorist Groups.....	245
	a. Argument that the Actions of a Terrorist Group Are Attributable to the State .....	245
	b. Argument that the Actions of a Terrorist Group Are Not Attributable to the State.....	246
	B. The Legitimacy of Executing UAV Targeted Killing ...	248
	1. Legal Legitimacy of UAV Targeted Killing .....	248
	2. Social Legitimacy of UAV Targeted Killing .....	250
	C. Effects and Implementation Requirements of the Decapitation Operation of North Korean Leader Kim Jong Un.....	250
	Conclusion .....	256

**ABSTRACT**

*After the U.S. Embassy in Baghdad was attacked, an MQ-9 Reaper drone carried out the assassination of Qasem Soleimani, commander of the Quds Force (Elite Army of Iranian Revolutionary Guard). Concerns have emerged about the legal issues related to drone attacks, a countermeasure against North Korea’s continued nuclear tests, and the theory of a preemptive strike against North Korea’s nuclear missile facilities. State agencies’ assaults or preemptive attacks against people or facilities that threaten the safety of a country are referred to as targeted attacks and are gaining attention as a new means of force in the international community, including the United Nations. Preemptive strikes based upon anticipatory self-defense are permitted only in proportion to the extent that the threat of an enemy’s attack is imminent and there is no other means of defense under international law. Since the 9/11 terror attacks in 2001, it has been argued that the enemy’s ability and goals should be considered as more important criteria than the imminence of the attack. In the case of terrorist groups or rogue states that are developing weapons of mass destruction (WMD), threats are difficult to detect in advance and can be devastating if overlooked, so mitigating the requirements for the imminent nature of the attack should virtually allow for prevention. A report distributed on December 2, 2004, in the United Nations Document A/59/565,*

*concluded that preemptive strikes based upon preventive self-defense were possible under international law and reaffirmed the principle of imminence and proportionality as a requirement. However, some still maintain that it is necessary to obtain prior approval from the Security Council for preventive attacks against imminent threats. With respect to reviewing the illegality of preemptive strikes carried out by drones—as targeted killing operations are carried out in accordance with the basic principles of war law—it is not an international, illegal act but an administrative order that prohibits government agencies from undertaking assassinations as legal acts for the state. According to the position that preemptive strikes do not violate federal laws, such as Executive Order 12333, targeted killings executed by the state as a last resort to protect their citizens will be recognized as exercising a legitimate violence monopoly. The use of unmanned aerial vehicles (UAVs), which began with secret missions conducted by intelligence agencies, not the military, was discussed as a means of war in the war state theory raised after 9/11. In the wake of the 9/11 terror attacks, the unified responsibility for targeted killing is a problem because of the unification of the CIA and the military.*

#### INTRODUCTION

A drone or unmanned aerial vehicle (UAV) is a remotely piloted aircraft system that also has an autonomous flight system capable of operating without a remote pilot (Autonomous Unmanned Aircraft System).<sup>2</sup> While drones can be useful in our lives,<sup>3</sup> they also pose threats, depending on the way they are used. For example, in 2014, unidentified drones appeared over France’s nuclear power plants, and, in the following year, another incident occurred when a drone carrying soil that contained radioactive material and a smoke pipe was dropped on the roof of the Japanese Prime Minister’s official residence.<sup>4</sup>

---

<sup>2</sup> Brian P. Tice, *Unmanned Aerial Vehicles: The Force Multiplier of the 1990s*, 5 AIRPOWER J. 41, 53 (1991) (“When used, UAVs should generally perform missions characterized by the three Ds: dull, dirty, and dangerous.”).

<sup>3</sup> In this Article, the term drone is understood as an unmanned aerial vehicle. See John F. Guilmartin, *Unmanned Aerial Vehicle*, ENCYC. BRITANNICA, <https://www.britannica.com/technology/unmanned-aerial-vehicle> (last updated Jan. 9, 2024).

<sup>4</sup> Maïa de la Baume, *Unidentified Drones Are Seen Above French Nuclear Plants*, N.Y. TIMES (Nov. 3, 2014), <https://www.nytimes.com/2014/11/04/world/europe/unidentified-drones-are-spotted-above-french-nuclear-plants.html> [<https://perma.cc/4TW2-B9PX>]; Mari Yamaguchi, *Drone Found on Roof of Japanese Prime Minister’s Office*, ASSOCIATED PRESS (Apr. 22, 2015), <https://apnews.com/general-news-dc9370ce058148af9595ff7f5c506123> [<https://perma.cc/3UUX-MBCR>].

These acts were intended to make society aware of the danger of terrorism. Since these incidents, Japan has imposed domestic regulations on drones with respect to flight methods and flight zones.<sup>5</sup> However, the most frightening aspect is that drones are used as a weapon of war.<sup>6</sup>

Today, drones, like manned vehicles, ships, and aircrafts, have evolved to become weapon systems carriers (platforms).<sup>7</sup> Foreign military forces, such as the United Kingdom (U.K.), the United States (U.S.), and Israel, considered the potential of drones early on. What they initially adopted was a target drone, which is a UAV, generally remote-controlled, and usually used in the training of anti-aircraft crews.<sup>8</sup> The induction communication technology through satellites enables long-distance remote control, as well as the movement and cruising distance of the drone itself, which are at the actual level of actual warfare. As soon as this technology was improved, the situation changed rapidly.

Since the 1990s, countries have gradually introduced unmanned reconnaissance aircrafts (RQ-4 Global Hawk, etc.) that are capable of flying at high altitudes for long periods without being influenced by weather.<sup>9</sup> In addition, the helicopter-mounted, air-to-ground missile known as the “Hell Fire” and the unmanned attack aircraft known as the “MQ-1 Predator,” which is equipped with a laser that guides it to an attack target, have assumed the leading roles in the war against global terrorism since 9/11.<sup>10</sup> It is no exaggeration to say that the

---

<sup>5</sup> See Koji Toshima et al., *Amendments of the Civil Aeronautics Act to Introduce the New Rules Restricting UAVs*, MHM INTELL. PROP. & TECH. NEWSL. (Mori Hamada & Matsumoto, Japan), Oct. 2015.

<sup>6</sup> Kevin Jon Heller, *One Hell of a Killing Machine: Signature Strikes and International Law*, 11 J. INT’L CRIM. JUST. 89, 119 (2013).

<sup>7</sup> Alan McKenna, *The Public Acceptance Challenge and Its Implications for the Developing Civil Drone Industry*, in THE FUTURE OF DRONE USE: OPPORTUNITIES AND THREATS FROM ETHICAL AND LEGAL PERSPECTIVES 355 (Bart Custers ed., Springer 2016). See generally Jack Miller, *Strategic Significance of Drone Operations for Warfare*, E-INT’L RELS. (Aug. 19, 2013), <https://www.e-ir.info/pdf/41714> [<https://perma.cc/Z8R3-EZRG>].

<sup>8</sup> See *Target Drone Systems*, AIRBUS, <https://www.airbus.com/en/products-services/defence/uas/uas-solutions/target-drone-systems> [<https://perma.cc/D5Z2-AB56>].

<sup>9</sup> See Oh Seok-min, *S. Korea Brings in First Global Hawk Unmanned Aircraft*, YONHAP NEWS AGENCY (Dec. 23, 2019, 13:33), <https://en.yna.co.kr/view/AEN20191223000551325> [<https://perma.cc/3QPX-2X4S>].

<sup>10</sup> Peter Finn, *Rise of the Drone: From Calif. Garage to Multibillion-Dollar Defense Industry*, WASH. POST (Dec. 23, 2011, 7:45 PM), <https://www.washingtonpost.com/national>

twenty-first century began as an era of war. The rapid evolution of drones has led to successive models, including the MQ-9 Reaper,<sup>11</sup> which has been improved, suggesting that war will be waged in the future with other robotic weapons.

The number of armed drones has increased each year, and now not only the U.K., the United States, and Israel but also Pakistan, Iraq, Nigeria, Iran, and Turkey are using them at domestic and foreign levels.<sup>12</sup> As a result, the number of victims has become a serious problem that the international community cannot ignore.<sup>13</sup> While these problems intensify with the rise of armed drones, the international community has begun to regulate drones in earnest.<sup>14</sup>

On December 31, 2019, Iraqi Shi'ite militias and supporters raided the U.S. Embassy in Baghdad, Iraq, to protest the deaths of dozens of militia members attributable to the U.S. military's bombing.<sup>15</sup> In response, U.S. President Donald Trump ordered the assassination of Qasem Soleimani, commander of the Iranian Revolutionary Guard's elite Quds Force, on January 2, 2020.<sup>16</sup> This was performed through the target of opportunity method.<sup>17</sup> The MQ-9 Reaper, manufactured by the U.S. company General Atomics, is an unmanned reconnaissance aircraft remote-controlled by satellite, priced at \$56 million per unit.<sup>18</sup>

---

/national-security/rise-of-the-drone-from-calif-garage-to-multibillion-dollar-defense-industry/2011/12/22/gIQACG8UEP\_story.html [https://perma.cc/4Y5M-PZJT].

<sup>11</sup> The MQ-9 Reaper is the U.S. Air Force's primary offensive strike unmanned aerial vehicle. *MQ-9 Reaper*, MILITARY.COM, <https://www.military.com/equipment/mq-9-reaper> [https://perma.cc/W28X-FMVZ].

<sup>12</sup> See *Unmanned Systems-Military Drone Market*, FORTUNE BUS. INSIGHTS (June 2023), <https://www.fortunebusinessinsights.com/military-drone-market-102181> [https://perma.cc/8W4J-AF5R].

<sup>13</sup> See EUR. PARL. ASS., *Drones and Targeted Killings: The Need to Uphold Human Rights and International Law*, Res. 2051 (2015).

<sup>14</sup> Jessica Reed, *Regulating UAS in 2023*, AVIONICS INT'L (Aug. 3, 2023), <https://www.aviationtoday.com/2023/08/03/regulating-uas-in-2023/> [https://perma.cc/337U-X7DM].

<sup>15</sup> Falih Hassan, Ben Hubbard & Alissa J. Rubin, *Protesters Attack U.S. Embassy in Iraq, Chanting "Death to America,"* N.Y. TIMES (Dec. 31, 2019), <https://www.nytimes.com/2019/12/31/world/middleeast/baghdad-protesters-us-embassy.html> [https://perma.cc/9WR6-MFYC].

<sup>16</sup> Carol E. Lee & Courtney Kube, *Trump Authorized Soleimani's Killing 7 Months Ago, with Conditions*, NBC NEWS INT'L (Jan. 13, 2020), <https://www.nbcnews.com/politics/national-security/trump-authorized-soleimani-s-killing-7-months-ago-conditions-n1113271> [https://perma.cc/DA4A-ZSK8].

<sup>17</sup> Daniel Lippman, Wesley Morgan, Meridith McGraw & Nahal Toosi, *How Trump Decided to Kill Iran's Soleimani*, POLITICO (Jan. 3, 2020), <https://www.politico.eu/article/how-trump-decided-to-kill-irans-soleimani/> [https://perma.cc/TA6M-S6FR].

<sup>18</sup> A reconnaissance aircraft (colloquially know as a spy plane) is a military aircraft designed or adapted to collect imagery intelligence (including photography) and signal

It has a wingspan of 66 feet, weighs 4,900 pounds, is equipped with missiles, and can be used at medium and high altitudes.<sup>19</sup> Thus, the MQ-9 Reaper is known as “the world’s most feared drone” that tracks and attacks targets.<sup>20</sup> However, criticisms have been raised, primarily by civic groups, with respect to whether the targeted attack strategy using UAVs is an act of war or a simple act of killing.<sup>21</sup>

## I

### REVIEWING THE ILLEGALITY OF DRONES’ PREEMPTIVE STRIKES

In relation to the illegality of preemptive strikes by drones, this Part will review the policy on armed drones within the disciplinary system of international norms, including international human rights law, and examine targeted killing through an overview of preemptive strikes.

No one appears to hear the word drone now, as they have become so familiar with the term in our daily lives. The drone is said to have acquired its name because in flight, as it sounds similar to a bee.<sup>22</sup> However, experts who believe it is an appropriate term still use the name drone, rather than the terms conventional UAV or remote-controlled vehicle (or remotely piloted vehicle). As drone technology advances, our lives will become dramatically more convenient.

In fact, drones are showing their usefulness already, in models with higher maneuverability and performance, and lower costs. It is widely known that they contribute to various industries—for instance, tourism, film, and video—and help academics guide tourists, find hidden objects, and photograph subjects in high mountains and deep seas.<sup>23</sup> In the future, drones are expected to play an active role in a wide range of fields, including logistics, agriculture, construction, civil engineering,

---

intelligence, and to measure intelligence. *See generally MQ-9 Reaper*, AIR FORCE (Mar. 2021), <https://www.af.mil/About-Us/Fact-Sheets/Display/Article/104470/mq-9-reaper/> [<https://perma.cc/2RPZ-MF5X>] (introducing general characteristics of MQ-9 Reaper).

<sup>19</sup> *Id.*

<sup>20</sup> *See* Richard Whittle, *The Man Who Invented the Predator*, SMITHSONIAN MAG.: AIR & SPACE MAG. (Apr. 2013), <https://www.smithsonianmag.com/air-space-magazine/the-man-who-invented-the-predator-3970502/> [<https://perma.cc/U9RX-N6MR>].

<sup>21</sup> *See* Daniel Statman, *Targeted Killing*, 5 THEORETICAL INQUIRIES L. 183, 183 (2004).

<sup>22</sup> *Drones Are Everywhere Now: But How Did They Get Their Name?*, MERRIAM-WEBSTER: WORDPLAY, <https://www.merriam-webster.com/wordplay/how-did-drones-get-their-name> [<https://perma.cc/5S5X-G6G8>].

<sup>23</sup> *See* Jesús Jiménez López & Margarita Mulero-Pázmány, *Drones for Conservation in Protected Areas: Present and Future*, 3 DRONES 1, 5–8 (2019).

surveying, security, emergency medical and disaster relief, and environmental protection.<sup>24</sup> In addition to providing best practices for domestic regulation, it is necessary to take action to create an environment for future drones to operate in the same airspace as manned aircraft. However, this Article does not consider the merits or positive aspects of these drones, but, rather, the ways to evaluate their illegal or invasive aspects, such as military attacks and terrorism.

### *A. Regulatory Structure of International Law*

#### *1. Armed Drone Policies of Opaque Countries*

There is no international law that prohibits drones themselves. As described above, they can enrich our lives, so it is difficult to forbid them completely. As such, it is necessary to think carefully about the way that drones are regulated under current international law.

Since their emergence, there have been numerous discussions among experts on the issue of armed drones in international law.<sup>25</sup> It is said that the international community began to express public concerns about the issue in the early 2010s.<sup>26</sup> In a 2010 report written by the United Nations special rapporteur on extrajudicial, summary or arbitrary executions, the special rapporteur stated that the U.S. Central Intelligence Agency (CIA) deliberately killed individuals in the fight against al-Qaeda and the Taliban. The issue was raised as to whether there was any legality in using armed drones as a means of so-called targeted killings.<sup>27</sup> Even thereafter, the international community admitted that the armed drone itself has the potential to reduce damage in armed conflict; although it is not a prohibited weapon, drone attacks must conform to all applicable international legal rules, and provide transparency about the implementing country whenever there is an opportunity. Further, it is necessary to explain compliance with the rules of international law externally.<sup>28</sup> Thus, the question is: what are

---

<sup>24</sup> See, e.g., Shiva Ilkhanizadeh et al., *The Potential Use of Drones for Tourism in Crises: A Facility Location Analysis Perspective*, 13 DRONES 246, 246 (2020).

<sup>25</sup> Christof Heyns et al., *The International Law Framework Regulating the Use of Armed Drones*, 65 INT'L & COMPAR. L.Q. 791, 792–820 (2016).

<sup>26</sup> See, e.g., Rosa Brooks, *Drones and the International Rule of Law*, 28 ETHICS & INT'L AFFS. 83, 83–104 (2014).

<sup>27</sup> See, e.g., NILS MELZER, TARGETED KILLING IN INTERNATIONAL LAW 449–53 (2008).

<sup>28</sup> See, e.g., G.A. Res. 71/85 (Oct. 2016); Statement, Int'l Comm. of the Red Cross, *The Scope and Application of the Principle of Universal Jurisdiction* (Oct. 14, 2016), <https://www.icrc.org/en/document/scope-and-application-principle-universal-jurisdiction-icrc-statement-united-nations-2016> [<https://perma.cc/WGV2-2VPT>].



the rules of international law that apply to armed drone attacks? The following Section will address the main rules.

## 2. *International Human Rights Law*

The most important international law for armed drone attacks is the right to life under international human rights law. This right stipulates that a country should not arbitrarily kill an individual.<sup>29</sup> Arbitrary is a very difficult term that has no clear legal definition. Under international human rights law, some exceptions to the right to life are permitted and do not constitute an arbitrary deprivation of life—that is, they do not infringe on the right to life.<sup>30</sup> A drone attack is not like playing a computer war game; instead, an armed drone is attacking a target with a console monitor at a ground station far from the battlefield. In fact, it can be argued that such attacks by armed drones are more likely to eliminate the psychological hesitation to take a person’s life, as compared to fighting on the battlefield (PlayStation phenomenon).<sup>31</sup> If this is true, isn’t the attacking country neglecting the life of the person targeted in the game?

With respect to armed drones, the following two situations prove to be problematic. The first situation is the self-defense exception during peacetime, when there is no other option than deliberately killing an individual to protect one’s own or another’s life from imminent danger.<sup>32</sup> In this case, (1) there is an imminent threat to life (immediate), (2) there is no way to neutralize the threat except by killing the other person (necessity), and (3) there is no ability to respond more than necessary (i.e., it is not excessive).<sup>33</sup> All these conditions of proportionality must be met; armed drones are specialized weapons for killing that do not have the ability to recognize the humanity of the other side and, so, it is necessary to meet these

---

<sup>29</sup> See, e.g., International Covenant on Civil and Political Rights art. VI, ¶ 1, Dec. 16, 1966, 999 U.N.T.S. 171.

<sup>30</sup> *Id.* art. VI; Hum. Rts. Comm., General comment No.36, U.N. Doc. CCPR/C/GC/36 (Sept. 3, 2019).

<sup>31</sup> CHRIS COLE ET AL., CONVENIENT KILLING: ARMED DRONES AND THE ‘PLAYSTATION’ MENTALITY 16 (2010), [https://dronewarsuk.files.wordpress.com/2010/09/convenient\\_killing1.pdf](https://dronewarsuk.files.wordpress.com/2010/09/convenient_killing1.pdf) [<https://perma.cc/97DG-PF46>].

<sup>32</sup> See generally Elizabeth Wilmshurst, *The Chatham House Principles of International Law on the Use of Force in Self-Defense*, 55 INT’L & COMPAR. L.Q. 963, 963 (2006).

<sup>33</sup> See generally David Wasserman, *Justifying Self-Defense*, 16 PHIL. & PUB. AFFS. 356, 365 (1987).

conditions.<sup>34</sup> The second situation in which a violation of the right to life by armed drones is permitted under international law is “targeted killing,” which will be examined below.

### ***B. Overview of First Strike***

The term targeted attack refers to situations in which state agencies threaten the safety of a country through assaults or preemptive attacks against people or facilities.<sup>35</sup> These are gaining attention as a new means of force in the international community, including the United Nations (U.N.). For example, concerns have been raised about the use of preemptive strikes on nuclear missile facilities as a countermeasure against the threat of WMDs, including North Korea’s continued nuclear tests.<sup>36</sup>

Preemptive strikes based upon anticipatory self-defense are permitted only to the extent that the threat of an enemy’s attack is imminent and there is no other means of defense under international law.<sup>37</sup> The principle of the impending nature and proportionality of the attack emerged as international customary law in 1837, when the British ship *Caroline*, which supported the Canadian forces, crossed the Niagara River into U.S. territory and attacked.<sup>38</sup>

The United Nations, which was established after World War II, prohibited the use of force between countries, except with the approval of the Security Council in accordance with Article 42 of the U.N. Charter and the exercise of self-defense rights in accordance with Article 51.<sup>39</sup> However, there is room for interpretation that the self-defense rights provided for in Article 51 can be exercised *ex post facto* only if armed attacks actually occur. Proponents of restrictions argue that Article 51 has created a new international standard to conduct

---

<sup>34</sup> See Heyns et al., *supra* note 25, at 794–95.

<sup>35</sup> See KEVIN K. MCALEENAN, DEP’T HOMELAND SEC., STRATEGIC FRAMEWORK FOR COUNTERING TERRORISM AND TARGETED VIOLENCE 4–34 (2019), [https://www.dhs.gov/sites/default/files/publications/19\\_0920\\_plcy\\_strategic-framework-countering-terrorism-targeted-violence.pdf](https://www.dhs.gov/sites/default/files/publications/19_0920_plcy_strategic-framework-countering-terrorism-targeted-violence.pdf) [<https://perma.cc/HF9L-VC3P>].

<sup>36</sup> Changsop Pyon et al., *A Preemptive Strike: Will It Resolve the North Korean Nuclear Standoff?*, 19 N. KOR. REV. 99, 100–05 (2023).

<sup>37</sup> Leo van de Hole, *Anticipatory Self-Defense Under International Law*, 19 AM. U. INT’L L. REV. 69, 99 (2003).

<sup>38</sup> Maria Benvenuta Occelli, Comment, “*Sinking*” the *Caroline*: *Why the Caroline Doctrine’s Restrictions on Self-Defense Should Not Be Regarded as Customary International Law*, 4 SAN DIEGO INT’L L.J. 467, 468–70 (2003). See W. Michael Reisman & Andrea Armstrong, *The Past and Future of the Claim of Preemptive Self-Defense*, 100 AM. J. INT’L L. 525, 527–28 (2006).

<sup>39</sup> See U.N. Charter arts. 42, 51 (providing for the right to exercise self-defense).

illegal preemptive strikes, while those opposed to restrictions do not recognize international customary law established after the *Caroline* issue.<sup>40</sup>

During discussions about the 1981 Israeli air strikes in Iraq, only six countries rejected preventive self-defense, and most of the nations that criticized Israel failed to meet the requirements for a first strike.<sup>41</sup> Most nations did not deny self-defense. More recently, after the 9/11 terror attacks, it has been argued that the enemy’s ability and goal should be considered as more important criteria than the imminence of the attack.<sup>42</sup> In the case of terrorist groups or rogue states developing WMDs, threats are difficult to detect in advance and can be devastating if overlooked, so lessening the requirements for the imminent nature of the attack should allow for prevention.<sup>43</sup>

In 2003, as the controversy heated up and the U.N. system could not cope with new types of threats, Secretary General Kofi Annan formed the High-level Panel on Threats, Challenges and Change to propose reform plans for the UN.<sup>44</sup> In a report released on December 2, 2004, the “wise person group” concluded that preemptive strikes based upon preventive self-defense are possible under international law and reaffirmed the principle of imminence and proportionality as requirements.<sup>45</sup> However, the group maintained that countries had to obtain prior approval from the Security Council for preemptive attacks against imminent threats.<sup>46</sup> Prior approval depends upon (1) continued and deliberate violations of the U.N. Security Council resolution that prohibits the development of nuclear weapons and missiles as a justification for preemptive strikes against North Korea, (2) a

---

<sup>40</sup> Jan Wouters & Tom Ruys, *The Legality of Anticipatory Military Action After 9/11: The Slippery Slope of Self-Defense*, 59 *STUDIA DIPLOMATICA* 45, 47–48 (2006).

<sup>41</sup> Målfrid Braut-Hegghammer, *Revisiting Osirak: Preventive Attacks and Nuclear Proliferation Risks*, 36 *INT’L SEC.* 101, 101 (2011).

<sup>42</sup> See generally ELIZABETH WILMSHURST, CHATHAM HOUSE, *PRINCIPLES OF INTERNATIONAL LAW ON THE USE OF FORCE BY STATES IN SELF-DEFENCE* (2005).

<sup>43</sup> Byard Q. Clemmons & Gary D. Brown, *Rethinking International Self-Defense: The United Nations’ Emerging Role*, 45 *NAVAL L. REV.* 217, 234 (1998) (arguing that the customary right of anticipatory self-defense should stand).

<sup>44</sup> *High-level Panel Poised to Present to Annan Report on Global Threats*, UNITED NATIONS: UN NEWS (Nov. 30, 2004), <https://news.un.org/en/story/2004/11/122382> [<https://perma.cc/62Z7-2864>].

<sup>45</sup> Rep. of the High-level Panel on Threats, Challenges and Change, at 53–57, U.N. Doc A/59/565 (Dec. 2, 2004).

<sup>46</sup> *Id.* at 13, 53, 85.

declaration of success in miniaturizing and reducing nuclear weapons' weight, (3) the development of medium- and long-range missiles for nuclear weapons attacks, and (4) mobile movements using solid fuel, etc.<sup>47</sup> In addition, there are limitations in advance detection because of the deployment of missiles and development of submarine-launched ballistic missiles.<sup>48</sup>

In South Korea's case, the essence of the problem lies in the military's ability and willingness to preemptively act when a North Korean nuclear attack is imminent. It is an empty discourse to preemptively attack without deploying advanced U.S. precision assets sufficient to immediately remove nuclear missile facilities, along with information reconnaissance assets that can closely monitor North Korea in real time. In the event of an emergency, it is necessary to deploy means of a precision strike that will effectively eliminate North Korea's offensive capabilities.<sup>49</sup>

### *C. Review of Targeted Killing*

In relation to targeted killings, this Part will examine the legality of targeted killings based on the theory of state monopoly on violence and violations of the principle of due process.<sup>50</sup> A typical example of targeted killing is the Anwar al-Awlaki killing. In April 2010, the United States announced that U.S. citizens could be targeted for killing, if they were considered suspects in connection with al-Qaeda.<sup>51</sup>

---

<sup>47</sup> *Id.* at 38–39.

<sup>48</sup> Chongsoo Byun et al., *Developing the Direction of Military Space Capabilities in South Korea*, 6 J. INDO-PACIFIC AFFS. 102, 104 (2023); Sean D. Murphy, *The Doctrine of Preemptive Self-Defense*, 50 VILL. L. REV. 699, 740 (2005); Natalino Ronzitti, *The Report of the UN High-Level Panel and the Use of Force*, 40 INT'L SPECTATOR 91, 93–94 (2005). See also Emanuel Gross, *Thwarting Terrorist Acts by Attacking the Perpetrators or Their Commanders as an Act of Self-Defense: Human Rights Versus the State's Duty to Protect Its Citizens*, 15 TEMP. INT'L & COMP. L.J. 195, 213 (2001) (asserting that the wording of Article 51 requires an armed attack and that mere threats or declarations are insufficient).

<sup>49</sup> Michael J. Glennon, *The Fog of Law: Self-Defense, Inherence, and Incoherence in Article 51 of the United Nations Charter*, 25 HARV. J.L. & PUB. POL'Y 539, 547 (2002) (claiming that arguments that the Charter permits anticipatory self-defense are unpersuasive). See generally Park Hwee-rhak & Kim Byung-ki, *Time to Balance Deterrence, Offense, and Defense? Rethinking South Korea's Strategy Against the North Korean Nuclear Threat*, 24 KOREAN J. DEF. ANALYSIS 515, 515 (2012).

<sup>50</sup> See generally Anna Leander, *Conditional Legitimacy, Reinterpreted Monopolies: Globalisation and the Evolving State Monopoly on Legitimate Violence* (Mar. 24–27, 2002) (unpublished manuscript) (on file at Columbia International Affairs Online).

<sup>51</sup> See John C. Dehn & Kevin Jon Heller, *Debate, Targeted Killing: The Case of Anwar Al-Aulaqi*, 159 U. PA. L. REV. PENNUMBRA 175 (2011), <https://scholarship.law.upenn>

In September 2011, Anwar al-Awlaki (also spelled al-Aulaqi), a clergyman with U.S. citizenship, was killed using a UAV while hiding in Yemen.<sup>52</sup>

*I. Position to Assert the Legality of Targeted Killing*

*a. Legal Action for the Country*

At the hearing of the U.S. Senate Select Committee on Intelligence, John O. Brennan, former Director of the CIA, indicated that the targeted killing strategy was a last resort to protect American citizens and, in al-Awlaki’s case, was not illegal.<sup>53</sup> According to an undisclosed document by the Department of Justice (DOJ) U.S. citizens connected with al-Qaeda or a related military organizations, who threaten the United States, can be subjects of both drone surveillance and targeted killings.<sup>54</sup> The President is responsible for ordering the execution of a targeted killing strategy.<sup>55</sup> Under the President’s requirements of last resort, if the execution of a targeted killing operation is carried out in compliance with the basic principles of the laws of war, it is not an illegal international act, but is permitted as a lawful act of the state.<sup>56</sup> Therefore, it would not violate federal laws such as Executive Order 12333, which prohibits assassination by government agencies.<sup>57</sup>

---

.edu/cgi/viewcontent.cgi?article=1058&context=penn\_law\_review\_online [https://perma.cc/R3XT-5YDN].

<sup>52</sup> *Id.* at 175, 185–86.

<sup>53</sup> John O. Brennan, Assistant to the President for Homeland Sec. & Counterterrorism, Speech in the Director’s Forum: The Efficacy and Ethics of U.S. Counterterrorism Strategy (Apr. 30, 2012) (transcription available at https://www.wilsoncenter.org/event/the-efficacy-and-ethics-us-counterterrorism-strategy [https://perma.cc/DFM4-8AYG]).

<sup>54</sup> See J. Nicholas Kendall, *Israeli Counter-Terrorism: ‘Targeted Killings’ Under International Law*, 80 N.C. L. Rev. 1069, 1081–88 (2002) (noting that the killings are preventative and are not reprisals because the purpose of the killings is to protect the state).

<sup>55</sup> Dehn & Heller, *supra* note 51, at 180.

<sup>56</sup> See generally Louis Fisher, *Basic Principles of the War Power*, 5 J. NAT’L SEC. L. & POL’Y 319 (2012).

<sup>57</sup> ELIZABETH B. BAZAN, CONG. RSCH. SERV., RS21037, ASSASSINATION BAN AND E.O. 12333: A BRIEF SUMMARY 1–6 (2002).

*b. Recognition of Legality Based upon the Theory of State Monopoly on Violence*

When the state implements targeted killings as a last resort to protect its people, the international community recognizes those killings as exercising its legitimate monopoly on violence.<sup>58</sup>

While personal violence may occur accidentally, state violence, which has the nature of political violence, is violence intended to establish political control.<sup>59</sup> According to Max Weber, the state is defined as a human community that demands a monopoly of legitimate physical violence within a certain realm and succeeds in realistically exercising it.<sup>60</sup> It is the presence or absence of coercion by violence or force (*Macht*) that distinguishes the law (*Gesetz*) from other social norms in the rule of law.<sup>61</sup> This is because power (*Macht*) functions not only as a source of force but also as a means to realize actions. It is important to note that to realize a rule of law, mandatory enforcement of laws is essential, and only the strict rule of law can fully justify the state's monopoly of violence. Thus, the monopoly of violence is a life-interest stake in the state of life and death.<sup>62</sup>

Here, the monopoly of violence is understood as a normative request of the rule of law. Detlef Merten explains the historical formation of monopoly violence.<sup>63</sup> In order to control violence among people and maintain peace in the community, the right to use physical and judicial violence is returned to the power of the state. For example, in the past, if someone's interests were infringed, the principle to achieve self-reliance using violence (*Fehde*) would have been executed by a kinship group called *Sippe*, to restore honor.<sup>64</sup> In contrast, as a general rule in

<sup>58</sup> See Philip Alston (Special Rapporteur on extrajudicial, summary or arbitrary executions), *Study on targeted killings*, at 4–26, U.N. Doc. A/HRC/14/24/Add.6 (May 28, 2010).

<sup>59</sup> See generally MAX WEBER, *Politics as Vocation*, in WEBER'S RATIONALISM AND MODERN SOCIETY 129, 129–98 (Tony Waters & Dagmar Waters eds. & trans., 2015).

<sup>60</sup> André Munro, *State Monopoly on Violence*, ENCYCL. BRITANNICA, <https://www.britannica.com/topic/state-monopoly-on-violence> (last updated Mar. 6, 2013).

<sup>61</sup> Christoph Menke, *Law and Violence*, 22 L. & LITERATURE 1, 1–17 (2010); MAX WEBER, THE THEORY OF SOCIAL AND ECONOMIC ORGANIZATION 152–53 (Talcott Parsons ed., 1947).

<sup>62</sup> MAX WEBER, ECONOMY AND SOCIETY 54 (Guenther Roth and Claus Wittich eds., 1978).

<sup>63</sup> DETLEF MERTEN, RECHTSSTAAT UND GEWALTMONOPOL 5–6 (Tubingen: Mohr 1975).

<sup>64</sup> Jongho Kim, *Beob-chi-ju-ui-wa Gug-ga-ui Pog-lyeog-dog-jeom-ui Han-gye-e gwan-han dam-lon* [*Arguments on the Rule of Law and the Limitations of Violence Monopoly of*

the modern age, self-reliance is prohibited and disputes are settled in public courts. Thus, individual violence is prohibited, as the state monopolizes it, and the state is obliged to recover the rights of the infringed individual.

The concept of violence is explained differently than before. Unlike previously, the monopoly of violence is presented here as a description of historical facts. The person in charge, or the dominant group, did not rule by blatant violence; however, in exigent cases, the dominant group applied the law of realizing rights by force.<sup>65</sup> Conversely, each person was entitled to self-defense by means of violence.<sup>66</sup> A more modern perspective prefers to interpret the struggle that took place outside war as not simply a struggle for power, but a legal struggle.<sup>67</sup> In this process, it was concluded by means of violence that self-defense was attributable to the lack of a centralized legal power (authority) and the lack of another form of conflict.<sup>68</sup> However, in the case of violent events, rules that the sanction system did not support were considered valid.<sup>69</sup> Under these circumstances, legal disputes were ultimately decided by the law of the strong, and conflicts that continued in a long chain of violence and counterviolence were not uncommon.<sup>70</sup> Nevertheless, the later and repeated attempts to achieve a ban on private confrontation led to a cut off from existing legal norms because of the legal nature of the struggle.<sup>71</sup>

---

*the State*], 28 HEONBEOMNONCHONG HAKSULJEONEOL [CONST. L. REV.] 5, at 24, 60 (2017) (S. Kor.).

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> OTTO BRUNNER, *LAND AND LORDSHIP* 1 (Howard Kaminsky & James Van Horn Melton trans., Univ. of Pa. Press 1992) (1939).

<sup>69</sup> Kim, *supra* note 64, at 24.

<sup>70</sup> Alette Smeulers, *A Criminological Approach to the ICC Control Theory*, in *THE OXFORD HANDBOOK OF INTERNATIONAL CRIMINAL LAW* 389–91 (Kevin Jon Heller et al. eds., 2020). See also Martha Lizabeth Phelps, *Doppelgangers of the State: Private Security and Transferable Legitimacy*, 42 *POL. & POL'Y* 824–49 (2014).

<sup>71</sup> See Cavika Prashad, *The Economic Impact of U.S. Drone Strikes on Pakistan* 12–13 (May 2, 2022) (B.A. thesis, Pace University), [https://digitalcommons.pace.edu/honors\\_college\\_theses/363](https://digitalcommons.pace.edu/honors_college_theses/363) [<https://perma.cc/K7ET-B3RF>].

## 2. *Position to Assert the Illegality of Targeted Killing*

### a. *Violation of Due Procedures*

The American Civil Liberties Union (ACLU) claims that without going to trial first, killing a person who is a distance away from a battlefield is a violation of the due process rules guaranteed by the U.S. Constitution, as well as a violation of international law.<sup>72</sup> Further, the use of deadly force by remote control in a nonarmed combat area should be used only as a last resort.<sup>73</sup> The ACLU provided the following case as an example to support this claim.

On August 30, 2010, in connection with the U.S. government's decision to kill al-Awlaki, his father, represented by the ACLU, became the plaintiff in a lawsuit filed against the U.S. government, in which the President, Secretary of Defense, and Director of the CIA were named as defendants.<sup>74</sup> The plaintiff argued that the government's use of targeted killing violates the Fourth and Fifth Amendments of the U.S. Constitution and customary international law.<sup>75</sup>

On July 18, 2012, representatives of Samir Khan and al-Awlaki, whom the CIA and U.S. forces killed in a drone strike, filed a lawsuit in a Federal District Court.<sup>76</sup> The plaintiffs claimed that the targeted killings authorized by the Secretary of Defense, the Commander of the U.S. Special Operations Command (USSOCOM), and the Director of the CIA had violated the fourth and fifth amendments of the U.S. Constitution and, thus, the prescribed judicial proceedings.<sup>77</sup>

Say that there is an individual who incites people to commit terrorism against their home country. If that individual is Korean, he or she will definitely be imprisoned because praising and encouraging "an antigovernment organization" is a crime under the National Security

---

<sup>72</sup> Hina Shamsi, *Death Without Due Process*, ACLU: NEWS & COMMENTARY (Mar. 3, 2014), <https://www.aclu.org/news/national-security/death-without-due-process> [<https://perma.cc/Y7MN-756P>]. See Philip Alston, *The CIA and Targeted Killings Beyond Borders*, 2 HARV. NAT'L SEC. J. 283, 307 (2011).

<sup>73</sup> W. Hays Parks, *Part IX of the ICRC "Direct Participation in Hostilities" Study: No Mandate, No Expertise, and Legally Incorrect*, 42 N.Y.U. J. INT'L L. & POL. 769, 815–16 (2010).

<sup>74</sup> *Al-Aulaqi v. Obama*, 727 F. Supp. 2d 1, 46–47 (D.D.C. 2010).

<sup>75</sup> *Id.* at 12.

<sup>76</sup> Complaint, *Al-Aulaqi v. Panetta*, 35 F. Supp. 3d 56 (D.D.C. 2014) (No. 12CV01192) 2012 WL 3024212.

<sup>77</sup> *Id.*



Act.<sup>78</sup> However, if someone is an American, the story is different. The United States is a country that constitutionally guarantees that its citizens cannot be deprived of life, liberty, or property rights without legal due process, even if they commit treason.<sup>79</sup> In short, in the United States, ensuring procedural justice is a more important and protected value than violating the content of the law.

*b. Disclosure of Information Related to Targeted Killing*

On February 1, 2012, the ACLU filed a lawsuit requesting the disclosure of a memo by the DOJ’s Office of Legal Counsel, which placed al-Awlaki on government kill lists.<sup>80</sup> The memo was written by the DOJ and maintained by the Department of Defense (DOD), CIA, and Joint Special Operations Command’s (JSOC), while the CIA wrote a paper based upon the DOJ.<sup>81</sup> On appeal, the Second Circuit ordered the release of the memos.<sup>82</sup>

In 2013, the Peshawar High Court in Pakistan stated that UAVs were attacking at random, which is considered a war crime and a violation of the Pakistani people’s basic human rights.<sup>83</sup> The court ordered the Pakistani government to use force when necessary in order to stop

---

<sup>78</sup> Gukga Boanbeop [National Security Act] art. 7(1) (S. Kor.), *translated in* Korean Legislation Research Institute’s online database at [https://elaw.klri.re.kr/kor\\_service/lawView.do?hseq=39798&lang=ENG](https://elaw.klri.re.kr/kor_service/lawView.do?hseq=39798&lang=ENG) (“Any person who praises, incites or propagates the activities of an antigovernment organization, a member thereof or of the person who has received an order from it, or who acts in concert with it, or propagates or instigates a rebellion against the State, with the knowledge of the fact that it may endanger the existence and security of the State or democratic fundamental order, shall be punished by imprisonment for not more than seven years.”).

<sup>79</sup> See U.S. CONST. amend. XIV, § 1.

<sup>80</sup> Nathan Freed Wessler, *ACLU Sues U.S. for Information on Targeted Killing Program*, ACLU: NEWS & COMMENTARY (Feb. 1, 2012), <https://www.aclu.org/news/national-security/aclu-sues-us-information-targeted-killing-program> [<https://perma.cc/R3U3-G9FP>]. See *N.Y. Times Co. v. U.S. Dep’t of Just.*, 915 F. Supp. 2d 508 (S.D.N.Y. 2013), *rev’d in part*, 756 F.3d 100 (2d Cir. 2014).

<sup>81</sup> Wessler, *supra* note 80.

<sup>82</sup> See *N.Y. Times Co. v. U.S. Dep’t of Just.*, 756 F.3d 100 (2d Cir. 2014), *opinion amended on denial of reh’g*, 758 F.3d 436 (2d Cir. 2014), *supplemented*, 762 F.3d 233 (2d Cir. 2014).

<sup>83</sup> *Foundation for Fundamental Rights v. Federation of Pakistan* (2013) Writ Petition, No 155-P/2012, Judgment, Peshawar High Court, [https://www.peshawarhighcourt.gov.pk/image\\_bank/Mr\\_Justice\\_Dost\\_Muhammad\\_Khan/wp1551-12.pdf](https://www.peshawarhighcourt.gov.pk/image_bank/Mr_Justice_Dost_Muhammad_Khan/wp1551-12.pdf) [<https://perma.cc/2WBW-AXZP>].

drone attacks in their territory.<sup>84</sup> Further, the court urged the Pakistani government to exercise its sovereignty, adding that if the government failed to comply with the court's order, prosecution could follow.<sup>85</sup> Additionally, the court asked the Foreign Ministry to urge the United Nations to end the attacks on Pakistan.<sup>86</sup>

In April 2014, the U.S. Court of Appeals for the Second Circuit in New York issued a court order that U.S. government personnel should disclose to the public evidence of legal justification for UAV attacks on suspected terrorists.<sup>87</sup> This order led to the CIA document becoming available to the public.<sup>88</sup>

So far, in relation to targeted killings, the Article has examined the legality of legal measures based on the theory of the state monopoly on violence and the illegality of information disclosure based on violation of the principle of due process.

## II

### CONTROVERSY OVER DRONE TARGETED KILLINGS

By examining the responsibility of targeted killings, their objectives, and their effects, this Part will examine the legitimacy and side effects of targeted killings, such as damage to innocent citizens, mistaken identity, and combat stress for pilots.

#### *A. Whether Targeted Killing Is Justified*

The government and academia are debating the legitimacy of the U.S. targeted killing strategy as a major policy in the war against terrorism.<sup>89</sup> High-ranking government officials have stated that a targeted killing strategy using UAVs is justified if it complies with the

---

<sup>84</sup> *Id.* at 2; Jonathan Horowitz & Christopher Rogers, *A Court in Pakistan Addresses U.S. Drone Attacks*, OPEN SOCIETY FOUNDATIONS JUSTICE INITIATIVE: CASE WATCH (May 28, 2013), <https://www.justiceinitiative.org/voices/case-watch-court-pakistan-addresses-us-drone-attacks> [<https://perma.cc/HMB4-BASX>].

<sup>85</sup> *Foundation for Fundamental Rights v. Federation of Pakistan*, Judgment on Writ Petition No. 1551-P/2012 (Peshawar High Court) (May 9, 2013), available at <https://ihl-databases.icrc.org/en/national-practice/foundation-fundamental-rights-v-federation-pakistan-decision-writ-petition-no>.

<sup>86</sup> *Id.*

<sup>87</sup> Julia Edwards, *U.S. to Disclose Legal Justification for Drone Strikes on Americans*, REUTERS (May 21, 2014, 5:06 PM), <https://www.reuters.com/article/idUSBREA4J11E/>.

<sup>88</sup> *CIA Drone Secrecy Ruling Nixed by Appeals Court*, CBS NEWS (May 8, 2013, 4:07 AM), <https://www.cbsnews.com/news/cia-drone-secrecy-ruling-nixed-by-appeals-court/> [<https://perma.cc/5GUD-QDXK>].

<sup>89</sup> TAMAR MEISELS & JEREMY WALDRON, *DEBATING TARGETED KILLING: COUNTER-TERRORISM OR EXTRAJUDICIAL EXECUTION?* 1–7 (2020).

laws of war and other related laws.<sup>90</sup> However, regardless of how much countries abide by the law and follow the prescribed procedures, society cannot ignore the opposition to the targeted killing strategy.<sup>91</sup> Public trust cannot be earned unless policy uncertainties are resolved, as evidenced by the media’s release of the DOJ’s confidential documents. The greatest issues in the policy debate around targeted killings include uncertainties in the targeted killing strategy’s contents, the division of responsibility, the requirements of the target, and the effects.

### *1. Responsibility for Targeted Killing*

The uncertainty in the division of responsibility for targeted killings can be explained by the integration of the CIA and the military in the wake of the 9/11 terror attacks. With respect to UAVs, former CIA Director George J. Tenet said that in 2000, the U.S. Air Force and the CIA had already proceeded with a policy of arming the UAV Predator with missiles, and the DOD and command communication had held discussions on the criteria for launching missiles, launch authority, and the effect of a missile attack’s success or failure.<sup>92</sup> Thereafter, a UAV attack mission was carried out for the first time in Afghanistan.<sup>93</sup> In addition, the National Commission on Terrorist Attacks Upon the United States recommends that the responsibility for conducting paramilitary operations, such as covert operations, should be transferred to the DOD.<sup>94</sup> However, while the DOD leaves responsibility for the activities to the USSOCOM, the Secretary of

---

<sup>90</sup> Sudha Setty, *Targeted Killings and the Interest Convergence Dilemma*, 36 W. NEW ENG. L. REV. 169, 179–80 (2014) (noting U.S. Attorney General Eric H. Holder, Jr. and Jeh C. Johnson, General Counsel to the Department of Defense, each cite the justification for the government’s targeted killing strategy).

<sup>91</sup> Jeff McMahan, *Targeted Killing: Killing, Combat or Law Enforcement?*, in TARGETED KILLINGS: LAW AND MORALITY IN AN ASYMMETRICAL WORLD 135 (Claire Finkelstein et al. eds., 2012).

<sup>92</sup> See generally *Counterterrorism Policy: Eighth Public Hearing of the Nat’l Comm’n on Terrorist Attacks Upon the U.S.*, 108th Cong. 7–9 (2004).

<sup>93</sup> Ian G.R. Shaw, *Predator Empire: The Geopolitics of U.S. Drone Warfare*, 18 GEOPOLITICS 536, 538 (June 14, 2013).

<sup>94</sup> Alston, *supra* note 72, at 284–85.

Defense and the Director of the CIA say that it is necessary to jointly implement a paramilitary action plan.<sup>95</sup>

According to data from the USSOCOM's paramilitary activities, the U.S. Congressional Research Service (CRS) found that the joint activities of special operations forces and the CIA do not achieve transparency or gain congressional approval more than traditional CIA covert activities.<sup>96</sup> The CRS takes issue with the fact that USSOCOM operates under the CIA rather than the DOD to avoid some of the constraints of military operations.<sup>97</sup> The current operations may increase public distrust in the targeted killing policy, while unit members' violations of the laws of war may amplify anti-American sentiment in Afghanistan.<sup>98</sup> In response, former U.S. Army Marshal Peter M. Cullen argued that targeted killings under the command of the CIA have become permanent, that they must always comply with the laws of war, and that an operation must be carried out by an organization composed only of military personnel.<sup>99</sup>

## 2. *Subjects of Targeted Killing*

The U.S. government decides who is targeted in targeted killings.<sup>100</sup> However, it cannot be denied that there is uncertainty in interpretation. Regarding the targeted killings that the United States is currently carrying out as part of the war on terror, most government officials who insist on the legitimacy of these targeted killings cite Isoroku Yamamoto, whom the United States shot down while boarding a plane

---

<sup>95</sup> *Id.* at 286–95. *See generally* RICHARD A. BEST, JR. & ANDREW FEICKERT, CONG. RSCH. SERV., RS22017, SPECIAL OPERATIONS FORCES (SOF) AND CIA PARAMILITARY OPERATIONS: ISSUES FOR CONGRESS (2009).

<sup>96</sup> MICHAEL E. DEVINE, CONG. RSCH. SERV., R45175, COVERT ACTION AND CLANDESTINE ACTIVITIES OF THE INTELLIGENCE COMMUNITY: SELECTED DEFINITIONS 8–13 (2022); Andru E. Wall, *Demystifying the Title 10-Title 50 Debate: Distinguishing Military Operations, Intelligence Activities & Covert Action*, 3 HARV. NAT'L SEC. J. 84, 94–95 (2011).

<sup>97</sup> Alston, *supra* note 72, at 355.

<sup>98</sup> PAUL KAMOLNICK, U.S. ARMY WAR COLL., COUNTER RADICALIZATION AND RECRUITMENT TO AL-QAEDA: FIGHTING THE WAR OF DEEDS 60–63 (June 2014).

<sup>99</sup> Peter M. Cullen, *The Role of Targeted Killing in the Campaign Against Terror*, 48 JOINT FORCE Q., 1st Quarter 2008, at 22–29.

<sup>100</sup> JAMES MANN, THE OBAMIANS: THE STRUGGLE INSIDE THE WHITE HOUSE TO REDEFINE AMERICAN POWER 410 (2012); Mike Dreyfuss, *My Fellow Americans, We Are Going to Kill You: The Legality of Targeting and Killing U.S. Citizens Abroad*, 65 VAND. L. REV. 249, 251–52 (2019) (arguing the government can conduct extrajudicial targeted killings of citizens legally by adhering to international law and domestic due process protections).

in World War II, as precedent.<sup>101</sup> In this respect, they emphasized that in a closed document from the DOJ there is no error in key government figures’ assertion that the strategy of eliminating al-Qaeda or a senior leader of a military organization affiliated with it as a justification for targeted killing compares in any way to eliminating the head of Japan in the past.<sup>102</sup>

In October 2001, immediately after the 9/11 attacks, the U.S. Federal Bureau of Investigation (FBI) announced that Osama bin Laden was among the FBI’s twenty-two “Most Wanted Terrorists,” which included Mohammed Atef, who was designated as his successor and held the position of head of al-Qaeda’s military branch. Atef also met the criteria for a targeted killing in the DOJ’s closed documents.<sup>103</sup> In fact, some people have been killed after being attacked by missiles from UAVs.<sup>104</sup> However, in Pakistan, there is a critical opinion that an average of eighty-four percent from 2004 to 2012 of targeted killings are concentrated on militants.<sup>105</sup> There is also an opinion that a UAV attack by the United States and Japan should eliminate a high-level leader, but if the targeted killing strategy against low-ranking soldiers continues, consistency, planning, and rationality as a policy may be problematic, and the U.S. defense budget may be wasted.<sup>106</sup>

---

<sup>101</sup> Thomas B. Hunter, *Targeted Killing: Self-Defense, Preemption, and the War on Terrorism*, 2 J. STRATEGIC SOC’Y 1, 9–10 (2009).

<sup>102</sup> Gary Solis, *Targeted Killing and the Law of Armed Conflict*, 60 NAVAL WAR COLL. REV. 127, 130 (2007).

<sup>103</sup> *FBI’s Most Wanted Terrorists 15 Years Later: The Ones Who Got Away*, ABC NEWS (Oct. 26, 2016, 9:02 AM), <https://abcnews.go.com/International/fbis-wanted-terrorists-15-years/story?id=43028355> [<https://perma.cc/LE7C-H7ZG>].

<sup>104</sup> John Yoo, *Assassination or Targeted Killings After 9/11*, 56 N.Y.U. L. REV. 57, 58 (2011).

<sup>105</sup> Judson J. Dengler, *An Examination of the Collateral Psychological and Political Damage of Drone Warfare in the Fata Region of Pakistan* 82, tbl.2 (Sept. 2013) (Master’s thesis, Naval Postgraduate School).

<sup>106</sup> *Drone Wars: The Constitutional and Counterterrorism Implications of Targeted Killing: Hearings on S. 113-876 Before the Subcomm. on the Const., Civ. Rts. and Hum. Rts. of the S. Comm. on the Judiciary*, 113th Cong. 876 (2013) (statement of Sen. Dick Durbin) (“The use of drones [is] more efficient and less costly in terms of American blood and treasure.”). For reference, the number of senior leaders and low-ranking soldiers killed by drone strikes in Pakistan was forty-three to seventy-six in 2004–2007, 157–265 in 2008, 241–508 in 2009, 555–960 in 2010 and 2011, 304–488 in 2012, 197–317 in 2012, and 44–53 in 2013. Among them, three were leaders in 2004–2007, fourteen in 2008, ten in 2009, eight in 2010, ten in 2011, six in 2012, and four in 2013. 137 DOUGLAS LOVELACE, JR., *TERRORISM: COMMENTARY ON SECURITY DOCUMENTS*, 95 (2014). See also Dengler, *supra* note 105, at 81.

### 3. *Effects of Targeted Killing*

An unmanned aerial missile attack, which is a key element of a targeted killing strategy, costs more than one million dollars per unit; if it is used on soldiers rather than key leaders, cost effectiveness will inevitably be a problem.<sup>107</sup> In addition, the targeted killing strategy can increase anti-American sentiment because missile bombings can kill innocent people in the country or accidentally kill friendly forces. A representative example of the side effects of targeted killings is Israel's targeting of top officials in the military sector of Hamas, an Islamic fundamentalist organization.<sup>108</sup>

In November 2012, Israel launched a missile attack on Gaza, which was effectively under the control of Hamas.<sup>109</sup> When the commander, Ahmed Jabari, the head of the Hamas military division, was killed, Hamas launched a retaliatory rocket attack. More than thirty rockets were shot down by the Israel's Iron Dome air defense system, but three flew near the commercial city of Tel Aviv-Yafo.<sup>110</sup> Thereafter, Israel planned an invasion of the Gaza Strip by its ground forces—Hamas also launched a missile attack near the Jordan River in the suburbs of Jerusalem—and continued rocket artillery attacks.<sup>111</sup> The dispute subsequently became full scale war. Under pressure from neighboring countries such as Egypt, as well as the United States and the United Nations, Israel and Hamas reached an armistice agreement on November 21.<sup>112</sup> This was an incident in which a targeted killing was

---

<sup>107</sup> Greg Miller, *Increased U.S. Drone Strikes in Pakistan Killing Few High-Value Militants*, WASH. POST (Feb. 10, 2011), [https://www.washingtonpost.com/national/increased-us-drone-strikes-in-pakistan-killing-few-high-ranking-militants/2011/02/20/ABdO3YQ\\_story.html](https://www.washingtonpost.com/national/increased-us-drone-strikes-in-pakistan-killing-few-high-ranking-militants/2011/02/20/ABdO3YQ_story.html) [https://perma.cc/VL4V-MJBP].

<sup>108</sup> See, e.g., RAPHAEL S. COHEN ET AL., LESSONS FROM ISRAEL'S WARS IN GAZA 4-5 (2017), [https://www.rand.org/pubs/research\\_briefs/RB9975.html](https://www.rand.org/pubs/research_briefs/RB9975.html) [https://perma.cc/6ZUX-MRES].

<sup>109</sup> Yaakov Lappin & Ben Hartman, *Two Rockets Land Outside J'lem; Two Fired at TA*, JERUSALEM POST (Nov. 16, 2012, 5:21 PM), <https://www.jpost.com/defense/two-rockets-land-outside-jlem-two-fired-at-ta> [https://perma.cc/U3DS-3YPF].

<sup>110</sup> *Israel Says 3 Killed in Rocket Fire from Gaza After Assassination of Hamas Chief Ahmed Jabari*, CBS NEWS (Nov. 15, 2012, 11:28 AM), <https://www.cbsnews.com/news/israel-says-3-killed-in-rocket-fire-from-gaza-after-assassination-of-hamas-chief-ahmed-jabari/> [https://perma.cc/5BRG-QXDF].

<sup>111</sup> Ilan Ben Zion & Elie Leshem, *Israel Hits Hamas Military Leader, Targets Missile Sites in Major Air Assault on Gaza Strip*, TIMES OF ISR. (Nov. 14, 2012, 4:20 PM), <https://www.timesofisrael.com/hamas-military-leader-ahmed-jaabari-assassinated-in-iaf-airstrike> [https://perma.cc/95VT-TH6Z].

<sup>112</sup> David D. Kirkpatrick & Jodi Rudoren, *Israel and Hamas Agree to a Cease-Fire, After a U.S.-Egypt Push*, N.Y. TIMES (Nov. 21, 2012), <https://www.nytimes.com/2012/11/22/world/middleeast/israel-gaza-conflict.html> [https://perma.cc/63LQ-3F7V].

intended to end the conflict by removing the head of the hostile forces’ military but resulted in a new conflict instead.

In contrast, on March 21, 2013, Abdullah Ocalan of the Kurdistan Workers Party (PKK), who had been planning a war against the Turkish government for thirty years, said that rather than war, a new era had arrived, and declared a cease-fire with the government and the withdrawal of troops from Turkey.<sup>113</sup> Two days later, Field Marshal Murat Karayilan of the PKK issued a statement that officially recognized Ocaran’s declaration.<sup>114</sup> Had they been targeted in the past and killed by missile strikes, perhaps the relationship between the Turkish government and Kurds would have been different. Since then, Ocaran has ordered the withdrawal of military personnel from their bases in the mountains of Northern Iraq but has not ordered them to disarm—so the international community still considers the PKK a terrorist group.<sup>115</sup>

### ***B. Side Effects of Targeted Killing***

The effects of targeted killings may restrict terrorist group activities.<sup>116</sup> For example, as a result of Israel’s targeted killings of terrorist groups in Palestine, the number of American civilian victims dropped from 75 in 2001 and 185 in 2002 to 21 in 2005.<sup>117</sup> Further, the U.S. targeted killing of Isoroku Yamamoto, who commanded Japan’s

---

<sup>113</sup> Constanze Letsch, *Kurdish Leader Abdullah Ocalan Declares Ceasefire with Turkey*, THE GUARDIAN (Mar. 21, 2013, 2:59 PM), <https://www.theguardian.com/world/2013/mar/21/pkk-leader-ocalan-declares-ceasefire> [https://perma.cc/BY7S-WE42] (reporting that PKK leader made a historic gesture to end thirty-year Kurdish war, stressing the need “to solve the arms problem without losing another life”).

<sup>114</sup> *Murat Karayilan Announces PKK Withdrawal from Turkey*, BBC NEWS (Apr. 25, 2013), <https://www.bbc.com/news/world-europe-22293966> [https://perma.cc/6JLW-6NF6].

<sup>115</sup> *Id.*

<sup>116</sup> See, e.g., Graig R. Klein, *The Leader of ISIS Is Dead, but Are Targeted Killings Effective?*, INT’L CENTRE FOR COUNTER-TERRORISM (Feb. 10, 2022), <https://www.icct.nl/publication/leader-isis-dead-are-targeted-killings-effective> [https://perma.cc/9PK8-4WA2] (“Existing evidence shows that terrorist groups practicing suicide terrorism tend to use the tactic less following targeted killings. . . . For example, after several AQAP commanders were killed in targeted strikes over a short period of time in 2015, the group looked for spies within its ranks and summarily executed two members for spying.”). In this way, targeted killings reduce terrorist capabilities by causing confusion in the organization to which the target belongs.

<sup>117</sup> Daniel Byman, *Do Targeted Killings Work?*, FOREIGN AFFS. (Mar. 1, 2006), <https://www.foreignaffairs.com/articles/israel/2006-03-01/do-targeted-killings-work> [https://perma.cc/HNR9-LNM5]; LOUIS A. ZEISMAN, TARGETED KILLINGS 16 (2013).

attack on Pearl Harbor, had a sufficiently decisive influence to signify a turn in the U.S.-Japanese war.<sup>118</sup> However, there are several side effects of targeted killing: first, collateral damage to innocent citizens; second, friendly fire; and third, battle stress on pilots (Whiplash Transition).<sup>119</sup>

### *1. Collateral Damage to Innocent Citizens*

Targeted killings result in collateral damage to innocent citizens. The ACLU, together with the Center for Constitutional Rights, requested a disclosure from government agencies, such as the DOD, regarding attacks on civilians.<sup>120</sup> The request refers to the United States' December 17, 2009, missile attack on Yemen that resulted in the death of at least twenty-one children and nine women who were mistaken for hostile forces.<sup>121</sup> In response, civic groups and others questioned intensively whether the targeted killing operation was planned and carried out according to legal procedures and whether it was carried out knowing that damage to ordinary citizens would occur.<sup>122</sup> In addition, civic groups requested disclosure of information on whether appropriate financial compensation was made to the victims' bereaved families and the unreasonable measures the government took to conceal responsibility for the missile attack.<sup>123</sup>

The damage to ordinary citizens caused by targeted killing strategies is also shown in a U.N. report.<sup>124</sup> Since the use of UAVs for targeted killing inevitably accompanies the indiscriminate killing of ordinary citizens in the vicinity of the original target, this series of acts violates international humanitarian law.<sup>125</sup> In addition, although UAVs' performance is improving day by day, there are limits to accurately

<sup>118</sup> Gabriella Blum & Philip B. Heymann, *Law and Policy of Targeted Killing*, 1 HARV. NAT'L SEC. J. 145, 150 (2010).

<sup>119</sup> Laurie R. Blank, *Analyzing the Legality and Effectiveness of U.S. Targeted Killing*, 13 J. NAT'L SEC. L. & POL'Y 259, 264–65, 271 (2023).

<sup>120</sup> ACLU & CTR. FOR CONST. FREEDOM, REQUEST UNDER FREEDOM OF INFORMATION ACT: EXPEDITED PROCESSING REQUEST (Apr. 17, 2012).

<sup>121</sup> *Id.*; HUM. RTS. WATCH, BETWEEN A DRONE AND AL-QAEDA: THE CIVILIAN COST OF U.S. TARGETED KILLINGS IN YEMEN 68 (2013).

<sup>122</sup> *See, e.g.*, HUM. RTS. WATCH, *supra* note 121.

<sup>123</sup> *US/Yemen: Investigate Civilian Deaths from Airstrikes*, HUM. RTS. WATCH (Dec. 17, 2013, 12:00 AM), <https://www.hrw.org/news/2013/12/17/us/yemen-investigate-civilian-deaths-airstrikes> [<https://perma.cc/HBC7-J6EK>].

<sup>124</sup> *See generally* Alston, *supra* note 58.

<sup>125</sup> Mary Ellen O'Connell, *Unlawful Killing with Combat Drones: A Case Study of Pakistan, 2004-2009*, in SHOOTING TO KILL: SOCIO-LEGAL PERSPECTIVES ON THE USE OF LETHAL FORCE 290–91 (Simon Bronitt et al. eds., 2012).



striking a place thousands of kilometers away.<sup>126</sup> Since June 2008, dozens of civilian casualties have occurred because of UAV attacks, including the death of numerous children.<sup>127</sup> In another incident, an attack was made on a Taliban leader, a known target, while he attended a funeral, but it increased anti-American sentiment by killing innocent citizens who attended the funeral and by destroying the religious rites of Islam.<sup>128</sup> Prior research highlights that this attack has the risk of inciting anti-American sentiment among local residents and at the same time driving Pakistan, a pro-American country, into an anti-American force.<sup>129</sup>

## 2. Friendly Fire

The targeted killing strategy may also present a problem with friendly fire. On April 6, 2011, a UAV missile accident occurred in the Helmand province of southern Afghanistan.<sup>130</sup> A fatal accident occurred because of a misfire on two marines and a navy medic who were fighting at the time. According to a study on misfires against friendly forces during the Gulf War, the causes were attributed to misrecognizing the attack target, topography and weather, scale of the operation, defects in the technology, and soldiers’ carelessness.<sup>131</sup> Misfires occur when human errors, such as a lack of combat training, fire control, and coordination, are combined in a complex way.<sup>132</sup>

---

<sup>126</sup> Michael N. Schmitt, *Precision Attack and International Humanitarian Law*, 87 INT’L REV. RED CROSS 445, 445 (2005).

<sup>127</sup> *White Book on Facts of Civilian Deaths in Afghanistan Caused by Unlawful Acts of the U.S. and Its Allies*, THE MINISTRY FOREIGN AFFS. OF THE RUSS. FED’N (Nov. 16, 2022, 11:45 AM), [https://mid.ru/en/foreign\\_policy/historical\\_materials/1838877/](https://mid.ru/en/foreign_policy/historical_materials/1838877/) (Russ.).

<sup>128</sup> See CTR. FOR CIVILIANS IN CONFLICT & COLUM. L. SCH. HUM. RTS. CLINIC, *THE CIVILIAN IMPACT OF DRONES* 48 n.271, 59 n.322, 74 n.416 (2012).

<sup>129</sup> Jacob E. Lipsman, *Predator Drones and Public Discourse: A Framing Analysis of the Killing of Anwar al-Awlaki* 15 (Mar. 28, 2014) (M.A. thesis, University of Kansas) (on file with KU ScholarWorks, University of Kansas). See generally Evin Hughes, *Float Like a Plane, Sting Like a Bomb: The Ethics of U.S. Drone Attacks* (Jul. 13, 2015) (unpublished essay), [https://cdn.ncte.org/nctefiles/about/awards/mailler/hughes\\_evin.pdf](https://cdn.ncte.org/nctefiles/about/awards/mailler/hughes_evin.pdf) [<https://perma.cc/HT6X-SHCC>].

<sup>130</sup> Stuart Casey-Maslen, *Pandora’s Box? Drone Strikes Under Jus ad Bellum, Jus in Bello, and International Human Rights Law*, 94 INT’L REV. RED CROSS 597, 613 (2012).

<sup>131</sup> See U.S. GOV’T ACCOUNTABILITY OFF., *GAO/OSI-93-4, OPERATION DESERT STORM: APACHE HELICOPTER FRATRICIDE INCIDENT* (1993).

<sup>132</sup> Charles R. Shrader, *Friendly Fire: The Inevitable Price*, 22 PARAMETERS 29, 39–40 (1992).

In the military's self-investigation of UAVs' misfiring of missiles, a total of seven problems were mentioned.<sup>133</sup> First, the two soldiers' deaths were attributable to friendly fire, and the soldiers themselves were not at fault.<sup>134</sup> Second, the cause of the friendly fire was the lack of comprehensive situational awareness and the failure to thoroughly grasp the unit's exact location.<sup>135</sup> Third, the UAVs' shooting support function required the commander to have an accurate understanding of the situation and effective integrated operation.<sup>136</sup> Fourth, those who participated in the UAV attack were convinced that the personnel in the target area were the enemy.<sup>137</sup> Fifth, there was no unified confirmation of the enemy's location.<sup>138</sup> Sixth, it is necessary to change UAVs' command and control organization and the ground bases' internal procedures, operational regulations, and communication functions.<sup>139</sup> Seventh, the medical care taken before the two soldiers died were sufficient and were carried out in a timely manner.<sup>140</sup>

In addition, the self-investigation report offers five recommendations.<sup>141</sup> First, it is necessary to accurately integrate the fire support function, based upon the ground commander's overall situational awareness.<sup>142</sup> Second, other requirements include situational awareness and accurately tracking and detecting enemy forces in a dynamic and dispersed tactical environment.<sup>143</sup> Third, it is necessary to ensure efficient weapon development and targeting in modern warfare.<sup>144</sup> Fourth, UAVs' role must be integrated to conduct intelligence, surveillance, and reconnaissance, as well as effective attacks against the enemy.<sup>145</sup> Fifth, it is necessary to establish a reporting system for the exact location in a dispersed battle.<sup>146</sup>

---

<sup>133</sup> Jill Laster & Ben Iannotta, *Fratricide in Sangin: Hard Lessons from Predator Strike Gone Wrong*, AIR FORCE TIMES (Feb. 20, 2012), <http://militarytimes.com/news/2012/02/air-force-hard-lessons-from-predator-strike-gone-wrong-021912w>.

<sup>134</sup> See Memorandum for Record, Summary of the Command Investigation into the Friendly Fire Incident on 6 April 2011 in Regional Command-Southwest 3-4 (Apr. 25, 2011).

<sup>135</sup> *Id.*

<sup>136</sup> *Id.*

<sup>137</sup> *Id.*

<sup>138</sup> *Id.*

<sup>139</sup> *Id.*

<sup>140</sup> *Id.*

<sup>141</sup> *Id.* at 4.

<sup>142</sup> *Id.*

<sup>143</sup> *Id.*

<sup>144</sup> *Id.*

<sup>145</sup> *Id.*

<sup>146</sup> *Id.*

Similarly, the UAV missile misfire incident during the Gulf War was a result of a combination of a variety of human errors, including misrecognizing the attack targets and lack of fire control and coordination.<sup>147</sup> Because this incident occurred between different military groups—the assailant in charge of shooting the UAV missile belonged to the air force, and the victims of the misfire belonged to the navy and marine corps—the awareness of the severity of the misfire was clearly insufficient.<sup>148</sup>

Given the reality of operational areas in which command communication crosses between different branches of the army, navy, and air force, which have carried out integrated operations in Iraq and Afghanistan in the past, the integration and unification of UAV systems is important.<sup>149</sup> Therefore, following the roadmap for UAV systems in 2005, 2007, and 2009, the DOD formulated roadmaps for various land, sea, and air unmanned systems and established future plans for unification.<sup>150</sup> However, there is nothing about friendly fire anywhere in the roadmap. The 2007 roadmap emphasizes the importance of the pilot’s role in the unmanned system but relates it to the efficiency of the system’s capability, not to the prevention of accidentally firing against friendly forces.<sup>151</sup>

### 3. Pilot Combat Stress (*Whiplash Transition*)

A targeted killing strategy can create a new form of combat stress (*Whiplash Transition*).<sup>152</sup> Pilots in charge of operations in the U.S. Air Force, who conduct UAV missile attacks, are facing unique combat stress that they have never experienced before.<sup>153</sup> These pilots become psychologically distressed after flying over Afghanistan, which is thousands of kilometers away from them, launching a missile attack,

---

<sup>147</sup> See generally Shrader, *supra* note 132.

<sup>148</sup> Steven Lee Myers, *U.S. Admits Missile Misfire May Have Hit Iraq Civilians*, N.Y. TIMES (Jan. 26, 1999), <https://www.nytimes.com/1999/01/26/world/us-admits-missile-misfire-may-have-hit-iraq-civilians.html> [<https://perma.cc/EGM4-D4H8>].

<sup>149</sup> U.S. DEP’T OF DEF., UNMANNED SYSTEMS ROADMAP 2007–2032, at 34 (2007).

<sup>150</sup> U.S. DEP’T OF DEF., UNMANNED SYSTEMS ROADMAP 2005–2030, at 71–77 (2005).

<sup>151</sup> *Id.* at 105–07.

<sup>152</sup> *Drone Wars: The Constitutional and Counterterrorism Implications of Targeted Killing*, *supra* note 106.

<sup>153</sup> William Saletan, *Ghosts in the Machine: Do Remote-Control War Pilots Get Combat Stress?*, SLATE TECHNOLOGY (Aug. 11, 2008, 7:53 AM), <https://slate.com/technology/2008/08/do-remote-control-war-pilots-get-combat-stress.html> [<https://perma.cc/QW68-LZUJ>].

and witnessing the brutal war scenes on their screens.<sup>154</sup> However, with respect to these pilots' combat stress, operators of UAVs can recognize that various situations cause attacks other than fighter pilots; however, this is the same situation as in existing manned aircraft and, thus, is not a new type of stress.<sup>155</sup> Nonetheless, the seriousness of the situation is based upon the fact that the combat stress problem unique to UAV pilots within the air force has not been noticed by the military at all, while military clergymen have been dispatched to units in Texas and elsewhere to relieve pilots' stress.<sup>156</sup>

In December 2004, the U.S. Federal Aviation Administration investigated various UAV accidents related to friendly fire incidents and conducted an interesting analysis of the effects of their artificial factors.<sup>157</sup> They found that the human factor accounts for 21 to 68% of the army and navy's UAV accidents, but the aircraft factor accounts for 67% of the air force's UAV accidents, of which procedural error accounts for 75%.<sup>158</sup> Thus, the pilots' mental state highly affects current UAV missile attacks, which means that the new combat stress may become a risk factor that interferes with operators' normal judgment.

### III REVIEW OF DRONE ATTACK LIMITS

To consider an acceptable limit for drone attacks, consider first whether drone attacks were used in an armed conflict. This should be a consideration because there is no way to appeal the illegality of an exception in the event of an armed conflict—that is, when a life is taken under international humanitarian law (The Law of Armed Conflict).<sup>159</sup> The European Convention on Human Rights also admits that “except

---

<sup>154</sup> *Id.*

<sup>155</sup> *Remote-Control Warriors Suffer War Stress*, NBC NEWS (Aug. 7, 2008, 3:06 PM), <https://www.nbcnews.com/id/wbna26078087> [<https://perma.cc/K9EL-24RS>].

<sup>156</sup> David Zucchini, *Stress of Combat Reaches Drone Crews*, L.A. TIMES (Mar. 18, 2012, 12:00 AM), <https://www.latimes.com/archives/la-xpm-2012-mar-18-la-na-drone-stress-20120318-story.html> [<https://perma.cc/LXS6-9XSC>].

<sup>157</sup> See KEVIN W. WILLIAMS, FED. AVIATION ADMIN., NO. DOT/FAA/AM-04/24, A SUMMARY OF UNMANNED AIRCRAFT ACCIDENT/INCIDENT DATA: HUMAN FACTORS IMPLICATIONS (2004).

<sup>158</sup> *Id.* at 10, 12.

<sup>159</sup> Sandra Krähenmann & George Dvaladze, *Humanitarian Concerns Raised by the Use of Armed Drones*, GENEVA CALL (June 16, 2020), <https://www.genevacall.org/news/humanitarian-concerns-raised-by-the-use-of-armed-drones/> [<https://perma.cc/FQ4E-M32W>]; JOINT COMMITTEE ON HUMAN RIGHTS, THE GOVERNMENT'S POLICY ON THE USE OF DRONES FOR TARGETED KILLING, 2015–16, HC 574, HL 141, at 8 (U.K.).

in respect of deaths resulting from lawful acts of war,” it is not an illegal deprivation of life by the state.<sup>160</sup> To justify drone attacks under international humanitarian law, armed conflict must occur first. Particularly in cases in which the state is coping with nonstate, armed groups, such as al-Qaeda and ISIS, a high degree of violence between the parties must continue for a long while before international law recognizes that armed conflict is occurring.<sup>161</sup> However, it is difficult to see such a high degree of armed conflict with armed drone attacks alone. This is because surgical warfare, which minimizes civilian losses with accurate target attacks, as well as human losses from the attack side, is not expected because of the use of UAVs.<sup>162</sup> However, even if the degree of violence is low, there is a worldwide opinion that a high degree of violence occurs in a single armed conflict when the same armed group conducts repeated drone attacks within a single country.<sup>163</sup> In any case, to justify armed drone attacks based upon this exception, it is necessary to first prove that armed conflict is already occurring.

If armed conflict exists, the parties to the dispute are required to act in accordance with the applicable international humanitarian law.<sup>164</sup> For international humanitarian law to recognize that an attack by an armed drone is legitimate, it must meet five conditions: (1) it must be directed toward a military target (distinction principle); (2) it cannot use forbidden weapons (i.e., indiscriminate attack weapons that cause excessive injuries or weapons that have a wide range of long-term effects on the natural environment); (3) it cannot inflict excessive damage, as compared to the military interests that could be gained by an attack on nonmilitary targets; (4) all conditions must be met (no principle of proportionality); and (5) all viable precautions (preventive principles) must be taken to ensure the ideal outcome.<sup>165</sup> These are all

---

<sup>160</sup> See Convention for the Protection of Human Rights and Fundamental Freedoms art. 15, ¶ 2, Nov. 4, 1950, E.T.S. No. 005.

<sup>161</sup> Gloria Gaggioli & Pavle Kilibarda, *Counterterrorism and the Risk of Over-Classification of Situations of Violence*, 103 INT’L REV. RED CROSS 203, 222 (2021).

<sup>162</sup> LARRY LEWIS, CTR. FOR NAVAL ANALYSES, COP-2014-U-007345-FINAL, DRONE STRIKES IN PAKISTAN: REASONS TO ASSESS CIVILIAN CASUALTIES 25 (2014).

<sup>163</sup> Jelena Pejic, *Extraterritorial Targeting by Means of Armed Drones: Some Legal Implications*, 96 INT’L REV. RED CROSS 67, 76–84 (2014).

<sup>164</sup> INT’L COMM. OF THE RED CROSS, HOW IS THE TERM “ARMED CONFLICT” DEFINED IN INTERNATIONAL HUMANITARIAN LAW? 1–5 (2008).

<sup>165</sup> *The Use of Armed Drones Must Comply with Laws*, INT’L COMM. OF THE RED CROSS (Oct. 5, 2013), <https://www.icrc.org/en/doc/resources/documents/interview/2013/05-10-drone-weapons-ihl.htm> [<https://perma.cc/U5BD-ZG8P>]. See also Molly McNab & Megan

important conditions, and this Part reinforces the following three points, which are particularly problematic in the context of armed drones.

First, the media contends that many civilians are victims of armed drone attacks, but soldiers are not the only military targets recognized by international law.<sup>166</sup> Considering a general civilian is also participating in the fight (professionally, “I am directly participating in hostilities”), he may be a legitimate target for a drone attack.<sup>167</sup> Therefore, attention should be paid to the fact that drone attacks against civilians are not always considered illegal attacks.<sup>168</sup> However, what is serious in this respect is that the attackers do not provide sufficient, official records to prove whether the killer was a soldier, whether the attack was actually a military goal, or who was initially killed. This problem is depicted in the movies *Drone of War* (original title: *Good Kill*) and *Drone Unmanned Bomber* (original title: *Drones*).<sup>169</sup>

Second, individual countries are obliged to judge whether new weapons will be banned.<sup>170</sup> As long as countries note that armed drones incorporate new technologies, they must fulfill their duty to inspect the weapons before they are used.<sup>171</sup>

Third, countries that can use the same advanced science and technology of armed drones as a means of attack could demand more efforts to use the technology as much as possible when using attack drones and to minimize civilian casualties when using other means

---

Matthews, *Clarifying the Law Relating to Unmanned Drones and the Use of Force: The Relationships Between Human Rights, Self-Defense, Armed Conflict, and International Humanitarian Law*, 39 DENVER J. INT’L L. & POL’Y 661, 687 (2011).

<sup>166</sup> See EUR. PARL. ASS., *supra* note 13.

<sup>167</sup> See generally Statement, Int’l Comm. of the Red Cross, *supra* note 28. ICRC Rule 7 provides that “[t]he parties to the conflict must at all times distinguish between civilian objects and military objectives. Attacks may be directed only against military objectives. Attacks must not be directed against civilian objects.” Int’l Comm. of the Red Cross, *Rule 7: The Principle of Distinction Between Civilian Objects and Military Objectives*, INT’L HUMANITARIAN L. DATABASES, <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule7> [<https://perma.cc/U2MQ-T29X>].

<sup>168</sup> See Christopher J. Coyne & Abigail R. Hall, *The Drone Paradox: Fighting Terrorism with Mechanized Terror*, 23 INDEP. REV. 51, 53–54 (2018). See generally Michael J. Boyle, *The Costs and Consequences of Drone Warfare*, 89 INT’L AFFS. 1 (2013).

<sup>169</sup> Genevieve Hassan, *Good Kill: Tackling the Ethics of Drone Warfare on Film*, BBC NEWS: ENT. & ARTS (Apr. 10, 2015), <https://www.bbc.com/news/entertainment-arts-32222793> [<https://perma.cc/6KMB-GNN5>].

<sup>170</sup> See Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts art. 36, June 8, 1997, 1125 U.N.T.S. 3.

<sup>171</sup> *The Use of Armed Drones Must Comply with Laws*, *supra* note 165.

(proportional and preventive principles).<sup>172</sup> The United States—at least, the Trump administration—wondered whether it could value the principle of proportionality and prevention when engaging in armed conflict with nonstate armed groups. In fact, the Israeli military’s “knock-on-the-roof” tactic, which entails an accurate attack on the roof of a nearby building, is an effective method to give advance warning of a military target attack.<sup>173</sup> The U.S. military has evaluated such tactics as effective and officially adopted this tactic in 2023.<sup>174</sup> Additionally, in the movie *Drone of War*, mentioned above, a person who is thought to be a damage assessment agent appears behind the main character who controls an armed drone; it may contain a message that the U.S. drone attack has implemented cutting edge, preventable measures.<sup>175</sup>

Unless all the rules of international humanitarian law above are met, an attack by an armed drone cannot be a “legal combat act,” as it is an exception to the right to life. Society must be fully aware that violations of international humanitarian law on the part of armed drones in armed conflict are also violations of international human rights law (infringement of rights to life).<sup>176</sup> If countries conduct armed drone attacks against targets outside their respective territory, rather than domestically, the countries must also comply with international law that governs armed acts, as long as the drones are assessed to be armed.<sup>177</sup> In this case, the act, describing the use of force, determines whether an armed drone attack on an overseas target is carried out with the consent of the territorial state or flag state (the country of registration of the ship or aircraft) or is self-defense by a country that meets the conditions set forth in Article 51 or Chapter 7 on forced action.<sup>178</sup> While the above act provides the primary regulatory structure

---

<sup>172</sup> See Yunus Emre Gül, *Drone Attacks and the Principle of Proportionality in the Law of Armed Conflict*, 70 ANNALES DE LA FACULTÉ DE DROIT D’ISTANBUL 119, 120–22 (2021).

<sup>173</sup> Jeroen C. van den Boogaard, *Knock on the Roof: Legitimate Warning or Method of Warfare?*, 2016 Y.B. INT’L HUMANITARIAN L. 183, 3–6, 9–12.

<sup>174</sup> Ilene Prusher, *UN Report Finds: Israel’s ‘Roof-Knock’ Warning No Way to Prevent Civilian Casualties*, HAARETZ (June 23, 2015), <https://www.haaretz.com/2015-06-23/ty-article/.premium/israels-roof-knock-warning-no-way-to-safeguard-civilians/0000017f-f0b8-df98-a5ff-f3bda8fb0000> [https://perma.cc/8RLU-XW4J].

<sup>175</sup> See Hassan, *supra* note 169.

<sup>176</sup> *The Use of Armed Drones Must Comply with Laws*, *supra* note 165.

<sup>177</sup> *Id.*

<sup>178</sup> See U.N. Charter ch. VII.

of international law applicable to armed drones, this Part will briefly mention a development that may be added in the future.

In May 2010, the United Nations published a report on targeted killing named “Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions.”<sup>179</sup> Targeted killing is not a term defined in international law, but it is said to have become common after Israel announced such execution (i.e., targeted killing) strategy in the occupied Palestinian territories.<sup>180</sup> In addition, Nils Melzer, legal counsel for the International Committee of the Red Cross, reviewed the plans and actions that special forces have taken for the purpose of targeted killings. Melzer stated that there should be five constitutional requirements for targeted killings: (1) special forces carry them out for the purpose of killing, (2) countries deliberate the plans for killing, (3) the killings target specially selected individuals, (4) countries incarcerate individuals during judicial proceedings, and (5) there are no international law issues.<sup>181</sup>

#### *A. Compliance with Due Process of Law*

With regard to compliance with the principle of due process, military drones are subject to the Hague Convention, Geneva Convention, Additional Protocols, and rules of engagement established by customary law.<sup>182</sup> By complying with these rules of law, countries implement due process. On September 14, 2001, the U.S. Congress enacted a statute authorizing the use of force against those involved in the 9/11 attacks.<sup>183</sup>

##### *1. Laws That Apply Due Process Principles*

Article 3 of the Geneva Convention and the Hague Convention (IV) respecting the Laws and Customs of War on Land, are examples of countries declaring respect for armed conflict situations, even if those countries are not members of the Convention, and have become common practice.<sup>184</sup> Thus, the Hague Convention, the Geneva

---

<sup>179</sup> Alston, *supra* note 58, at 4.

<sup>180</sup> *Id.*

<sup>181</sup> MELZER, *supra* note 27, at 4–6.

<sup>182</sup> Pejic, *supra* note 163, at 84.

<sup>183</sup> RICHARD F. GRIMMETT, CONG. RSCH. SERV., RS22357, AUTHORIZATION FOR USE OF MILITARY FORCE IN RESPONSE TO THE 9/11 ATTACKS (P.L. 107–40): LEGISLATIVE HISTORY (2006).

<sup>184</sup> Michael N. Schmitt, *Military Necessity and Humanity in International Humanitarian Law: Preserving the Delicate Balance*, 50(4) VA. J. INT’L L. 795, 800 (2010).



Convention, Additional Protocols, and the rules of engagement established as customary laws apply to military use of UAVs, and by complying with them, countries fulfill due process.<sup>185</sup>

## 2. Legal Application for the Operation of UAVs That Civilians Pilot

This Section explores the content of the Convention on International Civil Aviation, which applies to military aircrafts controlled by personnel engaged in military affairs. The Convention’s definition indicates that aircraft use is determined by pilot status.<sup>186</sup> In fact, the laws that apply to U.S. DOD and CIA operations using UAVs are different, as apparent in Title 10 and Title 50, respectively.<sup>187</sup> Military operations are conducted by the JSOC under the U.S. DOD Special Command System under Title 10, whereas the CIA conducts covert actions under Title 50.<sup>188</sup> Traditionally, the Pentagon conducts military acts, while the CIA conducts secret intelligence activities.<sup>189</sup> I define espionage as an act that is intended not to be known to the public, except that it is traditionally a military action, where a government affects the political, economic, or military situation abroad.<sup>190</sup> The U.S. government has maintained that the CIA’s use of UAVs does not violate domestic law.<sup>191</sup> Title 18, chapter 37, of U.S. domestic law stipulates confidential espionage activities, and provides a rationale for their order, obedience, and execution.<sup>192</sup>

On September 14, 2001, the U.S. Congress enacted a law that authorized use of force against those responsible for the 9/11 attacks.<sup>193</sup> According to the law, the U.S. President has the power to use all necessary and appropriate troops to track the persons responsible for

---

<sup>185</sup> See generally JEAN-MARIE HENCKAERTS & LOUISE DOSWALD-BECK, INT’L COMM. OF THE RED CROSS, CUSTOMARY INTERNATIONAL HUMANITARIAN LAW: RULES (2005).

<sup>186</sup> See Convention on International Civil Aviation, art. 3, Dec. 7, 1944, 15 U.N.T.S. 295; Michel Bourbonniere & Louis Haeck, *Military Aircraft and International Law: Chicago Opus 3*, 66 J. AIR L. & COM. 885, 887, 890–93, 917 (2001).

<sup>187</sup> See generally Wall, *supra* note 96.

<sup>188</sup> *Id.* at 85–88.

<sup>189</sup> *Id.* at 108–09 n.77.

<sup>190</sup> See Ursula M. Wilder, *The Psychology of Espionage and Leaking in the Digital Age*, 61 STUD. INTEL., June 2017, at 1, 2.

<sup>191</sup> See generally Brooks, *supra* note 26, at 100 n.1, 101 nn.18, 24.

<sup>192</sup> See 18 U.S.C. §§ 792–98.

<sup>193</sup> See GRIMMETT, *supra* note 183.

terrorist attacks.<sup>194</sup> Politically, the U.S. administration claims that the use of troops based upon such laws is authorized only during war.<sup>195</sup> Some American theorists also view this law as leading to war.<sup>196</sup> War status theory also seeks legal arguments from a U.S. internal report.<sup>197</sup> According to a 2013 DOJ report, armed attacks are considered legal if carried out in a way that complies with the four basic rules of war.<sup>198</sup> Based upon these rules, the U.S. administration also claims that armed attacks using UAVs are legal.<sup>199</sup> Further, U.S. officials have continued to elaborate the arguments for legality in the war law of terrorist attacks.<sup>200</sup> In this way, the United States discussed the use of UAVs, which began with secret missions on the part of spies, not the military, as a means of war in the war state theory raised in the wake of the 9/11 incident.

### ***B. Review of Targeted Killing Responsibilities***

Although targeted killings have been implemented in compliance with the law, there is also opposition to the targeted killing strategy because of the uncertainty of responsibility. The unification of the CIA and the military after the 9/11 attacks explains the uncertainty in the responsibilities for targeted killing. The primary means of targeted killing is through UAVs.<sup>201</sup> In 2000, former CIA Chief George J. Tenet had an armed policy between the U.S. Air Force and the CIA in the

---

<sup>194</sup> See The President's Constitutional Authority to Conduct Military Operations Against Terrorists and Nations Supporting Them, 25 OP. O.L.C. 188 (2001).

<sup>195</sup> STEPHEN P. MULLIGAN & JENNIFER K. ELSEA, CONG. RSCH. SERV. LSB10391, RECENT U.S. AIRSTRIKES: LEGAL AUTHORITIES AND QUESTIONS 1–4 (2020).

<sup>196</sup> See Jack S. Levy, *The Causes of War and The Conditions of Peace*, 1 ANN. REV. POL. SCI. 139, 151–57 (1998); Ivo H. Daalder & James M. Lindsay, *The Globalization of Politics: American Foreign Policy for a New Century*, BROOKINGS INST. (Jan. 1, 2003), <https://www.brookings.edu/articles/the-globalization-of-politics-american-foreign-policy-for-a-new-century/> [<https://perma.cc/X9TF-XK5K>].

<sup>197</sup> MULLIGAN & ELSEA, *supra* note 195, at 1–6.

<sup>198</sup> Marko Milanovic, *A Few Brief Thoughts on the DoJ White Paper*, EJIL: TALK! (Feb. 7, 2013), <https://www.ejiltalk.org/a-few-brief-thoughts-on-the-doj-white-paper/> [<https://perma.cc/J3LC-R4BT>]; U.S. DEP'T OF JUST., LAWFULNESS OF A LETHAL OPERATION DIRECTED AGAINST A U.S. CITIZEN WHO IS A SENIOR OPERATIONAL LEADER OF AL-QA'IDA OR AN ASSOCIATED FORCE (2011).

<sup>199</sup> Brooks, *supra* note 26, at 83–84.

<sup>200</sup> Michael Wood, *International Law and the Use of Force: What Happens in Practice?*, 53 INDIAN J. INT'L L. 355–59 (2013).

<sup>201</sup> Lt. Col. M. Thembo, Targeted Killings: An Effective and Justified Method of Self Defense Against Terror Attacks 2–4 (2016) (research paper, Canadian Forces College), available at <https://www.cfc.forces.gc.ca/259/290/318/305/thembo.pdf> [<https://perma.cc/9J3S-V9VX>].

deployment of a missile by a UAV Predator and communicated with the DOD.<sup>202</sup>

After discussions were had on the missile’s launch standards and rights, as well as the effect of the success and failure of a missile attack, the United States conducted its first UAV attack mission in Afghanistan.<sup>203</sup> In addition, the National Commission on Terrorist Attacks Upon the United States issued a recommendation to transfer the responsibility for conducting paramilitary operations, such as secret operations, from the CIA to the Pentagon, while the Senate and the House of Representatives demanded that the USSOCOM take responsibility for the activity and the Secretary of Defense and CIA Director jointly conduct a paramilitary action plan.<sup>204</sup>

In accordance with USSOCOM’s paramilitary activities, the CRS found that the activities of the Special Operations Forces in collaboration with the CIA are less transparent and congressionally approved than the CIA’s traditional, covert activities.<sup>205</sup> To avoid some of the mandatory constraints, the CRS stated that the issue is that USSOCOM is working for the CIA, not for the DOD.<sup>206</sup> These paramilitary activities increase public distrust in targeted killing policies, while troops’ violations of war laws also intensify anti-American sentiments in Afghanistan.<sup>207</sup> In response, Peter M. Cullen, former U.S. Army commander, said that CIA-directed targeted killings were “troublesome” because only organizations composed of military personnel can conduct operations.<sup>208</sup>

---

<sup>202</sup> Sam Vincent, *Innovation, Technology and Security: The Emergence of Unmanned Aerial Vehicles Before and After 9/11*, at 213–22 (June 2019) (Ph.D. thesis, London School of Economics and Political Science) (describing Air Force-CIA Convergence on Arming Predator).

<sup>203</sup> Chris Woods, *The Story of America’s Very First Drone Strike*, THE ATLANTIC (May 30, 2015), <https://www.theatlantic.com/international/archive/2015/05/america-first-drone-strike-afghanistan/394463/> [<https://perma.cc/2VED-QYA2>].

<sup>204</sup> Jennifer D. Kibbe, *Covert Action and the Pentagon*, 22 INTEL. & NAT’L SEC. 57, 60–61, 68–69 (2007). See U.S. SPECIAL OPERATIONS COMMAND, POSTURE STATEMENT 2007, 1–26 (2007).

<sup>205</sup> Kibbe, *supra* note 204, at 67–68.

<sup>206</sup> Joseph B. Berger III, *Covert Action Title 10, Title 50, and the Chain of Command*, JOINT FORCE Q., Oct. 1, 2012, at 32.

<sup>207</sup> Aunohita Mojumdar, *Afghanistan: The Risks of Rising Anti-American Feelings in Kabul*, EURASIANET (Mar. 24, 2011), <https://eurasianet.org/afghanistan-the-risks-of-rising-anti-american-feelings-in-kabul> [<https://perma.cc/R74E-K2GF>].

<sup>208</sup> Peter M. Cullen, *The Role of Targeted Killing in the Campaign Against Terror*, 48 JOINT FORCE Q., Jan. 1, 2008, at 27.

### *C. New International Regulatory Initiatives*

#### *1. Lethal Autonomous Weapon Systems (LAWS)*

As artificial intelligence (AI) has developed in recent years, there has been an increase in the potential risks of violence that removes humans and human-free robotic weapons from the equation, particularly because of their vulnerability to cyberattacks.<sup>209</sup> Drones are vulnerable to such risks as long as they are robot terminals. Notably, there is no fully autonomous weapon at this time.<sup>210</sup> However, many countries are still actively promoting such a weapon.<sup>211</sup> For instance, the Israeli's Iron Dome is already famous for its highly autonomous performance, and the British, state-of-the-art, unmanned fighter, "Watchkeeper," is drawing close to the future and attracting experts' attention.<sup>212</sup> Nonetheless, their manufacturers emphasize human control. While human rights NGOs have been engaged in the "Campaign to Stop Killer Robots," countries have responded by defining robotic weapons as Lethal Autonomous Weapons Systems (LAWS).<sup>213</sup> Within the framework of the Convention on Certain Conventional Weapons (CCW), this Section reviews what regulations are possible, including the definition of LAWS and the weapons review described above. Although it may not be able to extend to the regulations used in ordinary police, law enforcement, or international peace cooperation activities, the CCW is a notable development in armed drone regulations.

---

<sup>209</sup> See generally Jean-Paul A. Yaacoub et al., *Robotics Cyber Security: Vulnerabilities, Attacks, Countermeasures, and Recommendations*, 21 INT'L J. INFO. SEC. 115 (2022).

<sup>210</sup> *Fully Autonomous Weapons: Questions and Answers*, HUM. RTS. WATCH: NEWS (Oct. 21, 2013, 12:01 AM), <https://www.hrw.org/news/2013/10/21/qa-fully-autonomous-weapons> [<https://perma.cc/9EKU-5FR9>].

<sup>211</sup> Michael T. Klare, *Autonomous Weapons Systems and the Laws of War*, ARMS CONTROL TODAY, Mar. 2019, at 6, 7.

<sup>212</sup> Iain Boyd, *Israel's Iron Dome Air Defense System Works Well—Here's How Hamas Got Around It*, THE CONVERSATION (Oct. 13, 2023, 8:32 AM), <https://theconversation.com/israels-iron-dome-air-defense-system-works-well-heres-how-hamas-got-around-it-215512> [<https://perma.cc/A8S3-3ZQ6>]; *Watchkeeper*, THE BRITISH ARMY: NEWS (Aug. 28, 2020), <https://www.army.mod.uk/news-and-events/news/2020/08/watchkeeper/>.

<sup>213</sup> See generally HUM. RTS. WATCH, STOPPING KILLER ROBOTS: COUNTRY POSITIONS ON BANNING FULLY AUTONOMOUS WEAPONS AND RETAINING HUMAN CONTROL (2020); Robert F. Trager & Laura M. Luca, *Killer Robots Are Here—and We Need to Regulate Them*, FOREIGN POL'Y (May 11, 2022, 1:46 PM), <https://foreignpolicy.com/2022/05/11/killer-robots-lethal-autonomous-weapons-systems-ukraine-libya-regulation/> [<https://perma.cc/7DTN-4S56>] ("Once lethal autonomous weapons systems begin to spread, they will be difficult to control.").

## 2. Proliferation Prevention and Export Management

On October 5, 2016, fifty-two countries, including the United States and Japan, made a joint declaration on the export and subsequent use of armed or attackable UAVs.<sup>214</sup> Armed drones are accessible not only to every country but also to nonstate terrorists. The use of armed drones in asymmetric warfare is recognized as a serious threat to national security, along with the proliferation of WMDs. This problem is why the United States made the joint declaration to prevent terrorists from obtaining armed drones.<sup>215</sup> In that joint declaration, the countries confirmed that the application of the existing international law (paragraph A), including the international humanitarian law and international human rights law, and the export of armed drones is consistent with the “principles of the existing multilateral export control and nonproliferation regimes” (paragraph C).<sup>216</sup> Paragraphs A and C are required in each signatory country; to meet these requirements, paragraph D emphasizes the use of voluntary transparent measures.<sup>217</sup> It is necessary to carefully consider how far these measures are maturing as legal standards. Further, as an effort to establish important international standards that regulate the export management of armed drones, these measures must be considered together with LAWS regulations.<sup>218</sup>

---

<sup>214</sup> *Joint Declaration for the Export and Subsequent Use of Armed or Strike-Enabled Unmanned Aerial Vehicles (UAVs)*, U.S. DEP’T OF STATE (Oct. 28, 2016), <https://2009-2017.state.gov/r/pa/prs/ps/2016/10/262811.htm> [<https://perma.cc/K7W3-H8UU>] [hereinafter *Joint Declaration for the Export and Use of UAVs*].

<sup>215</sup> Zachary Kallenborn, *Swarms of Mass Destruction: The Case for Declaring Armed and Fully Autonomous Drone Swarms as WMD*, MOD. WAR INST. (May 28, 2020), <https://mwi.westpoint.edu/swarms-mass-destruction-case-declaring-armed-fully-autonomous-drone-swarms-wmd/> [<https://perma.cc/2NZV-XXH5>].

<sup>216</sup> *Joint Declaration for the Export and Use of UAVs*, *supra* note 214, ¶¶ A, C.

<sup>217</sup> *Id.* ¶ D.

<sup>218</sup> Rachel Stohl, *Drones and the Development of International Standards*, STIMSON (Feb. 4, 2020), <https://www.stimson.org/2020/drones-and-the-development-of-international-standards/> [<https://perma.cc/R4RN-ZUGZ>] (presenting an opportunity for the United States to set the standard for the transfers and use of armed drones around the world).

### ***D. Review of the Relationship Between Artificial Intelligence and Drones***

#### *1. The Concept of Artificial Intelligence and Autonomy*

Autonomy in weapons is most closely related to AI because the autonomous operation of weapons can be achieved through AI-based algorithms.<sup>219</sup> In fact, in 1956, AI was developed and has since held an influential position in the development of computer science.<sup>220</sup> Recent advances in AI are attributable to technological leaps that have taken place since 2010, through the development of machine learning.<sup>221</sup> For example, AI algorithm's image recognition error has decreased from 30% in 2010 to less than 5% in 2016.<sup>222</sup> Human recognition error is approximately 5%; thus, AI has already surpassed human image recognition.<sup>223</sup> Advanced image recognition technology is one of the key elements of autonomous weapons. When general-purpose AI becomes a reality, autonomous weapons will undergo another revolutionary change.<sup>224</sup>

The core of an autonomous weapon system is its low degree of human intervention.<sup>225</sup> There is no agreed-upon definition of autonomy, but it can generally be understood as a relational concept rather than an actual concept. A substance can exist on its own without any relationship with anything else. In other words, people and weapons exist separately from each other. People are people and weapons are just weapons. When a person uses a weapon, a relationship

<sup>219</sup> Sona Poghosyan, *AI in the Military: How Is Artificial Intelligence Transforming Modern Warfare?*, PLAT.AI: BLOG (Aug. 2, 2023), <https://plat.ai/blog/ai-in-military/> [<https://perma.cc/85J4-27UJ>].

<sup>220</sup> Andreas Kaplan & Michael Haenlein, *Siri, Siri, in My Hand: Who's the Fairest in the Land? On the Interpretations, Illustrations, and Implications of Artificial Intelligence*, 62 BUS. HORIZONS 15, 21 (2018).

<sup>221</sup> GAURAV BATRA ET AL., MCKINSEY & COMPANY, ARTIFICIAL-INTELLIGENCE HARDWARE: NEW OPPORTUNITIES FOR SEMICONDUCTOR COMPANIES 1–8 (2018).

<sup>222</sup> John Wu, *Fact of the Week: Image Recognition Algorithms Decreased Their Error Margin from 30 Percent in 2010 to Less Than 5 Percent in 2016*, INFO. TECH. & INNOVATION FOUND. (Mar. 26, 2018), <https://itif.org/publications/2018/03/26/fact-week-image-recognition-algorithms-decreased-their-error-margin-30/> [<https://perma.cc/53DF-QJEM>].

<sup>223</sup> STANFORD UNIV., ARTIFICIAL INTELLIGENCE INDEX REPORT 2021, CHAPTER 2: TECHNICAL PERFORMANCE 7 n.2 (2021).

<sup>224</sup> See Kai-Fu Lee, *The Third Revolution in Warfare*, THE ATLANTIC (Sept. 11, 2021), <https://www.theatlantic.com/technology/archive/2021/09/i-weapons-are-third-revolution-warfare/620013/> [<https://perma.cc/K7VL-YFTP>] (“First there was gunpowder. Then nuclear weapons. Next: artificially intelligent weapons.”).

<sup>225</sup> Neil Davison, *A Legal Perspective: Autonomous Weapon Systems Under International Humanitarian Law?*, UNODA OCCASIONAL PAPERS, Nov. 2017, at 5, 5.

is established from that point on. In other words, relationships can be established between existing opposites. Contrastingly, autonomy can exist even if the relationship (person) does not intervene in the operation of the object (weapon). Thus, autonomy refers to the degree to which humans are involved in the man-machine command-control relation.<sup>226</sup>

The first category of AI is human-in-the-loop.<sup>227</sup> It involves a person who trains and tests or tunes an AI system to help it produce more reliable results.<sup>228</sup> Here, the loop refers to the OODA loop, which stands for observe, orient, decide, act.<sup>229</sup> This is a process that a human typically executes during the operation of the weapon system.<sup>230</sup> Human intervention and control, which are autonomous in nature, are exercised at certain stages of the mission.<sup>231</sup> Thus, this category of AI involves unmanned weapons that humans remotely control.

The second category of AI is human-on-the-loop.<sup>232</sup> This is an autonomous weapon system in which humans serve as supervisors.<sup>233</sup> These autonomous weapons operate independently, but human soldiers can intervene if something goes wrong, such as a malfunction or system failure.<sup>234</sup>

The third category of AI is human-out-of-the-loop.<sup>235</sup> A human-out-of-the-loop weapon system is designed to operate independently without human intervention.<sup>236</sup> It exerts full autonomy, allowing the

---

<sup>226</sup> Anna Konert & Tomasz Balcerzak, *Military Autonomous Drones (UAVs) - From Fantasy to Reality: Legal and Ethical Implications*, 59 TRANSP. RSCH. PROCEDIA 293, 296–298 (2021). See generally U.S. DEP’T OF DEF., DIRECTIVE 3000.09, AUTONOMY IN WEAPON SYSTEMS (2023).

<sup>227</sup> Vikram Singh Bisen, *What Is Human in the Loop Machine Learning: Why & How Used in AI?*, MEDIUM (May 20, 2020), <https://medium.com/vsinghbisen/what-is-human-in-the-loop-machine-learning-why-how-used-in-ai-60c7b44eb2c0> [https://perma.cc/DN43-ZSYZ].

<sup>228</sup> *Id.*

<sup>229</sup> Giulio Rusciano, *Observe, Orient, Decide, Act*, MEDIUM (May 14, 2023), <https://giuliorusciano.medium.com/observe-orient-decide-act-2b9a867b2459> [https://perma.cc/R4WQ-89S2].

<sup>230</sup> *Id.*

<sup>231</sup> *Id.*

<sup>232</sup> PAUL SCHARRE, CTR. FOR A NEW AM. SEC.: ETHICAL AUTONOMY PROJECT, AUTONOMOUS WEAPONS AND OPERATIONAL RISK 9–10 (2016).

<sup>233</sup> *Id.*

<sup>234</sup> *Id.*

<sup>235</sup> *Id.*

<sup>236</sup> *Id.*

machine to function without the need for human control.<sup>237</sup> Even if a person tries to intervene, it can be very difficult to do so.<sup>238</sup> Autonomous weapons that operate and exercise force with this full level of autonomy are usually referred to as LAWS or killer robots.<sup>239</sup> Human-out-of-the-loop weapons at this level are the most controversial, both ethically and at an international level.

Notably, the boundaries dividing these three categories of AI are not fixed. AI-powered weapons may vary between partial autonomy, full autonomy, and human supervision, depending on factors such as the complexity of the mission, the external environment, and legal and policy restrictions.<sup>240</sup> Further, the most important aspect of autonomous weapons—like military robots and drones—is the way that they make decisions and execute autonomous killings. Until now, in the notions or norms of war, taking human life was based upon human judgment.<sup>241</sup> Thus, the use of autonomous weapons poses a fundamental challenge to those ideas and norms.

To understand the concept of autonomy, it is helpful to compare it with a related concept—automation. Automation refers to operating in accordance with a predetermined procedure in response to external data input through a sensor.<sup>242</sup> This is similar to how an algorithm operates. Autonomy refers to having the ability to adapt to changes in the environment through machine learning.<sup>243</sup> Based upon this understanding and awareness of the environment, autonomous systems can take appropriate actions to bring about desirable outcomes.<sup>244</sup>

The distinction between autonomy and automation is useful; however, in reality, it can be difficult to distinguish the two, and there are many areas in which the two overlap. For example, even

---

<sup>237</sup> *Id.*

<sup>238</sup> *Id.*

<sup>239</sup> Michael C. Horowitz & Paul Scharre, *Do Killer Robots Save Lives?*, POLITICO MAG. (Nov. 19, 2014), <https://www.politico.com/magazine/story/2014/11/killer-robots-save-lives-113010/> [<https://perma.cc/THQ2-ZNTR>].

<sup>240</sup> See SCHARRE, *supra* note 232, at 12.

<sup>241</sup> *Id.* at 25.

<sup>242</sup> See *What Is Automation?*, IBM, <https://www.ibm.com/topics/automation> [<https://perma.cc/6HKF-B2MR>].

<sup>243</sup> Chinedu Pascal Ezenkwu & Andrew Starkey, *Machine Autonomy: Definition, Approaches, Challenges and Research Gaps*, ADVANCES INTELLIGENT SYS. & COMPUTING 335, 335–58 (2019).

<sup>244</sup> M. L. CUMMINGS, ARTIFICIAL INTELLIGENCE AND THE FUTURE OF WARFARE 3–4 (2017).



an automated air defense weapon can have built-in autonomous functions.<sup>245</sup>

## 2. *Development and Operation of Autonomous Weapon Systems*

Here we review the development and introduction of autonomous weapons based upon various materials and examine whether they can be classified into three categories of autonomy.

The Phalanx close-in weapon system used by the U.S. Navy Aegis destroyer has auto-detection, tracking, immediate response shooting, and navigation, as well as tracking radar with self-detection capabilities to automatically repel anti-ship missiles or aircraft.<sup>246</sup> It is a standalone defense system that incorporates a 20mm gun and can recognize and attack targets autonomously. The American C-RAM is a short-range air weapon intercept system that automatically fires and intercepts short-range projectiles, such as cannons, rockets, and mortars.

Together with the representative drone, the MQ-4C Triton, the U.S. Navy operates the X-47B, a fighter-sized combat drone with autonomous launch, landing, and flight capabilities from a transport aircraft. This is the first-generation model of a U.S. autonomous military drone. The U.S. Army also used MARRS, a remote-controlled blasting robot (or unmanned commercial vehicle for blasting) in the 2007 Iraq war. When the United States Navy employs the MK-60 Captor system, torpedoes and mines do not explode when fired. Instead, they automatically descend to a preset depth, use acoustic sensors to detect an enemy submarine, and release the torpedo from their capsule to target an attack on the enemy submarine.

The Russian PMK-2 has similar functions, as does the English Sea Urchin.<sup>247</sup> The U.S. Navy’s Guard Bot is an unmanned amphibious vehicle that can secure landing points and land autonomously.<sup>248</sup> In 2016, the United States developed the Sea Hunter, an AI-based

---

<sup>245</sup> Jürgen Altman & Frank Sauer, *Autonomous Weapon Systems and Strategic Stability*, 59 SURVIVAL 117, 118–19 (2017).

<sup>246</sup> *20 mm Phalanx Close-in Weapon System (CIWS)*, NAVWEAPS, [http://www.navweaps.com/Weapons/WNUS\\_Phalanx.php](http://www.navweaps.com/Weapons/WNUS_Phalanx.php) [<https://perma.cc/9Y2Q-7ASH>].

<sup>247</sup> OCEAN STUDIES BOARD ET AL., OCEANOGRAPHY AND MINE WARFARE 14–16 (2000).

<sup>248</sup> Daniel Faggella, *Guardbot: From Protecting Territory to Playing with Dolphins*, ROBOHUB (Jan. 30, 2014), <https://robohub.org/guardbot-from-protecting-territory-to-playing-with-dolphins/> [<https://perma.cc/2QKT-FKBD>].

autonomous trap drone that does not require remote control.<sup>249</sup> In addition, Boeing developed the Echo Voyager, an unmanned diving drone designed for operations in deep waters inaccessible to manned submarines.<sup>250</sup> Furthermore, AeroVironment deployed Blackwing drones, which are launched from submarines and able to attack with small warheads.<sup>251</sup> The U.S. Air Force developed a “loitering munition” called the Low Cost Autonomous Attack System (LOCAAS).<sup>252</sup> These weapons are equipped with built-in sensors and target recognition software, enabling them to identify and engage preprogrammed targets.<sup>253</sup> They can hover over a designated space for a period of time, and some can swarm.<sup>254</sup>

Israel’s Harpy is an autonomous weapon that performs similar functions to the LOCAAS.<sup>255</sup> France, Sweden, and Germany use autonomous bombs detonated by sensors mounted on 155mm guns. Autonomous guided weapons include the British Brimstone (air-to-air missile), the Russian and Indian BrahMos (cruise missile), and the Swedish RBS-15 (anti-ship missile). In the United States, an autonomous cyber weapon system called Monster Mind is being developed for use in cyberspace. It is designed to detect data streams deploying cyberattacks in the United States and disable them immediately and automatically. In Israel, the Iron Dome is a famous mobile defensive weapon system used to defend against short-range

---

<sup>249</sup> James Vincent, *The US Navy’s New Autonomous Warship Is Called the Sea Hunter*, THE VERGE (Apr. 8, 2016, 1:33 AM), <https://www.theverge.com/2016/4/8/11391840/us-navy-autonomous-ship-sea-hunter-christened>.

<sup>250</sup> Simon James, *Boeing Echo Voyager Takes the Plunge*, LINKEDIN (June 19, 2017), <https://www.linkedin.com/pulse/boeing-echo-voyager-takes-plunge-simon-jones/> [https://perma.cc/M8XK-B268] (introducing Echo Voyager specifications and purpose).

<sup>251</sup> Thomas Newdick, *The U.S. Navy’s Submarine-Launched Aerial Drone Capacity Is Set to Greatly Expand*, THE WAR ZONE (Mar. 10, 2021, 5:48 PM), <https://www.thedrive.com/the-war-zone/39700/the-u-s-navys-submarine-launched-aerial-drone-capacity-is-set-to-greatly-expand> [https://perma.cc/F3JS-7VTZ].

<sup>252</sup> Ingvild Bode & Tom F.A. Watts, *Loitering Munitions: Flagging an Urgent Need for Legally Binding Rules for Autonomy in Weapon Systems*, ICRC: HUMANITARIAN L. & POL’Y (June 29, 2023), <https://blogs.icrc.org/law-and-policy/2023/06/29/loitering-munitions-legally-binding-rules-autonomy-weapon-systems/> [https://perma.cc/EQ9T-6ZWR].

<sup>253</sup> *See Id.*

<sup>254</sup> Elizabeth Cooke, *US Marine Corps Developing Loitering, Swarming Munitions*, NAVAL TECH. (June 14, 2023), <https://www.naval-technology.com/news/us-marine-corps-developing-loitering-swarming-munitions/?cf-view> [https://perma.cc/FK46-RGVV].

<sup>255</sup> Paul Scharre, *Autonomy, “Killer Robots,” and Human Control in the Use of Force – Part II*, JUST SEC. (July 9, 2014), <https://www.justsecurity.org/12712/autonomy-killer-robots-human-control-force-part-ii/> [https://perma.cc/5FSJ-DYHV].

missiles.<sup>256</sup> The Iron Dome automatically detects, calculates trajectory, and analyzes the drop point of the enemy’s missile, and a soldier on the ground confirms the interceptive missile’s launch.<sup>257</sup>

Israel’s Guardium is a currently unarmed, unmanned patrol car deployed at the border, but can be armed if necessary and act autonomously against enemy movements.<sup>258</sup> Israel also developed the Harpy, which is a drone that can independently locate and attack enemy radar bases.<sup>259</sup> Unmanned weapons with similar functions are also deployed in Turkey, China, South Korea, and India.<sup>260</sup> The British Taranis system is an automatic combat drone that can autonomously track and identify targets, but the system is designed to attack only on command from a soldier.<sup>261</sup> Britain’s Brimstone missile is equipped with automatic enemy detection and “fire and forget” capabilities, and can strike targets autonomously.<sup>262</sup>

Vincent Boulanin and Maaïke Verbruggen also describe representative autonomous weapons from around the world, including weapons that are fully autonomous or operate under human supervision.<sup>263</sup> Autonomous missile and rocket defenses include the Dutch Goalkeeper, Israel’s Iron Dome, and Russia’s Kashtan.<sup>264</sup> Autonomous vehicle weapons are operated by many countries. For example, South Korea’s SGR-A1, like Israel’s Guardium, operates as

---

<sup>256</sup> Boyd, *supra* note 212.

<sup>257</sup> *Id.*

<sup>258</sup> *Always Watching: The IDF Unmanned Ground Vehicle*, IDF: TECH. & INNOVATION (Dec. 6, 2012), <https://www.idf.il/en/mini-sites/technology-and-innovation/always-watching-the-idf-unmanned-ground-vehicle/> [<https://perma.cc/C49C-3AME>].

<sup>259</sup> Paul Scharre & Michael C. Horowitz, *An Introduction to Autonomy in Weapon Systems* 13–15 (Ctr. for a New Am. Sec., Working Paper, 2015).

<sup>260</sup> *Id.* at 13 n.44.

<sup>261</sup> Guia Marie Del Prado, *This Drone Is One of the Most Secretive Weapons in the World*, BUSINESS INSIDER: TECH NEWS (Sept. 29, 2015, 1:17 PM), <https://www.businessinsider.com/british-taranis-drone-first-autonomous-weapon-2015-9> [<https://perma.cc/U64Y-85RW>].

<sup>262</sup> ROBIN GEISS, *THE INTERNATIONAL-LAW DIMENSION OF AUTONOMOUS WEAPON SYSTEMS* 9–11 (2015).

<sup>263</sup> VINCENT BOULANIN & MAAÏKE VERBRUGGEN, *MAPPING THE DEVELOPMENT OF AUTONOMY IN WEAPON SYSTEMS* 9–12 (2017).

<sup>264</sup> Agata Kleczkowska, *Autonomous Weapons and the Right to Self-Defence*, 56 ISR. L. REV. 24, 27 (2023).

unmanned border weapon.<sup>265</sup> The SGR-A1 is designed to detect and identify the infiltration of enemy soldiers within a radius of two-to-three miles.<sup>266</sup> Guards have control over the firing mechanism of the loaded machine gun, but it can be programmed with autonomous functions.<sup>267</sup>

Andrew Ilachinski also provided examples of human-directed and fully autonomous weapons.<sup>268</sup> Unmanned systems under human supervision include Korea's X-47B; England's Taranis; Israel's Harpy and Iron Dome; the Aegis battle system (an autonomous aerial missile defense system); the Netherlands' Goalkeeper; Russia's Kashtan; and the United States' MK-15 Phalanx CIWS, C-RAM, and Patriot. The British, Belgian, and Korean navies have deployed Dutch Goalkeepers. Germany, France, Sweden, and Russia have deployed a ground robot protection system, and the United States' SWORDS and Israeli Trophy also fall into this category. A fully autonomous unmanned weapon system does not support, supervise, or intervene in the event of a system failure. The self-propelled loitering munitions fall into this category, in which Israeli Harpys are deployed in action. The United States' tank destroyers, LOCAAS, and the enemy radar destroyer, Tacit Rainbow, have been tested.<sup>269</sup>

There are several points to consider when identifying autonomous weapons. First, defensive autonomous weapons are being introduced, while offensive autonomous lethal weapons are not yet widely used in combat. Second, as mentioned above, the level of autonomy is not fixed and can be adjusted to suit different situations. For example, a fully autonomous weapon can operate with human supervision.<sup>270</sup> As another example, the SGR-A1—deployed in part on the armistice line—is fired under soldiers' supervision but can also fire autonomously. The Israeli Harpy can also be operated either under a

---

<sup>265</sup> Eli Shayotovich, *Everything We Know About Samsung's Machine Gun Robots*, *Slash Gear* (Feb. 1, 2023, 12:14 PM), <https://www.slashgear.com/825074/everything-we-know-about-samsungs-machine-gun-robots/> [<https://perma.cc/4HU5-Y2E2>].

<sup>266</sup> *Id.*

<sup>267</sup> *Id.*

<sup>268</sup> ANDREW ILACHINSKI, AI, ROBOTS, AND SWARMS: ISSUES, QUESTIONS, AND RECOMMENDED STUDIES 147–51 (2017).

<sup>269</sup> Dave Majumdar, *The Trouble with High-Tech*, U.S. NAVAL INST.: PROC. (Feb. 2015), <https://www.usni.org/magazines/proceedings/2015/february/trouble-high-tech> [<https://perma.cc/E3UK-UPZM>].

<sup>270</sup> *Id.*

soldier’s supervision or perform independent autonomous functions.<sup>271</sup> Third, autonomous unmanned weapons are increasingly used alone or integrated with manned weapon systems.

### 3. *Changes in the Way War Is Waged*

An important aspect in the development of autonomous weapons, or military robots, is that their sizes, shapes, and uses are becoming very diverse. This diversity has been a factor in changing the way wars are waged.

Traditionally, robots have been conceived as unmanned systems similar in size and shape to humans. Today, their shapes and sizes vary greatly. Lockheed Martin’s unmanned high-airship is equipped with a football field-sized radar array and can remain suspended at an altitude of nearly twenty kilometers for over a month.<sup>272</sup> Furthermore, military robots of various sizes are being developed, such as unmanned bombers with wings twenty-five meters long as well as small, hummingbird-sized drones.<sup>273</sup> There are also nano-sized robots, which are ultra-miniature robots.<sup>274</sup> A cluster of nano robots is referred to as *smart dust* and is used to collect intelligence information.<sup>275</sup> The shapes are also very diverse, including human, animal, and object shapes.

Second, the role of robots in war is also expanding. In the early years of the Iraq War, which began in 2003, “the ground invasion force had no unmanned systems.”<sup>276</sup> In 2008, an unmanned commercial

---

<sup>271</sup> See Harpy: *Autonomous Weapon for All Weather*, IAI, <https://www.iai.co.il/p/harpy> [<https://perma.cc/QBD6-G9EX>].

<sup>272</sup> Douglas P. Kondrack, *High Altitude Airship Station-Keeping Analysis*, AIR FORCE INST. TECH. 1, 24–25 (2006); Flavio Araripe d’Oliveira et al., *High-Altitude Platforms — Present Situation and Technology Trends*, 8 J. AEROSPACE TECH. & MGMT. 249, 254 (2016).

<sup>273</sup> Syed Agha Hassnain Mohsan et al., *Unmanned Aerial Vehicles (UAVs): Practical Aspects, Applications, Open Challenges, Security Issues, and Future Trends*, 16 INTELLIGENT SERV. ROBOTICS 109, 121 (2023).

<sup>274</sup> Paolo Motto Ros, Danilo Demarchi & Sandro Carrara, *Editorial: Smart Dust: Micro and Nano Scale Devices for Highly-Integrated Localized and Distributed Smart Systems for Precision and Personalized Medicine*, FRONTIERS IN NEUROBOTICS (Oct. 10, 2022), <https://www.frontiersin.org/articles/10.3389/fnbot.2022.1051124/full> [<https://perma.cc/K8SV-9SU6>].

<sup>275</sup> *Id.* These nano robots are referred to as *smart dust* because of their ultrafine size.

<sup>276</sup> Peter W. Singer, *War of the Machines: A Dramatic Growth in the Military Use of Robots Brings Evolution in Their Conception*, SCI. AM., July 1, 2010, at 56, 59 (describing how robots on and above the battlefield are bringing about the most profound transformation of warfare since the advent of the atom bomb); Bernd Debusmann, *Killer Robots and a*

vehicle—the MAARS robot, which was equipped with a machine gun and grenade launcher—was introduced to conduct guard and sniper missions.<sup>277</sup> Medical robots were developed and deployed to assist in the transport and treatment of wounded soldiers in combat situations.<sup>278</sup> Since 2007, drones have been bombing guerrilla gatherings and finding and killing rebels.<sup>279</sup> The use of military robots has increased significantly as battles take place in cities more often than on plains or in mountainous areas.

Third, military robots' intelligence and autonomy are increasing gradually because of the advances in computing power, electronic technology, and AI. For example, in the case of the Predator drone, soldiers controlled the first model remotely. Later models can autonomously take off, land, and track twelve targets simultaneously.<sup>280</sup> The onboard target recognition software's performance has been sufficiently improved to enable the software to determine where a particular footstep originated.<sup>281</sup>

Amid this general trend, we examine the promotion of U.S. policy regarding the use of weapons with respect to military strategy, operations, and tactics. With respect to military strategy, first, this Section examines the tertiary offset strategy that is being pursued against China and Russia; second, this Section reviews swarming at the strategy and operational level; and lastly, this Section investigates the utility and effectiveness of autonomous unmanned weapons at the operational and tactical levels.<sup>282</sup>

---

*Revolution in Warfare*, REUTERS (Apr. 22, 2009, 7:25 AM), <https://www.reuters.com/article/idUSLM674603>.

<sup>277</sup> Jean Dubiel, *Robots Can Stand in for Soldiers During Risky Missions*, U.S. ARMY (Aug. 11, 2008), <https://www.army.mil/article/11592/robots-can-stand-in-for-soldiers-during-risky-missions/> [<https://perma.cc/DHS5-YDBK>].

<sup>278</sup> Nathan T. Fisher & Gary R. Gilbert, *Medical Robotic and Autonomous System Technology Enablers for the Multi-Domain Battle 2030-2050*, SMALL WARS J. (July 22, 2017, 6:32 PM), <https://smallwarsjournal.com/jrnl/art/medical-robotic-and-autonomous-system-technology-enablers-for-the-multi-domain-battle-2030-> [<https://perma.cc/L7TM-ZB38>].

<sup>279</sup> *Id.*

<sup>280</sup> Connor Miles, *Predators, Reaper and Black Knights Fill U.S. Arsenal*, READING EAGLE: NEWS (Jan. 31, 2017, 12:00 AM), <https://www.readingeagle.com/2017/01/31/predators-reaper-and-black-knights-fill-us-arsenal/> [<https://perma.cc/NZQ7-7K96>].

<sup>281</sup> Harry van der Linden, *Arguments Against Drone Warfare with a Focus on the Immorality of Remote Control Killing and 'Deadly Surveillance'*, 19 RADICAL PHIL. REV. 331, 333–35 (2016).

<sup>282</sup> Brian Charles Kempf, *The Third Offset: The U.S. Strategy to Combat Future Threats*, 8–9 (2017) (Master's thesis, Missouri State University).

First, the United States recognizes autonomous weapons or military robots in the context of a third order offset strategy. In particular, the United States has recognized that it is very important to secure the superiority of military technology to counter the superiority of competing or hostile countries’ military power. The first offset strategy involved developing tactical nuclear weapons, medium-range nuclear missiles, and strengthening of aviation and missile defense networks. This was done to offset the numerical advantage that the Soviet conventional military deployed in Eastern Europe in the early 1950s during the Cold War.

The second offset strategy was the United States’ effort to develop stealth technology, introduce reconnaissance satellites, and develop and introduce the GPS to offset and mirror the development of the Soviet’s nuclear weapons capability and missile projectiles in the late 1970s. A wide variety of technologies, digital electronic information, precision-guided weapons, and stealth technology have become key features in the secondary offset strategy.<sup>283</sup>

The third offset strategy, announced in November 2014, was based on the United States’ weakening military technological advantage over China and Russia. The goal was not to acquire next-generation technologies, but to reevaluate technological innovation and explore new military strategy concepts. Five detailed areas have been proposed for this strategy: (1) development of an autonomous deep learning system;<sup>284</sup> (2) human-machine cooperation decision-making system;<sup>285</sup> (3) development of wearable devices, heads-up displays, exoskeleton enhancement function, etc.;<sup>286</sup> (4) hybrid operation of improved human-unmanned systems;<sup>287</sup> and (5) development and operation of partially autonomous weapons to operate in future cyber and electronic

---

<sup>283</sup> ILACHINSKI, *supra* note 268, at 28. See also KELLEY M. SAYLER, CONG. RSCH. SERV., R46458, EMERGING MILITARY TECHNOLOGIES: BACKGROUND AND ISSUES FOR CONGRESS (2022) (providing an overview of selected emerging military technologies such as AI, LAWS, Hypersonic Weapons, Directed Energy Weapons, Biotechnology, and Quantum Technology).

<sup>284</sup> Mohsen Soori et al., *Artificial Intelligence, Machine Learning and Deep Learning in Advanced Robotics, a Review*, 3 COGNITIVE ROBOTICS 54, 54–70 (2023).

<sup>285</sup> Simon Rothfuß et al., *Human–Machine Cooperative Decision Making Outperforms Individualism and Autonomy*, 53 IEEE TRANSACTIONS ON HUM.-MACH. SYS. 761, 761–70 (2023).

<sup>286</sup> See Inseong Jo & Joonbum Bae, *Design and Control of a Wearable and Force-Controllable Hand Exoskeleton System*, 41 MECHATRONICS 90, 90–101 (2017).

<sup>287</sup> See Mohsan et al., *supra* note 273.

warfare environments.<sup>288</sup> Budgets are allocated to the DOD every year to achieve this goal. The DOD's Strategic Capabilities Office, which was established in 2012, has led the third offset strategy. In 2017, a \$900 million Research and Development budget was allocated to the Strategic Capabilities Office, the mission of which focuses on integrating new strategic concepts into innovative military technology through advances in AI and robotics.<sup>289</sup> In addition, in 2015, the DOD established Silicon Valley's Defense Innovation Unit Experimental (DIUx) to explore and investigate the Valley's outstanding AI and robot technology.<sup>290</sup>

The third offset strategy that the DOD is pursuing is currently designed to prepare for changes in the military security environment that may occur over the next twenty to thirty years, secure military technology superiority against potential hostile forces, and devise a military strategy to do so. These potential hostile countries include Russia, Iran, North Korea, China, and hostile nonstate actors such as international terror groups. This strategy survived the Trump administration's defense budget and continues to be promoted today. According to one study, the People's Liberation Army of China is also trying to possess similar military technology capabilities by examining the U.S. third-order offset strategy and defense innovation policies closely.<sup>291</sup> The robot swarming strategy that uses autonomous weapons is a movement at the strategic and operational level.<sup>292</sup> Although the details differ, China also appreciates the potential of a swarming strategy that uses military robots.<sup>293</sup> Currently, most countries are largely operating a small number of highly expensive weapons systems

---

<sup>288</sup> Nathan Leys, *Autonomous Weapon Systems and International Crises*, STRATEGIC STUD. Q., Spring 2018, at 48, 52.

<sup>289</sup> See JOHN F. SARGENT JR., CONG. RSCH. SERV., R46341, FEDERAL RESEARCH AND DEVELOPMENT (R&D) FUNDING: FY 2021, 1–55 (2020).

<sup>290</sup> Cheryl Pellerin, *DoD's Silicon Valley Innovation Experiment Begins*, U.S. DEP'T OF DEF.: NEWS (Oct. 29, 2015), <https://www.defense.gov/News/News-Stories/Article/Article/626602/dods-silicon-valley-innovation-experiment-begins/> [https://perma.cc/73HM-LFWE].

<sup>291</sup> John Markoff & Matthew Riseberg, *China's Intelligent Weaponry Gets Smarter*, N.Y. TIMES (Feb. 3, 2017), <https://www.nytimes.com/2017/02/03/technology/artificial-intelligence-china-united-states.html> [https://perma.cc/6Y9J-HWK8].

<sup>292</sup> David Lague, *In U.S.-China AI Contest, the Race Is on to Deploy Killer Robots*, REUTERS (Sept. 8, 2023, 11:00 AM), <https://www.reuters.com/investigates/special-report/us-china-tech-drones/>.

<sup>293</sup> *Id.*



that are multifunctional and demonstrate excellent performance.<sup>294</sup> This is generally referred to as a platform strategy (or mothership strategy).<sup>295</sup> For example, the operation of F-35 fighters or Aegis Weapons System is typical.<sup>296</sup> These weapon systems are meant to perform multifunctional operations within one system. In other words, this means that all land, sea, and air operations are performed on F-35 fighters or Aegis ships. However, it is recognized that a swarming strategy (or herd strategy) that uses many small autonomous weapons (unmanned fighters or unmanned combat traps) will be more effective in terms of attack and defense.<sup>297</sup> According to Dr. Peter Singer, the platform strategy has the characteristics of centralized communication, command and control, decentralized firepower, and on its merits, matches the traditional way of conducting war.<sup>298</sup> On the other hand, the swarming strategy can focus firepower and decentralize control and communication. The advantage is that the units that participate in swarming can make self-organized decisions and actions in a decentralized way in dissemination, communication, and combat performance.

John Arquilla and David Ronfeldt discussed this concept of a swarming strategy, which has attracted attention as an effective operation that can be used practically in developing unmanned weapons and drones.<sup>299</sup> The United States is emphasizing the swarming strategy in particular as a means to counter the power of China’s military numerical advantage (a new rival in the background of the rapid increase in the cost of advanced weapons systems), the basis of

---

<sup>294</sup> Paul Scharre, *Unleash the Swarm: The Future of Warfare*, WAR ON THE ROCKS (Mar. 4, 2015), <https://warontherocks.com/2015/03/unleash-the-swarm-the-future-of-warfare/> [https://perma.cc/JF3E-EMD2].

<sup>295</sup> *Id.*

<sup>296</sup> Press Release, Lockheed Martin, F-35 and Aegis Combat System Successfully Demonstrate Integration Potential in First Live Missile Test (Sep. 13, 2016), <https://news.lockheedmartin.com/2016-09-13-F-35-and-Aegis-Combat-System-Successfully-Demonstrate-Integration-Potential-in-First-Live-Missile-Test> [https://perma.cc/RFS5-ME3Z].

<sup>297</sup> Maj. B. Paola Benson, *Swarming Autonomous Unmanned Aerial Systems 1–15* (May 24, 2018) (Master’s thesis, U.S. Army Command and General Staff College), <https://apps.dtic.mil/sti/pdfs/AD1070941.pdf> [https://perma.cc/6W7G-2KXM].

<sup>298</sup> *The Future of Warfare: Hearing Before the S. Comm. on Armed Services*, 114th Cong. 30 (2015) (statement of Dr. Peter W. Singer, Strategist & Senior Fellow, New America).

<sup>299</sup> See generally JOHN ARQUILLA & DAVID RONFELDT, RAND NAT’L SEC. RSCH. DIV., *SWARMING AND THE FUTURE OF CONFLICT* (2000).

the platform strategy, and the relative weakening of military and technological advantages.<sup>300</sup>

Swarming is not a strategy that is currently in operation.<sup>301</sup> However, in the United States, an F-18 bomber recently tested 103 small Perdix drones, which was reported to have been successful.<sup>302</sup> If the institutional environment is established, such as infrastructure for the swarming strategy and training of operating personnel, new military innovations that operate large numbers of drones will be possible. The importance of this swarming strategy is strongly related to the standardization of operations and tactics using military robots with AI algorithms for each situation and scenario. These operational and tactical algorithms include collecting, processing, and using real-time battlefield information, which is one of the core functions of autonomous weapons or military robots. It also includes functions such as identifying, evaluating, and hitting targets.<sup>303</sup>

These changes are made in part by the operations algorithm that combines autonomous weapons with the command-and-control functions that robots have assumed and, further, by the difficult battles that have been fought directly on the battlefield based on mental and physical abilities. As this swarming strategy becomes widely applied, a new type of combat organization centered on autonomous weapons will emerge. For example, historically, the U.S. Air Force was formed with combat aircrafts that began to be used in World War I, and the strategic headquarters was established with the emergence of nuclear weapons.<sup>304</sup> In addition, there is also an analysis that indicates that the development of autonomous weapons, such as drones, can change the geopolitics of a large number of U.S. military bases overseas.<sup>305</sup>

---

<sup>300</sup> Gabriel Dominguez, *Pentagon Drone Swarm Strategy Aims to Counter Chinese Military*, JAPAN TIMES (Sept. 6, 2023), <https://www.japantimes.co.jp/news/2023/09/06/asia-pacific/politics/us-military-replicator-drones-china/> [https://perma.cc/2QBH-DNYK]; SAYLER, *supra* note 283, at 2, 6.

<sup>301</sup> Benson, *supra* note 297, at 1–15.

<sup>302</sup> Chris Baraniuk, *U.S. Military Tests Swarm of Mini-Drones Launched from Jets*, BBC NEWS (Jan. 10, 2017), <https://www.bbc.com/news/technology-38569027> [https://perma.cc/V4FP-HNXX].

<sup>303</sup> Maj. Andrew William Sanders, *Drone Swarms 7–9* (Dec. 4, 2017) (Master's thesis, U.S. Army Command and General Staff College), <https://apps.dtic.mil/sti/pdfs/AD1039921.pdf> [https://perma.cc/LE3H-KQLB].

<sup>304</sup> FINAL REPORT OF THE CHIEF OF AIR SERVICE (1921), *reprinted in* 1 THE U.S. AIR SERVICE IN WORLD WAR I, at 21–26 (Maurer Maurer ed., Office of Air Force History, 1978).

<sup>305</sup> Ian G.R. Shaw, *Robot Wars: U.S. Empire and Geopolitics in the Robot Age*, 48 SEC. DIALOGUE 451, 451–70 (2017).

As of 2015, the United States operates approximately 800 military bases in more than eighty countries.<sup>306</sup> The reported annual cost to maintain these bases is \$100 billion.<sup>307</sup> The development of unmanned military robots, such as drones, and the use of swarming strategies can reduce the need for such bases. This is because the operation of an autonomous weapon system can ease the limitations of physical distance, which has become an environmental variable in military operations.

Third, the usefulness and effectiveness of robots also manifests at the operational and tactical levels. Robotic weapons have great utility in the social warfare, irregular warfare, and street warfare environments that characterize modern warfare. In particular, “social war” here refers to civil wars between domestic forces due to socioeconomic inequality. Herfried Münkler claimed that many military conflicts in the world are social wars.<sup>308</sup> Social warfare and irregular warfare often occur in urban environments. Even experienced special warfare soldiers want to spread fear in a city battlefield situation, which is complex and lacks information about the enemy.<sup>309</sup> It is difficult to determine where the enemy is, how to distinguish combatants from civilians, and where improvised explosive devices (IEDs) are hidden. In many cases, irregular armed groups use civilians and even small children as shields to attack and defend themselves.<sup>310</sup> In this highly uncertain and high-

---

<sup>306</sup> David Vine, *Where in the World Is the U.S. Military?*, POLITICO MAG. (Aug. 2015), <https://www.politico.com/magazine/story/2015/06/us-military-bases-around-the-world-119321/> [<https://perma.cc/7KJA-5R8T>]; Alice Slater, *The U.S. Has Military Bases in 80 Countries, All of Them Must Close*, THE NATION (Jan. 24, 2018), <https://www.thenation.com/article/archive/the-us-has-military-bases-in-172-countries-all-of-them-must-close/> [<https://perma.cc/NSE8-9WJE>].

<sup>307</sup> Johnny Harris, *Why Does the US Have 800 Military Bases Around the World?*, VOX (May 18, 2015, 10:30 AM), <https://www.vox.com/2015/5/18/8600659/military-bases-united-states> [<https://perma.cc/32GC-N5NF>]; JOHN GLASER, WITHDRAWING FROM OVERSEAS BASES: WHY A FORWARD-DEPLOYED MILITARY POSTURE IS UNNECESSARY, OUTDATED, AND DANGEROUS (2017).

<sup>308</sup> HERFRIED MÜNKLER, THE NEW WARS 5–31 (Patrick Camiller, trans., Polity Press 2005).

<sup>309</sup> See John Spencer, *The Eight Rules of Urban Warfare and Why We Must Work to Change Them*, MOD. WAR INST. (Jan. 12, 2021), <https://mwi.westpoint.edu/the-eight-rules-of-urban-warfare-and-why-we-must-work-to-change-them/> [<https://perma.cc/9SNM-JTY2>].

<sup>310</sup> See, e.g., Federica Marsi, *What Is a ‘Human Shield’ and Why Is Israel Using the Term in Gaza?*, AL JAZEERA (Nov. 13, 2023), <https://www.aljazeera.com/news/2023/11/13/what-is-a-human-shield-and-why-is-israel-using-the-term-in-gaza> [<https://perma.cc/2YDA-VAUY>].

risk urban battlefield environment, robotic soldiers could perform various roles, such as observation, detection, search, tracking, IED removal, and killing, thereby reducing the risk of human injury and casualties. Above all, the deployment of autonomous weapons leads to enormous military strategic gains. Because of this, more and more countries are implementing policies to expand the military use of AI and robots. The development and deployment of AI-based autonomous weapons is recognized as the third military technological revolution—following gunpowder and nuclear weapons—and has become the driving force of international arms competition.<sup>311</sup>

As the United States is advocating for the introduction of military robots in the framework of the third offset strategy, military robots are becoming a factor that can cause major changes at various levels such as the reorganization of military manpower, strategy, and operation. In addition, with respect to military operations and tactics, the benefits of military robot operations are also great. Robots do not experience any of the effects on the battlefield that humans do. This can greatly reduce injuries that are difficult to avoid by greatly reducing the number of soldiers on the battlefield.<sup>312</sup>

However, autonomous weapons' development and proliferation can also create significant risks to international security. Autonomous weapons reduce the barriers to war. When many military robots are mobilized, it is easy to begin a war and difficult to end it. Every day, the media coverage that influences public opinion through daily articles about war decreases, and the public may begin to ignore war. This is a long-lasting factor in war. A dictator or terrorist organization can begin or join a war by purchasing inexpensive robotic weapons without the need for a large army. In the case of swarming operations, failure to coordinate interactions among autonomous weapon systems can lead to unwanted and unintentional escalation.<sup>313</sup> Further, if autonomous weapons are hacked, it can have the terrible outcome of killing allies.

### ***E. Review of the Findings of the U.N. Special Rapporteur's Investigation***

The United States claims that the drone-based killing of Commander Soleimani was a legitimate preemptive measure against an impending

---

<sup>311</sup> Lee, *supra* note 224.

<sup>312</sup> BONNIE L. DOCHERTY, *LOSING HUMANITY: THE CASE AGAINST KILLER ROBOTS* 4 (2012).

<sup>313</sup> Kenneth Payne, *Artificial Intelligence: A Revolution in Strategic Affairs?*, 60 *SURVIVAL GLOB. POL. & STRATEGY* 7, 7–32 (2018).

attack and a legitimate way to exercise the right to self-defense.<sup>314</sup> Among the many alternatives to killing Soleimani proposed under the Pentagon’s “drainage” strategy, President Trump attempted to opt for an attack on Syrian militias that Iran was suspected of covertly supporting.<sup>315</sup> However, before that action was taken, the Kata’ib Hizballah protesters attacked the U.S. Embassy in Baghdad on December 31, 2019. This was seen as an immediate and irresistible situation of an impending attack, and the extreme option proposed in the drainage strategy was taken.<sup>316</sup> Thus, the targeted killing of Commander Soleimani took place.

President Trump said that at the time that Soleimani was killed, Iran was planning an attack on four U.S. embassies.<sup>317</sup> To emphasize that killing Soleimani was a legitimate measure for the safety of its own people, the administration chose the expression “targeted killing” rather than “assassination.”<sup>318</sup>

The U.N. Special Rapporteur on extrajudicial summary or arbitrary executions, Dr. Agnes Callamard, indicated that the investigation found no evidence of an impending attack on the four embassies. She wrote a report that stated that the use of drones against Commander

---

<sup>314</sup> Press Release, Dep’t of Def., Statement by the Dep’t of Def. (Jan. 2, 2020), <https://www.defense.gov/News/Releases/Release/Article/2049534/statement-by-the-department-of-defense/> [<https://perma.cc/5QTP-DFRN>].

<sup>315</sup> Daniel Arkin et al., *Trump Announces Strikes on Syria Following Suspected Chemical Weapons Attack by Assad Forces*, NBC NEWS (Apr. 14, 2018, 5:56 AM), <https://www.nbcnews.com/news/world/trump-announces-strikes-syria-following-suspected-chemical-weapons-attack-assad-n865966> [<https://perma.cc/DAE6-RPGT>] (statement of U.S. Defense Secretary James Mattis) (“Clearly, the Assad regime did not get the message last year. . . . This time, our allies and we have struck harder.”).

<sup>316</sup> *Protesters Storm U.S. Embassy Compound in Baghdad*, AL JAZEERA (Dec. 31, 2019), <https://www.aljazeera.com/news/2019/12/31/protesters-storm-us-embassy-compound-in-baghdad> [<https://perma.cc/9MAB-ZRMM>] (reporting atmosphere in Baghdad: public anger grows after U.S. attacks on Iran-backed militia in Iraq and Syria that killed 25 fighters); Falih Hassan, Ben Hubbard & Alissa J. Rubin, *Protesters Attack U.S. Embassy in Iraq, Chanting “Death to America,”* N.Y. TIMES (Dec. 31, 2019), <https://www.nytimes.com/2019/12/31/world/middleeast/baghdad-protesters-us-embassy.html> [<https://perma.cc/5X3D-SCW6>].

<sup>317</sup> *Trump Believes Iran Was Targeting Four U.S. Embassies: Fox News*, REUTERS (Jan. 10, 2020, 11:44 AM), <https://www.reuters.com/article/idUSKBN1Z9280/>.

<sup>318</sup> Elizabeth Jensen, *“Killing” or “Assassination?”*, NPR (Jan. 7, 2020, 5:45 PM), <https://www.npr.org/sections/publiceditor/2020/01/07/794277670/-killing-or-assassination> [<https://perma.cc/D2BK-4WVU>]; Mia Swart, *Death by Drone: How Can States Justify Targeted Killings?*, AL JAZEERA (July 11, 2020), <https://www.aljazeera.com/news/2020/7/11/death-by-drone-how-can-states-justify-targeted-killings> [<https://perma.cc/34Y7-NU8G>].

Soleimani violated international law and the Charter of the United Nations.<sup>319</sup> The right to preemptive self-defense against an impending attack is immediate, irresistible, and is allowed when there is no choice. In the case of Commander Soleimani's killing, Rapporteur Callamard said such conditions were not met.<sup>320</sup> She concluded the killing was an "arbitrary killing" that violated the U.N. Charter.<sup>321</sup>

The question raised was whether the U.N. Human Rights Council could review the contents of the report and impose sanctions if the actions the United States took were illegal.<sup>322</sup> The United States withdrew from the U.N. Human Rights Council on June 19, 2018.<sup>323</sup> Interpol adopted a negative position in response to the Iranian government's request for the red notice, a type of wanted notice, which President Trump wanted in accordance with the principle of prohibiting intervention in political and military activities. Hence, it is unlikely that the Council will take any action against the United States.

### *F. Implications of Soleimani's Assassination*

After Soleimani's assassination, opposition to President Trump's foreign policy emerged and anti-American sentiment expanded in the Middle East. In addition, with the strengthening of relations between Russia and Iran and the creation of an atmosphere of tension due to the conflict with Iran, an attempt to win reelection by rallying Trump supporters has emerged.

#### *1. NSC's Failure to Check the President*

Because Secretary of State Tillerson and Secretary of Defense Mattis, an expert who has experienced previous wars in the Middle East, including the Gulf War, disagreed strongly with the

---

<sup>319</sup> Agnes Callamard (Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions), *Use of Armed Drones for Targeted Killings*, at 3–40, U.N. Doc. A/HRC/44/38 (Aug. 15, 2020).

<sup>320</sup> *Id.*

<sup>321</sup> *Id.* at 39–40.

<sup>322</sup> Press Release, U.N. Hum. Rts. Council, High Commissioner for Human Rights to the Human Rights Council: Sanctions That Threaten People's Lives and Health Need to Be Halted (Sept. 14, 2023), <https://www.ohchr.org/en/news/2023/09/high-commissioner-human-rights-human-rights-council-sanctions-threaten-peoples-lives>.

<sup>323</sup> Gardiner Harris, *Trump Administration Withdraws U.S. from U.N. Human Rights Council*, N.Y. TIMES (June 19, 2018), <https://www.nytimes.com/2018/06/19/us/politics/trump-israel-palestinians-human-rights.html> [<https://perma.cc/9EJV-QESF>].

implementation of President Trump’s foreign policy, the President had to enforce his U.S. Middle East policy arbitrarily.<sup>324</sup>

### 2. *Expansion of Anti-American Forces in the Middle East*

In January 2007, President Bush attempted to assassinate Soleimani, who visited Syria to attend a meeting.<sup>325</sup> However, because he feared the loss of U.S. national interests that would result from Soleimani’s assassination, President Bush did not have Soleimani assassinated, even though he received reports from spies that there was an opportunity to do so.<sup>326</sup> After Soleimani’s assassination during Trump’s administration, anti-government protests declined and anti-American protests spread in Iran and Iraq.<sup>327</sup> President Trump attempted targeted killings, asserting that these were justifiable actions against the imminent danger that Iran posed, and succeeded as a result.<sup>328</sup> However, the assassination of Soleimani resulted in the spread of anti-American protests in Iraq, where the parliament had voted unanimously in favor of U.S. troops’ withdrawal.<sup>329</sup>

### 3. *Strengthening Relations Between Russia and Iran*

Soleimani traveled to Russia frequently and helped Vladimir Putin with his strategy in the Middle East.<sup>330</sup> In particular, Soleimani’s most

---

<sup>324</sup> PETER BERGEN, *THE COST OF CHAOS: THE TRUMP ADMINISTRATION AND THE WORLD* 50–52 (2022).

<sup>325</sup> Eric Schmitt, Helene Cooper, Thomas Gibbons-Neff, Maggie Haberman & Peter Baker, *For Trump, a Risky Decision on Suleimani Is One Other Presidents Had Avoided*, N.Y. TIMES (Jan. 4, 2020), <https://www.nytimes.com/2020/01/03/world/middleeast/suleimani-iran-iraq-strike.html>.

<sup>326</sup> *Id.*

<sup>327</sup> The Associated Press, *Protests Across U.S. Condemn Action in Iran and Iraq*, NBC NEWS (Jan. 5, 2020, 7:05 PM), <https://www.nbcnews.com/news/us-news/protests-across-u-s-condemn-action-iran-iraq-n1110516> [<https://perma.cc/K32D-SX53>].

<sup>328</sup> Elliot Setzer, *White House Releases Report Justifying Soleimani Strike*, LAWFARE INST. (Feb. 14, 2020, 12:17 PM), <https://www.lawfaremedia.org/article/white-house-releases-report-justifying-soleimani-strike> [<https://perma.cc/YX2S-LYU8>].

<sup>329</sup> Megan Specia, *Iran Offers Mixed Message After Backing Away from Conflict with U.S.*, N.Y. TIMES (Jan. 9, 2020), <https://www.nytimes.com/2020/01/09/world/middleeast/us-iran-war.html> [<https://perma.cc/U3RZ-LGP7>].

<sup>330</sup> Bozorgmehr Sharafedin, *Report and Denial That Iranian Commander Met Putin in Moscow*, REUTERS (Dec. 16, 2015, 12:13 PM), <https://www.reuters.com/article/idUSKBN0TZ2SL/> [<https://perma.cc/92GY-ZV3X>]; John W. Parker, *Qassem Soleimani: Moscow’s Syria Decision – Myth and Reality*, INST. FOR NAT’L STRATEGIC STUD. (Feb. 4, 2020), <https://inss.ndu.edu/Media/News/Article/2074132/qassem-soleimani-moscows-syria-decision-myth-and-reality/> [<https://perma.cc/E998-9H7Q>].

notable strategic contribution helped Russia extend the life of Bashar al-Assad, the Syrian Shiite dictator.<sup>331</sup> Therefore, the assassination of Soleimani, who was the strongest link between Russia and Iran, could be a factor in further strengthening the relations between Russia and Iran. This is because Iran has a good opportunity to attract Russia's ability to expand its influence in the Middle East, where anti-American sentiment has been greatly heightened. Of course, Russia may not be happy with such a situation, because it would cause a serious problem with the United States. Thus, one might easily expect that Iran is likely to stretch its hand out to Russia moderately. However, it is clear that Soleimani's assassination will compromise the United States' diplomatic position in the Middle East, and Russia will occupy that gap and make the most profit.

#### *4. Attempt for Reelection by Gathering Trump Supporters*

The creation of an atmosphere of fear through the conflict with Iran may not conclusively help Trump's reelection, but it will certainly influence gathering supporters in relation to the reelection. Further, those who are not the targets of conscription will predominate in gathering support. President Trump continues to isolate Iran, in part, in an attempt to win Jewish voters, who are primarily Democratic supporters.<sup>332</sup> The President withdrew from nuclear negotiations with Iran and relocated the U.S. Embassy to Jerusalem in a similar context.<sup>333</sup>

President Trump lagged behind Hillary Clinton by nearly three million votes in the national popular vote in the 2016 presidential election.<sup>334</sup> Thus, obtaining the vote of a fraction of the four million

---

<sup>331</sup> Miriam Berger, *Qassem Soleimani Helped Shape the Brutality of Syrian War*, WASH. POST (Jan. 3, 2020, 3:43 PM), <https://www.washingtonpost.com/world/2020/01/03/qassem-soleimani-helped-shape-brutality-syrian-war/> [<https://perma.cc/72LP-M89A>].

<sup>332</sup> Alexander Griffing, *Trump's 2020 Strategy: Politicize Israel, Demonize Ilhan Omar and Keep Key Voters at Home*, HAARETZ (Mar. 21, 2019), <https://www.haaretz.com/israel-news/2019-03-21/ty-article/.premium/trump-israel-ilhan-omar-jewish-vote/0000017f-e759-d62c-a1ff-ff7be2210000>.

<sup>333</sup> Zeeshan Aleem, *Iran Says the US Is Violating the Nuclear Deal. It Has a Point*, VOX (July 21, 2017, 8:50 AM), <https://www.vox.com/2017/7/21/16003746/trump-iran-deal-zarif> [<https://perma.cc/96NB-CNVL>] (pointing out how Trump's behavior at recent summits undermines the nuclear deal's basic terms).

<sup>334</sup> Sarah Begley, *Hillary Clinton Leads by 2.8 Million in Final Popular Vote Count*, TIME (Dec. 20, 2016, 4:38 PM), <https://time.com/4608555/hillary-clinton-popular-vote-final/> [<https://perma.cc/XQB8-9H35>]; Lisa Lerer, *Clinton Wins Popular Vote by Nearly 2.9 Million*, ASSOCIATED PRESS (Dec. 23, 2016, 9:48 AM), <https://apnews.com/article/2c7a5afc13824161a25d8574e10ff4e7> [<https://perma.cc/3MBJ-T55M>].



Jews who support the Democratic Party would be very helpful to Trump. He could also attract support from nearly one million Iranian Americans by exerting pressure on Iran. Most Iranian Americans left for the United States immediately after the Iranian Revolution in 1979, and the majority of these immigrants rejected Iranian theocratic politics.<sup>335</sup> Reza Pahlevi, the grandson of the Pahlevi dynasty at the time, also lives in Maryland and has continued to put pressure on Trump to confront Iran.<sup>336</sup>

### ***G. Review of the Biden Administration’s Policy Against Iran***

#### ***1. Difficulties in the Biden Administration’s Policy Against Iran***

The Biden administration’s Middle East policy is designed to restore the Iranian Joint Comprehensive Plan of Action (which the Trump administration destroyed), to emphasize democracy, human rights, and alliance values, and support the Arab-Israeli Détente.<sup>337</sup> However, the process of implementing the policy will not be simple.<sup>338</sup>

As President Trump overused populist foreign policies to rally domestic support, anxiety among allies of the United States in the Middle East increased, and discord formed.<sup>339</sup> Allies Turkey and Qatar showed deviant pro-Russian and pro-Iranian actions, and the Trump administration turned a blind eye.<sup>340</sup> While America’s credibility plummeted, Russia led the end-of-war negotiations for the return of its sponsor, Syria, to a normal state. Russia showed off its diplomatic power by mediating the Azerbaijan-Armenia conflict.<sup>341</sup> As America’s

---

<sup>335</sup> Ali Mirsepassi-Ashtiani, *The Crisis of Secular Politics and the Rise of Political Islam in Iran*, 38 SOC. TEXT 51, 51–84 (1994).

<sup>336</sup> PHILIP K. JENKINS, *DECADE OF NIGHTMARES: THE END OF THE SIXTIES AND THE MAKING OF EIGHTIES AMERICA* 153 (2006).

<sup>337</sup> Zhiyu Jiang, *Biden’s Middle East Policy: Inheritance and Changes to Trump’s Middle East Policy*, 586 ADVANCES SOC. SCI., EDUC. & HUMANITIES RSCH. 85, 91 (2021).

<sup>338</sup> Thomas L. Friedman, *Biden Made Sure ‘Trump Is Not Going to Be President for Four More Years,’* N.Y. TIMES (Dec. 2, 2020), <https://www.nytimes.com/2020/12/02/opinion/biden-interview-mcconnell-china-iran.html> [<https://perma.cc/UZ9Z-X5S6>].

<sup>339</sup> Muhammad Nadeem Mirza et al., *Populism in the United States: Binary Constructions by Donald Trump in the Domestic and Foreign Policies*, 6 GLOBAL SOCIAL REV. 59, 66 (2021).

<sup>340</sup> *Id.*

<sup>341</sup> *Armenia, Azerbaijan Agree to Exchange POWs, Take Steps on Normalising Ties*, FR. 24 (July 12, 2023), <https://www.france24.com/en/europe/20231207-armenia-azerbaijan-to-exchange-pows-take-steps-on-normalising-ties> [<https://perma.cc/VW8V-N5UL>]; Mary Glantz, *Armenia, Azerbaijan and Georgia’s Balancing Act Over Russia’s War in Ukraine*,

regional presence rapidly weakened, America's allies Israel and Saudi Arabia developed relationships with China.<sup>342</sup> China also maintains close relations with Turkey and Iran.<sup>343</sup>

The difficulties of the Biden administration's policy toward Iran can be explained as follows. First, unlike when the Obama administration led the nuclear agreement in 2015, hardliners are currently gaining ground within Iran. Hardliners consider exporting the anti-American Islamic revolution to the region and developing nuclear weapons rather than normalizing Iran through giving up nuclear development and easing sanctions.

Second, there are few democratic countries among the Middle East allies.<sup>344</sup> In the post-COVID-19 era, if Islamic extremist terrorist organizations resurrect themselves by taking advantage of national failures in the Middle East, the United States would desperately need allies to form a united front. Upon the resurrection of those organizations, the standards for democracy and human rights values could be significantly lowered.

Third, the Abraham Accords, which were concluded through the mediation of the Trump administration in late 2020, were a diplomatic achievement that broke the inertia of focusing on regional conflict, although it did not prioritize the Palestinian issue.<sup>345</sup> Accordingly, the Biden administration will maintain the U.S. Embassy, which was

---

THE U.S. INST. OF PEACE (Mar. 15, 2022), <https://www.usip.org/publications/2022/03/armenia-azerbaijan-and-georgias-balancing-act-over-russias-war-ukraine> (pointing out Russia's role in ongoing conflicts in South Caucasus countries is a critical factor in their response).

<sup>342</sup> Hal Brands, *US Push for a Saudi-Israel Deal Is All About China*, AM. ENTER. INST. (Aug. 11, 2023), <https://www.aei.org/op-eds/us-push-for-a-saudi-israel-deal-is-all-about-china/>; Aziz El Yaakoubi & Parisa Hafezi, *Saudi Arabia Puts Israel Deal on Ice amid War, Engages with Iran, Sources Say*, REUTERS (Oct. 13, 2023), <https://www.reuters.com/world/middle-east/saudi-arabia-puts-israel-deal-ice-amid-war-engages-with-iran-sources-say-2023-10-13/>.

<sup>343</sup> WILL GREEN & TAYLORE ROTH, U.S.-CHINA ECON. & SEC. REV. COMM'N, CHINA-IRAN RELATIONS: A LIMITED BUT ENDURING STRATEGIC PARTNERSHIP 3–19 (June 28, 2021).

<sup>344</sup> David J. Kramer, *When It Comes to Democratic Transitions, the Middle East Is a Desert*, GEORGE W. BUSH PRESIDENTIAL CTR. (June 23, 2022), <https://www.bushcenter.org/publications/when-it-comes-to-democratic-transitions-the-middle-east-is-a-desert> [<https://perma.cc/JSS8-PCXZ>] (classifying the degree of democratization of individual countries in the Middle East).

<sup>345</sup> Sarah Leah Whitson, *It's Time to Scrap the Abraham Accords*, TIME (Dec. 4, 2023, 7:00 AM), <https://time.com/6339889/cancel-abraham-accords/>; AMR YOSSEF, MOD. WAR INST., THE REGIONAL IMPACT OF THE ABRAHAM ACCORDS 3–7 (2021).

moved to Jerusalem,<sup>346</sup> as part of its support for a new détente, and thus will endure Palestinian backlash and resistance. In addition, the relaxation of the alliance system with the United States in the region, the rise of Russian influence, and the strengthening of anti-American solidarity among Russia, China, Iran, and Turkey are also obstacles to the Biden administration’s Middle East policy.

Biden’s administration is saying that it will reduce the United States’ role in the Middle East and focus on the Indo-Pacific strategy in the future to check China, so it may require a full effort to implement the Middle East policy.<sup>347</sup>

## 2. Foreign Policy Focused on the Restoration of Iran’s Nuclear Agreement

The Biden administration, which began in January 2021, has made restoring the Iranian nuclear agreement that the Trump administration abolished the heart of its Middle East policy.<sup>348</sup> In an interview with the New York Times in December 2020, Biden said that the best way to stabilize the Middle East would be to restore Iran’s nuclear agreement.<sup>349</sup> Subsequently, the new administration’s diplomatic and security lines were established with the protagonists of the 2015 Iran nuclear agreement.<sup>350</sup> Secretary of State Antony Blinken, White House National Security Adviser Jake Sullivan, and Iranian Envoy Robert Malley have all played key roles in past nuclear agreements.<sup>351</sup>

---

<sup>346</sup> Alexia Underwood, *The Controversial US Jerusalem Embassy Opening, Explained*, VOX (May 16, 2018, 2:41 PM), <https://www.vox.com/2018/5/14/17340798/jerusalem-embassy-israel-palestinians-us-trump> [https://perma.cc/UP6D-HXA4]; *US to Keep Embassy in Jerusalem: Biden’s Top Diplomat*, AL JAZEERA (Jan. 20, 2021), <https://www.aljazeera.com/news/2021/1/20/us-secretary-of-state-blinken-us-embassy-to-remain-in-jerusalem> [https://perma.cc/2Q7D-3RFF].

<sup>347</sup> U.S. Inst. of Peace, *Passing the Baton 2021: Securing America’s Future Together*, YOUTUBE (Jan. 29, 2021), [https://www.youtube.com/watch?v=uY-WvawiV3I&t=802s&ab\\_channel=UnitedStatesInstituteofPeace](https://www.youtube.com/watch?v=uY-WvawiV3I&t=802s&ab_channel=UnitedStatesInstituteofPeace).

<sup>348</sup> Davin Henry, *Jake Sullivan: Minneapolis Native Among Those to Hatch Iranian Nuclear Deal*, MINNPOST (Nov. 27, 2013), <https://www.minnpost.com/dc-dispatches/2013/11/jake-sullivan-minneapolis-native-among-those-hatch-iranian-nuclear-deal/> [https://perma.cc/F7W8-R9FM].

<sup>349</sup> Friedman, *supra* note 338.

<sup>350</sup> DANIEL H. JOYNER, *The Joint Comprehensive Plan of Action and Developments since July 2015, in IRAN’S NUCLEAR PROGRAM AND INTERNATIONAL LAW: FROM CONFRONTATION TO ACCORD 221*, 221–46 (2016).

<sup>351</sup> Sullivan, Blinken and Malley Seek to Establish New Parameters for ‘Escalating Nuclear Crisis,’ JEWISH NEWS SYNDICATE (Feb. 1, 2021), <https://www.jns.org/bidens>

In January 2021, National Security Adviser Sullivan emphasized in a videoconference hosted by the U.S. Peace Institute that the restoration of the Iranian nuclear agreement was a major priority policy in the early days of the Biden administration.<sup>352</sup> In May 2018, President Trump withdrew unilaterally from the multilateral nuclear agreement, which Iran signed with six major countries (permanent members of the U.N. Security Council and Germany), and reimposed high-intensity Iranian sanctions.<sup>353</sup> He did this because the nuclear agreement at the time did not fundamentally prevent Iran from developing nuclear weapons.<sup>354</sup>

Despite fierce opposition from the international community, President Trump advanced his personal agenda to achieve solidarity among domestic supporters. However, the Biden administration's process of restoring the Iranian nuclear agreement will be difficult. This is because the Trump administration's policy of maximum pressure on Iran has reduced the position of the Iranian moderate reformists who supported the nuclear agreement with the United States significantly and strengthened the dominance of the hardline conservatives instead.

The Iranian hardliners' political interests are related not to the normalization of Iran by easing sanctions but to the expansion of the Islamic Revolution's intraregional export and expansionist strategies with an anti-American slogan.<sup>355</sup> The revolutionary garrison, a key military organization of the Iranian clerical system, has fostered and supported Lebanese Hezbollah, Yemeni Houthi rebels, Syrian and Iraqi Shiite militias, and Hamas in Gaza as pro-Iranian proxy organizations.<sup>356</sup> In January 2020, after the Trump administration killed

---

-national-security-advisor-suggests-expedited-timeline-to-rejoin-iran-nuclear-deal/ [https://perma.cc/5DND-63T7].

<sup>352</sup> U.S. Inst. of Peace, *supra* note 347.

<sup>353</sup> Bill McCarthy, *Trump's Pledge to Renegotiate Iran Deal Remains at Standstill as Election Nears*, POLITIFACT (July 15, 2020), <https://www.politifact.com/truth-o-meter/promises/trumpometer/promise/1368/renegotiate-iran-deal/> [https://perma.cc/S9C5-3NBR].

<sup>354</sup> Armin Rosen, *Iran's Nuclear Program May Have Cost the Country \$500 Billion or More*, YAHOO FIN. (June 30, 2015), <https://finance.yahoo.com/news/irans-nuclear-program-astronomical-waste-193337661.html> [https://perma.cc/7FKH-FWVR].

<sup>355</sup> KATHERINE ZIMMERMAN, AM. ENTER. INST., *YEMEN'S HOUTHIS AND THE EXPANSION OF IRAN'S AXIS OF RESISTANCE* 7–10 (2022).

<sup>356</sup> *Id.*; Allison Kaplan Sommer, *Hamas, Hezbollah and the Houthis: What Is Iran's Involvement in the Israel-Hamas War?*, HAARETZ (Oct. 22, 2023), <https://www.haaretz.com/haaretz-explains/2023-10-22/ty-article/.premium/hamas-hezbollah-and-the-houthis-what-is-irans-involvement-in-the-israel-hamas-war/0000018b-4318-d242-abef-533e2d6a0000> [https://perma.cc/WR89-XAH9].

Commander Soleimani with drones at Baghdad Airport, radicals who vowed revenge against the United States dominated within Iran.<sup>357</sup>

Since then, the competition between conservatives and the innovation in the internal power structure has disappeared, and instead, the conservative competition between the hardliners affiliated with the Revolutionary Guard and the fundamentalists of the Ulama Group has been established.<sup>358</sup> In the February general election of the same year, the military hardliners won over the fundamentalists, and the revolutionary garrison completed its internal purge, after which the hardline countermeasures against the United States were established.<sup>359</sup> In December, the Iranian Congress, dominated by radical hardliners, passed a bill to resume enrichment of twenty percent uranium with overwhelming approval, and in January 2021, Iranian authorities declared they had resumed twenty percent enrichment at the Fordow enrichment facility in line with the first anniversary of the death of Commander Soleimani.<sup>360</sup>

Iran’s hardliners have already insisted on financial compensation for the Trump administration’s destruction of the nuclear agreement and strong sanctions.<sup>361</sup> The fight for priority began ahead of the Biden administration’s negotiations to restore the nuclear agreement.<sup>362</sup> When the Obama administration led the nuclear agreement in 2015, there were many moderate-affiliated presidents, foreign ministers, and

---

<sup>357</sup> Qassim Abdul-Zahra & Zeina Karam, *Iran Vows Revenge for US Attack That Killed Powerful General*, AP NEWS (Jan. 4, 2020, 7:06 PM), <https://apnews.com/article/donald-trump-ap-top-news-tehran-international-news-iraq-e36db7c72c1adba1a6cae75091bc273d> [<https://perma.cc/WL94-YJZP>].

<sup>358</sup> Afshon P. Ostovar, *Guardians of the Islamic Revolution Ideology, Politics, and the Development of Military Power in Iran (1979–2009)*, at 26–32 (2009) (Ph.D. dissertation, University of Michigan) (on file with the University of Michigan Library).

<sup>359</sup> Patrick Wintour, *Purge of Reformists in Iran Election Could Doom Nuclear Deal, Say Diplomats*, THE GUARDIAN (Feb. 9, 2020), <https://www.theguardian.com/world/2020/feb/09/purge-of-reformists-in-iran-election-could-doom-nuclear-deal-say-diplomats> [<https://perma.cc/LJH3-2TZS>] (reporting that hardliners were poised to sweep to power after 90% of reformist candidates barred from ballot).

<sup>360</sup> Maziar Motamedi, *Iran Says It Has Resumed 20% Uranium Enrichment at Fordow Site*, AL JAZEERA (Jan. 4, 2021), <https://www.aljazeera.com/news/2021/1/4/iran-says-it-has-resumed-20-percent-uranium-enrichment-at-fordow-site> [<https://perma.cc/7SN5-C3EN>].

<sup>361</sup> Holly Dages, *Iranian Hardliners’ ‘I-Told-You-So’ Moment*, ATL. COUNCIL: NEW ATLANTICIST (May 9, 2018), <https://www.atlanticcouncil.org/blogs/new-atlanticist/iranian-hardliners-i-told-you-so-moment/> [<https://perma.cc/25XC-KLAR>].

<sup>362</sup> Michael Crowley, Farnaz Fassihi & Ronen Bergman, *Hoping to Avert Nuclear Crisis, U.S. Seeks Informal Agreement with Iran*, N.Y. TIMES (June 14, 2023), <https://www.nytimes.com/2023/06/14/us/politics/biden-iran-nuclear-program.html>.

metropolitan lawmakers in Iran. Now, the power class consists of the hardline conservatives.<sup>363</sup>

The Iranian general election in February 2020 ended with a crushing victory on the hardliners' part and a devastating defeat of moderate reformers.<sup>364</sup> Of the 290 seats, conservatives took 230 seats; reformists, 20; nonaffiliated, 35; and minority religions, 5.<sup>365</sup> In the 2016 elections, the reformists won 121 seats, and the moderate reformist Hassan Rouhani remained president.<sup>366</sup> The leading contender for the speakership in 2020 was a former commander of the Revolutionary Guard Air Force, Mohammad Bagher Ghalibaf, who won Tehran through the 2020 general election.<sup>367</sup>

Saudi Arabia, the UAE, and the Sunni representatives, who were excluded completely from the Obama administration-led nuclear agreement process, are demanding that the Arab Gulf countries participate in the process of restoring the nuclear agreement.<sup>368</sup> Israel, concerned about Iran's nuclear armament, could provoke Iran by carrying out a variety of covert operations, including the assassination of Iranian nuclear scientists and the destruction of nuclear facilities, which will heighten tensions in the region greatly. In November 2020, Mohsen Fakhrizadeh, the godfather of Iran's nuclear program, was killed near Tehran with support from Israeli intelligence.<sup>369</sup>

Another reason that the Biden administration's restoration of the Iranian nuclear agreement is not expected to go well is that the Indo-Pacific is the focus of the new government's diplomacy.<sup>370</sup> The Obama

<sup>363</sup> Patrick Wintour, *Iran Elections: Conservatives on Brink of Landslide Victory*, THE GUARDIAN (Feb. 22, 2020), <https://www.theguardian.com/world/2020/feb/22/iran-elections-conservatives-heading-for-large-majority> [<https://perma.cc/GW27-3NB4>].

<sup>364</sup> *Id.*

<sup>365</sup> Garrett Nada, *2020 Parliamentary Election Results*, U.S. INST. OF PEACE (Feb. 24, 2020), <https://iranprimer.usip.org/blog/2020/feb/24/2020-parliamentary-election-results> [<https://perma.cc/A9HB-TR2N>]; Parisa Hafezi, *Choices Curtailed: Iran's Parliamentary Election*, REUTERS (Feb. 20, 2020, 10:48 PM), <https://www.reuters.com/article/iran-election-factbox-idINKBN20F0PM> [<https://perma.cc/D39C-AL77>].

<sup>366</sup> Nada, *supra* note 365.

<sup>367</sup> *Id.* See *Islamic Parliament of Iran: Election Results*, IPU PARLINE, [https://data.ipu.org/node/79/elections?chamber\\_id=13421](https://data.ipu.org/node/79/elections?chamber_id=13421) [<https://perma.cc/7GE5-AXHB>].

<sup>368</sup> See generally INT'L CRISIS GRP., *A TIME FOR TALKS: TOWARD DIALOGUE BETWEEN THE GULF ARAB STATES AND IRAN* (2021).

<sup>369</sup> *Mohsen Fakhrizadeh, Iran's Top Nuclear Scientist, Assassinated near Tehran*, BBC NEWS (Nov. 27, 2020, 2:03 PM), <https://www.bbc.com/news/world-middle-east-55105934> [<https://perma.cc/Y8AU-FRDV>].

<sup>370</sup> Gregory Aftandilian, *Why President Biden Wants to Revive the Iran Deal*, GULF INT'L F. (Aug. 15, 2022), <https://gulff.org/why-president-biden-wants-to-revive-the-iran-deal/> [<https://perma.cc/PWV3-PRL3>].

administration’s Middle East policy, which the Biden administration takes as a sketch, also chose “offshore balancing,” and “leading from behind,” and emphasized Asia-focused strategies.<sup>371</sup>

The plan was to establish a nuclear agreement to contain hardline conservatives in Iran, empower moderate reformers, and thus bring about the balance of power in the Middle East.<sup>372</sup> This is because the stakes in China’s ability to control the Middle East, whose influence is increasing, has become a priority.<sup>373</sup> Thus, the Biden administration will avoid the United States’ active role in the Middle East and may not focus its efforts on negotiations with Iran.

The Trump administration declared a withdrawal from the Middle East and declared an arbitrary repeal of the Iranian nuclear deal.<sup>374</sup> It also pushed forward with the unilateral and sudden withdrawal of U.S. troops from the Middle East and the betrayal of friendly Kurds.<sup>375</sup> It also unilaterally demanded an increase in NATO defense contributions.<sup>376</sup> As a result, the Biden administration was forced to offer an alternative.

In the meantime, the United States will leave the Middle East step-by-step and focus on the Indo-Pacific strategy, which will put China in check.<sup>377</sup> The new government is in a hurry to negotiate the restoration

---

<sup>371</sup> HAL BRANDS, *THE LIMITS OF OFFSHORE BALANCING* 2–3 (2015).

<sup>372</sup> Kali Robinson, *What Is the Iran Nuclear Deal?*, COUNCIL ON FOREIGN RELS. (Oct. 27, 2023), <https://www.cfr.org/backgrounder/what-iran-nuclear-deal> [https://perma.cc/Q99N-H8KT].

<sup>373</sup> Burak Elmali, *How the U.S. Can Respond to China’s Engagement in the Middle East*, NEW LINES INST. (Nov. 20, 2023), <https://newlinesinstitute.org/strategic-competition/how-the-u-s-can-respond-to-chinas-engagement-in-the-middle-east/> [https://perma.cc/LP4Y-S4TE]. See generally KATARZYNA W. SIDŁO, EUR. INST. OF THE MEDITERRANEAN, *THE ROLE OF CHINA IN THE MIDDLE EAST AND NORTH AFRICA (MENA). BEYOND ECONOMIC INTERESTS?* (2020).

<sup>374</sup> Mark Landler, *Trump Abandons Iran Nuclear Deal He Long Scorned*, N.Y. TIMES (May 8, 2018), <https://www.nytimes.com/2018/05/08/world/middleeast/trump-iran-nuclear-deal.html> [https://perma.cc/KSB6-SRX2].

<sup>375</sup> Liz Sly, *This Time, the United States Is Betraying More than Just the Kurds, Allies Say*, WASH. POST (Dec. 18, 2018, 8:36 PM), [https://www.washingtonpost.com/world/middle\\_east/isis-is-not-defeated-and-will-return-if-the-us-pulls-out-says-americas-syrian-allies/2018/12/20/0e0502c2-03d5-11e9-958c-0a601226ff6b\\_story.html](https://www.washingtonpost.com/world/middle_east/isis-is-not-defeated-and-will-return-if-the-us-pulls-out-says-americas-syrian-allies/2018/12/20/0e0502c2-03d5-11e9-958c-0a601226ff6b_story.html) [https://perma.cc/2XQJ-RB6L].

<sup>376</sup> FABRICE POTHIER & ALEXANDER VERSHBOW, ATL. COUNCIL, *NATO AND TRUMP: THE CASE FOR A NEW TRANSATLANTIC BARGAIN* 4–7 (2017).

<sup>377</sup> Shin Hyeong-cheol, *War in Middle East Blows a Hole in Biden’s Strategy of Checking China, Say Korean Experts*, HANKYOREH (Oct. 13, 2023, 16:43), <https://>

of the Iranian nuclear agreement, but if results are not achieved early, the future of the agreement will not be bright.<sup>378</sup>

### 3. Arab and Israeli Policies to Support *Détente*

Despite the Trump administration's legacy, the Biden administration will support the Arab-Israeli *Détente*'s achievements in resolving regional conflicts.<sup>379</sup> In August 2020, Israel and the UAE signed the Abraham Accords with U.S. arbitration to normalize diplomatic relations; Bahrain, Sudan, and Morocco also agreed on diplomatic relations with Israel.<sup>380</sup> Israel and the UAE have agreed to cooperate in the fields of information and high-tech, as well as the development of a COVID-19 vaccine.<sup>381</sup>

The Abraham Accords do not address the Palestinian issue, the core of the Arab-Israeli conflict, as a priority, but they are considered a diplomatic achievement that breaks the long-standing inertia of the conflict.<sup>382</sup> In February 2021, U.S. Secretary of State Blinken instructed Iranian Envoy Malley to form a negotiation team that will restore the nuclear agreement and include a policy to support Arab and Israeli *Détente*.<sup>383</sup>

english.hani.co.kr/arti/\_edition/e\_national/1112031.html [https://perma.cc/EC9X-XMQT] (S. Kor.).

<sup>378</sup> See generally FREEDOM HOUSE, FREEDOM IN THE WORLD 2020 (Sarah Repucci et al. eds., 2020).

<sup>379</sup> Shibley Telhami, *Biden's Dangerous Stance on the War in Israel and Gaza*, BROOKINGS (Oct. 27, 2023), <https://www.brookings.edu/articles/bidens-dangerous-stance-on-the-war-in-israel-and-gaza/> [https://perma.cc/M4VC-BFCR]; Hesham Youssef, *10 Things to Know: Biden's Approach to the Israeli-Palestinian Conflict*, U.S. INST. OF PEACE (June 10, 2021), <https://www.usip.org/publications/2021/06/10-things-know-bidens-approach-israeli-palestinian-conflict> [https://perma.cc/N7VB-B6GC]; Ellen Knickmeyer, *Biden Didn't Make Israeli-Palestinian Talks a Priority. Arab Leaders Say Region Now Paying the Price*, ASSOCIATED PRESS (Oct. 17, 2023, 1:17 PM), <https://apnews.com/article/israel-palestinian-amas-peace-agreement-war-d930f103b33a4b1e40dd1da5d9c8b05b> [https://perma.cc/P73A-US8X].

<sup>380</sup> Joel Singer, *The Abraham Accords: Normalization Agreements Signed by Israel with the U.A.E., Bahrain, Sudan, and Morocco*, 60 I.L.M. 448, 448–63 (2021).

<sup>381</sup> Jeffrey Heller, *Israel, UAE to Cooperate in Fight Against Coronavirus*, REUTERS (June 26, 2020, 8:33 PM), <https://www.reuters.com/article/us-health-coronavirus-israel-gulf-idUSKBN23W2UJ/>.

<sup>382</sup> Naomi Chazan, *The Price of Failure: Future Directions for the Israeli-Palestinian Peace Process*, in RESOLVING THE ISRAELI-PALESTINIAN CONFLICT 9–21 (Moises F. Salinas & Hazza Abu Rabi eds., 2009); Alon Ben-Meir, *The Abraham Accords' Implications for the Israeli-Palestinian Conflict*, ALON BEN-MEIR (June 24, 2022), <http://alonben-meir.com/writing/the-abraham-accords-implications-for-the-israeli-palestinian-conflict/> [https://perma.cc/Q6J5-9ZWP].

<sup>383</sup> Sullivan, *Blinken and Malley Seek to Establish New Parameters for 'Escalating Nuclear Crisis'*, *supra* note 351.



**IV**  
**UNMANNED AERIAL VEHICLE TARGETED KILLING PRACTICE  
IN KOREA**

The legitimacy of targeted killings by UAVs is an issue that is being hotly debated internationally.<sup>384</sup> In the northern part of the Korean peninsula, a premodern dynastic power that completely ignores the human rights of the people is firmly established,<sup>385</sup> and many people call for the destruction of this regime through a decapitation operation.<sup>386</sup> Therefore, the discussion about the possibility of eliminating powerful figurehead Kim Jong Un by UAVs is a legal debate that needs to be thoroughly reviewed.

***A. The Legal Basis for UAV Targeted Killing***

*1. Implementation by the State*

*a. Necessity for Consent from the Relevant Country*

The act of violating the sovereignty of other countries is, of course, not permitted under international law.<sup>387</sup> Invading another country’s territory—such as crossing the border or using force therein—violates the country’s sovereignty and independence and is a prohibited act.<sup>388</sup> These prohibited acts comply with the principle of mutual inviolability

---

<sup>384</sup> *Drone Wars: The Constitutional and Counterterrorism Implications of Targeted Killing*, *supra* note 106. See also Jaume Saura, *Implications of the Use of Drones in International Law*, INT’L CATALAN INST. FOR PEACE: PEACE IN PROGRESS (Feb. 2014), <https://www.icip.cat/perlapau/en/article/implications-of-the-use-of-drones-in-international-law/> [https://perma.cc/E8AZ-A595].

<sup>385</sup> See Special Rapporteur on the situation of human rights in the Democratic People’s Republic of Korea, *Situation of human rights in the Democratic People’s Republic of Korea (Advance Unedited Version)*, 3–7, U.N. Doc. A/78/526 (Oct. 12, 2023).

<sup>386</sup> Alexander Gillespie, *Assassinating Kim Jong-Un Could Go So Wrong*, AL JAZEERA: OPINION (Oct. 22, 2017), <https://www.aljazeera.com/opinions/2017/10/22/assassinating-kim-jong-un-could-go-so-wrong> [https://perma.cc/P96E-HR5V].

<sup>387</sup> Heath Pickering, *Why Do States Mostly Obey International Law?*, E-INT’L RELS. (Feb. 4, 2014), <https://www.e-ir.info/2014/02/04/why-do-states-mostly-obey-international-law/> [https://perma.cc/9SD8-2J68]. See also John B. Bellinger III, *How Russia’s Invasion of Ukraine Violates International Law*, COUNCIL ON FOREIGN RELS. (Feb. 28, 2022), <https://www.cfr.org/article/how-russias-invasion-ukraine-violates-international-law> [https://perma.cc/RW2A-QXRS].

<sup>388</sup> Zakaria Daboné, *International Law: Armed Groups in a State-Centric System*, 93 INT’L REV. RED CROSS 395, 395–400 (2011).

in Article 2, paragraph 4 of the U.N. Charter,<sup>389</sup> and paragraph 7 of the same article establishes the U.N.'s duty not to interfere with the jurisdiction of independent states.<sup>390</sup> However, exceptional cases in which Korea may invade other countries' territories and use force within its territories involve obtaining permission from the Security Council under Article 39 of the U.N. Charter: violation of neutrality laws, consent, and the right to self-defense.<sup>391</sup> Therefore, it is necessary to review whether UAVs' attack strategy carried out outside the region requires the consent of the relevant country and the exercise of the right of self-defense against nonstate actors.

In accordance with the principle of nonintervention in the domestic affairs of Article 2, paragraphs 1 and 7 of the U.N. Charter, when a country intervenes in the affairs of another, that country's consent is required.<sup>392</sup> If the state has given consent for another state's involvement, the use of force must be based upon the fact that the consent is justified.<sup>393</sup> Accordingly, for the relevant country's consent to be legitimate, it must be made subjectively.<sup>394</sup>

*b. Whether Nonstate Actors Can Exercise Their Right to Self-Defense*

If another country invades Korea, whether counterattacks according to the right to self-defense can be used against nonstate forces must be reviewed. Article 51 of the U.N. Charter on the exercise of the right to self-defense does not stipulate that only a state can exercise the right of self-defense, and the place is not stipulated to be only within the

---

<sup>389</sup> U.N. Charter art. 2, ¶ 4 (“All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any other state or in any other manner incompatible with the purposes of the United Nations.”).

<sup>390</sup> U.N. Charter art. 2, ¶ 7 (“Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of compulsory measures under Chapter 7.”).

<sup>391</sup> U.N. Charter art. 39, ch. VII (“The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.”).

<sup>392</sup> See U.N. Charter art. 2, ¶¶ 1, 7.

<sup>393</sup> Ashley S. Deeks, *Consent to the Use of Force and International Law Supremacy*, 54 HARV. INT'L L.J. 1, 15–20 (2013).

<sup>394</sup> Kyungsoo Jung, *Bukane Daehan Indojeok Gaeibui Jeongdangseong [The Legitimacy of Humanitarian Intervention in North Korea]*, 25 MINJUBEOPAK [DEMOCRATIC L. STUD.] 130 (2004) (S. Kor.).

territory of the country concerned.<sup>395</sup> In particular, Article 51 of the U.N. Charter stipulates that an armed attack by another country against a member state of the U.N. is not necessarily a requirement for a state act in self-defense.<sup>396</sup>

As awareness of terrorist incidents increased greatly after the 9/11 attacks, various discussions arose about the definition of armed attack, including the subject of the right to self-defense.<sup>397</sup> The accumulation of events theory<sup>398</sup> has been considered an argument for the right to preventive self-defense since the 1980s and was reexamined after the 9/11 attacks.<sup>399</sup> In 2011, John Brennan, director of the CIA, advocated that the concept of “imminent” in “imminent threat” should be interpreted broadly, reflecting the current situation in which technology is developing rapidly.<sup>400</sup>

## 2. Action Against Terrorist Groups

### a. Argument that the Actions of a Terrorist Group Are Attributable to the State

If it is revealed that a terrorist group clearly belongs to a country, the victim country can exercise its right to self-defense against that country by applying the right of self-defense, without consent.<sup>401</sup> Countries such as Pakistan, where drone strikes have been carried out, are cases

---

<sup>395</sup> INSEOP JEONG, SINGUKJEBEOP GANGUI [LECTURE ON NEW INTERNATIONAL LAW] 1076–77 (2016) (S. Kor.).

<sup>396</sup> *Id.* at 1077.

<sup>397</sup> See generally Carsten Stahn, *Terrorist Acts as “Armed Attack”: The Right to Self-Defense, Article 51 (½) of the UN Charter, and International Terrorism*, FLETCHER F. WORLD AFFS., Summer/Fall 2003, at 35, 35–54.

<sup>398</sup> With respect to the presence or absence of an armed attack, even if an act of aggression does not reach the level of an armed attack immediately, if the attack continues in the future, it is considered an “armed attack” that is subject to the right of self-defense. See Seongho Je, *9.11 Tereosageone Daehan Gukjebeopjeok Daeung* [International Legal Response to the 9/11 Terror Incident], 47 GUKJEBEOPAKNONCHONG [J. INT’L L.] 1, 213 (2002) (S. Kor.).

<sup>399</sup> Stéphanie Bellier, *Unilateral and Multilateral Preventive Self-Defense*, 58 ME. L. REV. 507, 514–17 (2006).

<sup>400</sup> JACLYN TANDLER, KNOWN AND UNKNOWN: PRESIDENT OBAMA’S LETHAL DRONE DOCTRINE 2 (2013).

<sup>401</sup> See Michael N. Schmitt, *Counter-Terrorism and the Use of Force in International Law*, GEORGE C. MARSHALL EUR. CTR. FOR SEC. STUD. (Jan. 2002), <https://www.marshallcenter.org/en/publications/marshall-center-papers/counter-terrorism-and-use-force-international-law/counter-terrorism-and-use-force-international-law> [https://perma.cc/9PBU-DXSU].

in which acts of terrorist groups belong to the state.<sup>402</sup> To exercise the right of self-defense against such nonstate actors, the use of force outside the border without the consent of the relevant state or the approval of the Security Council becomes illegal under international law.<sup>403</sup> Therefore, a country that intends to use force must obtain that country's consent, and it can use force only within the scope of that consent. Article 8 of the Draft Articles on Responsibility of States for International Wrongful Acts stipulates that when an agency is under the direction, control, or supervision of a state, it is in effect considered an agency of that state.<sup>404</sup>

Even in U.N. Security Council Resolution 1368, a resolution established immediately after the 9/11 attacks, it was clearly stated that activities such as supporting, organizing, and providing shelter for terrorist groups were illegal acts and were the responsibility of the state.<sup>405</sup> However, even when the right to self-defense is exercised against a country, it is necessary for the terrorist group's attack to be imminent and substantial, and the principle of necessity and proportionality must be observed.<sup>406</sup> Unlike the Taliban-related government in the case of Afghanistan, a new government has been established and is responding with force to terrorist groups in alliance with the United States according to subjective consent.<sup>407</sup>

*b. Argument that the Actions of a Terrorist Group Are Not Attributable to the State*

In some cases, there is no relationship between the country in which the terrorist group is based and the terrorist group itself. If force is used against the terrorist group, it will of course affect the base country as well. A representative case is the United States' use of force against al-Qaeda in Germany, a group that the German government did not

---

<sup>402</sup> Elena Chachko & Ashley Deeks, *Which States Support the 'Unwilling and Unable' Test?*, LAWFARE (Oct. 10, 2016, 1:55 PM), <https://www.lawfaremedia.org/article/which-states-support-unwilling-and-unable-test> [<https://perma.cc/4FQU-9GM8>]. See also Murphy, *supra* note 48, at 703–09; Patrick B. Johnston & Anoop K. Sarbahi, *The Impact of US Drone Strikes on Terrorism in Pakistan*, 60 INT'L STUD. Q. 203, 203–19 (2016).

<sup>403</sup> JEONG, *supra* note 395, at 1092.

<sup>404</sup> *Id.* at 399.

<sup>405</sup> S.C. Res. 1368, ¶ 3 (Sept. 12, 2001).

<sup>406</sup> Wood, *supra* note 200, at 357–58.

<sup>407</sup> Ryan T. Williams, *Dangerous Precedent: America's Illegal War in Afghanistan*, 33 U. PA. J. INT'L L. 563, 566 (2011).

support.<sup>408</sup> The condition that applies when the acts of the terrorist group are not those of the state is that if the damage attributable to the terrorist group’s use of force is known in advance, all necessary measures must be taken to prevent it.<sup>409</sup> If such efforts fail to eliminate terrorist groups, it is necessary to respond to them in cooperation with other countries to comply with the duty to prevent terrorism under international law.<sup>410</sup>

Nevertheless, there is much discussion about the use of force against terrorist groups in countries with which they are not associated.<sup>411</sup> Under international law, according to Article 8 of the draft State Responsibility Act, if it is judged that the base country did not perpetrate the terrorist act because there is no connection between the unrelated base country and the terrorist group, it cannot be the state’s responsibility.<sup>412</sup> The International Court of Justice also ruled in *Democratic Republic of the Congo v. Uganda* that the right of self-defense against a state cannot be exercised if the relationship between the base state and the nonstate actor is not proven.<sup>413</sup> Accordingly, if the originating country was not involved in the terrorist act, then the state does not bear responsibility.<sup>414</sup> Further, from a broader perspective on the use of force outside the region, there is a view that even an unrelated base state can exercise its right to self-defense by considering it a state responsibility if it cannot take countermeasures or

---

<sup>408</sup> Joby Warrick & Walter Pincus, *U.S. More Prepared but Faces Ongoing Threat*, WASH. POST (Sept. 11, 2007), <https://www.washingtonpost.com/archive/national/2007/09/11/us-more-prepared-but-faces-ongoing-threat/6c38125f-3c4c-45c8-81f5-1e7427138c84/> [<https://perma.cc/ATN8-MSHY>].

<sup>409</sup> Wood, *supra* note 200, at 355–57. See *War and Terrorism*, COUNCIL OF EUR., <https://www.coe.int/en/web/compass/war-and-terrorism> [<https://perma.cc/V374-HJLE>]. See also U.N. Off. on Drugs & Crime, *Frequently Asked Questions on International Law Aspects of Countering Terrorism* 21 n.56 (2009), <https://www.unodc.org/documents/terrorism/Publications/FAQ/English.pdf> [<https://perma.cc/PP2J-VFQN>].

<sup>410</sup> Young Sok Kim, *Gukjebeopsang Tereohangwuiui Gyujejedowa Uri Narau Tereo Gyujebangane Gwanhan Gochal* [A Study on the Regulatory System of Terrorism Under International Law and Korea’s Counterterrorism Control Plan], 350 *INGWONGWAJEONGUI* [HUM. RTS. & JUST.] 92, 93 (2005) (S. Kor.).

<sup>411</sup> Christian J. Tams, *The Use of Force Against Terrorists*, 20 *EUR. J. INT’L L.* 359, 359–62 (2009).

<sup>412</sup> Emanuel Gross, *Trying Terrorists - Justification for Differing Trial Rules: The Balance Between Security Considerations and Human Rights*, 13 *IND. INT’L & COMP. L. REV.* 1, 95–97 (2002).

<sup>413</sup> *Armed Activities on the Territory of the Congo (Dem. Rep. Congo v. Uganda)*, *Judgement*, 2005 *I.C.J.* 116, at 5 (Dec. 19).

<sup>414</sup> Gross, *supra* note 412, at 95–97.

does not respond actively to a terrorist group.<sup>415</sup> Eric H. Holder Jr., then U.S. Attorney General, argued that the exercise of the right to self-defense is justified if the base state is “unable or unwilling” to take action against the threat of terrorism.<sup>416</sup>

### ***B. The Legitimacy of Executing UAV Targeted Killing***

Regarding the relationship between legal legitimacy and social legitimacy of targeted killings by UAVs, targeted killings can be justified as a self-defense measure to combat terrorism,<sup>417</sup> but there is room for violation of international human rights law due to civilian casualties and violation of legitimacy due to noncompliance with due process. This can be a problem and needs to be reviewed.

#### *1. Legal Legitimacy of UAV Targeted Killing*

Strategies related to using UAVs in Korea can be divided into reconnaissance and surveillance tasks, and armed attacks when they are used in actual combat.<sup>418</sup> For unarmed acts that correspond to reconnaissance and surveillance, the existing international laws and regulations on aircraft can be applied by analogy, considering the essential parts of UAVs, such as flight vehicles, reconnaissance and surveillance functions, equipment and weapon loading, and control systems.<sup>419</sup> In addition, in the case of actual combat and active armed

---

<sup>415</sup> Arnulf Becker Lorca, *Rules for the Global War on Terror: Implying Consent and Presuming Conditions for Intervention*, 45 INT’L L. & POL. 1, 39 (2012).

<sup>416</sup> Eric Holder, U.S. Att’y Gen., Dep’t of Just., Speech at Northwestern University School of Law (Mar. 5, 2012).

<sup>417</sup> Matthew T. Mueller, *The Drone Question: Legality, Ethics, and the Need to Recognize Transnational Armed Conflict*, 6–10 (May 2017) (B.A. thesis, James Madison University), <https://commons.lib.jmu.edu/honors201019/364> [https://perma.cc/G7VK-TNT2]. See also Thomas Byron Hunter, *Targeted Killing: Self-Defense, Preemption, and the War on Terrorism*, J. STRATEGIC SEC., May 2009, at 1, 7–8, 11–12.

<sup>418</sup> Kang Hyun-kyung, *Pyongyang’s Armed Drones Pose New Threat to Seoul*, KOREA TIMES (Aug. 20, 2023, 9:08 AM), [https://www.koreatimes.co.kr/www/nation/2023/11/113\\_357367.html](https://www.koreatimes.co.kr/www/nation/2023/11/113_357367.html) [https://perma.cc/3HNV-96BB]; Chae Yun-hwan, *S. Korea Launches Drone Operations Command amid N. Korean Threats*, YONHAP NEWS AGENCY (Sept. 1, 2023, 18:13), <https://en.yna.co.kr/view/AEN20230901005500325> [https://perma.cc/F8JH-WV5F].

<sup>419</sup> Mark Edward Peterson, *The UAV and the Current and Future Regulatory Construct for Integration into the National Airspace System*, 71 J. AIR L. & COM. 521, 543–44, 557 (2006).

attack, UAVs are operated as a means of self-defense against such nonstate actors as terrorist groups.<sup>420</sup>

Currently, the operation of UAVs as a countermeasure against terrorism is carried out through the use of force outside the region with the agreement between the country where the terrorist organization is based and the country that has been affected by terrorism.<sup>421</sup> However, if a state sanctions the act of a terrorist group, another state can exercise the right of self-defense against that state because the sanction is considered an act of an institution in effect.<sup>422</sup> On the other hand, if the base state is unable to control the terrorist group or has no will to resolve it, the victim state can use force within the base state’s territory to sanction the terrorist group, which is a nonstate actor, under the agreement between the two countries.<sup>423</sup> Therefore, it can be said that South Korea can also use UAV strategies by exercising its right to self-defense when the other country does not or cannot combat a terrorist group’s action.

In addition, in the case of terrorism, if the country in which the terrorist act was committed has no will to resolve the terrorism problem, based upon the legal requirement of consent, armed force may be used within the scope of consent within the originating country.<sup>424</sup> This was actually the response to an Islamic terrorist group based in Tajikistan in 1993,<sup>425</sup> countermeasures against terrorist groups based in Iraq in the 1990s,<sup>426</sup> and countermeasures against terrorist groups based

---

<sup>420</sup> Junseong Choi et al., *Saibeo Muryeokbunjaengeseo Muryeokdaeungui Hangye* [*Limits of Armed Response in Cyber Armed Conflict*], 11 BOANGONGHAGYEONGUNONMUNJI [J. SEC. ENG’G] 387, 390 (2014) (S. Kor.).

<sup>421</sup> THOMAS G. PLEDGER, THE ASS’N OF THE U.S. ARMY, THE ROLE OF DRONES IN FUTURE TERRORIST ATTACKS (2021). See also *Countering Terrorism*, NATO (last updated Dec. 5, 2023), [https://www.nato.int/cps/en/natohq/topics\\_77646.htm](https://www.nato.int/cps/en/natohq/topics_77646.htm) [<https://perma.cc/5Z9F-35B8>].

<sup>422</sup> JEONG, *supra* note 395, at 1092.

<sup>423</sup> *Id.* at 1094.

<sup>424</sup> Schmitt, *supra* note 401.

<sup>425</sup> Byeongho Lee, *Tajikiseutan Naejeonui Galdeungyoine Gwanhan Yeongu* [*Study on Conflict Factors in the Civil War in Tajikistan*], 29 JUNG DONG YEONGU [MIDDLE E. STUD.] 94, 100 (2010) (S. Kor.).

<sup>426</sup> Gibeom Park et al., *Iseullam Wollijuireul Tonghae Bon Jungdongjiyeoktereoriyeumui Ihae* [*Understanding Middle East Terrorism Through Islamic Fundamentalism*], 12 SIKYURITI YEONGU [SEC. & SEC. RSCH.] 149, 157 (2006) (S. Kor.).

in Northern Iraq and Turkey in 1996.<sup>427</sup> Thus, it can be said that the state recognizes the exercise of the right of self-defense against nonstate actors, and cooperation based upon consent to prevent acts of terrorism is becoming a practice.

## 2. *Social Legitimacy of UAV Targeted Killing*

As seen above, civic groups are raising issues about human rights violations with respect to missile attacks. UAV attacks targeted against terrorist groups, which are nonstate actors, are discussed widely now as violations of international legal obligations in the international community, and as a violation of international humanitarian law<sup>428</sup> because of harm to civilians compared to military benefits in the process of their operation. Thus, these operations are being criticized for doing so.

The United Nations and others have criticized the large-scale use of force against individuals without first guaranteeing their due process in criminal proceedings, noting that such treatment violates international human rights law. Accordingly, military strategies that use UAVs in Korea should be implemented only after going through international law and due process. In the process of operating UAVs, it is particularly necessary to respond to liability issues by transparently disclosing the designation of the target range and the specific status of civilian damage. In addition, it is necessary to ensure transparency through a thorough investigation of the UAVs' targeting strategy. Finally, even members of terrorist organizations must be guaranteed due process. It is necessary to prioritize this by using means such as arrest or detention, and to use targeted attacks as a last resort.

### ***C. Effects and Implementation Requirements of the Decapitation Operation of North Korean Leader Kim Jong Un***

Can assassination prevent larger atrocities? Can killing a country's leader be morally justified? If removing one leader could prevent the death, torture, grievous bodily harm, or lasting suffering of many innocent people, then some would view the removal of such an individual as a viable option, and one could raise the question of whether it is the best choice. If laws and moral principles allow states

---

<sup>427</sup> Bong-Kae Do, *Teoki Tereojogigui Mokpyowa Siltae Gwanhan Gochal* [A Study of Goals and Cases of Terrorist Organizations in Turkey], 13 JUNG DONG YEONGU [MIDDLE E. STUD.] 1, 14 (2013) (S. Kor.).

<sup>428</sup> See generally Michael Ramsden, *Targeted Killings and International Human Rights Law: The Case of Anwar al-Awlaki*, 16 J. CONFLICT & SEC. L. 385 (2011).



and individuals to use lethal force in self-defense, then those same principles should permit the use of lethal force to the extent required to defend other persons or states. If dictators such as Adolf Hitler or Slobodan Milošević had been removed early, millions of innocent lives could have been saved from genocide.

Before the modern era, killing tyrants emerged as an important topic in political philosophy from the perspective of the “public good.” Jean-Jacques Rousseau, an Enlightenment-era philosopher, justified the killing of tyrants from a liberal point of view.<sup>429</sup> Politics must be based upon the consent of the social contract and the general will of the people.<sup>430</sup> Tyranny is a departure from this state. Therefore, to return to the state of nature, killing tyrants is justified according to the “decrees of immutable equity.”<sup>431</sup> Philosopher John Locke also considered tyranny to be the greatest crime.<sup>432</sup> The people have the right to kill tyrants through the “supreme power” granted to them.<sup>433</sup> Nevertheless, there are still remnants of international norms that stigmatize “decapitation attacks” today. International norms that attach a negative image to killing a dictator who abuses and massacres countless civilians are quite hypocritical. That is why the dilemma of “ethical disconnection” arises.

The reason why the United States banned the assassination of foreign leaders by executive order is that successive U.S. administrations mobilized the CIA to interfere illegally in other countries’ internal affairs, such as a regime change or instigating coups.<sup>434</sup> This reasoning is still present in modern times. However, to

---

<sup>429</sup> David Lay Williams, *Modern Theorist of Tyranny? Lessons from Rousseau’s System of Checks and Balances*, 37 POLITY 443, 443–65 (2005).

<sup>430</sup> DAVID LAY WILLIAMS, ROUSSEAU’S SOCIAL CONTRACT: AN INTRODUCTION 1–25 (2014); *General Will*, in ENCYCLOPEDIA OF POLITICAL THEORY 551–53 (Mark Bevir ed., 2010).

<sup>431</sup> WILLIAMS, *supra* note 430. See also Shannon K. Brincat, ‘Death to Tyrants’: *The Political Philosophy of Tyrannicide – Part I*, 4 J. INT’L POL. THEORY 212, 221 (2008).

<sup>432</sup> MARY NYQUIST, *Locke’s “Of Slavery,” Despotical Power, and Tyranny*, in ARBITRARY RULE: SLAVERY, TYRANNY, AND THE POWER OF LIFE AND DEATH 340 (2013).

<sup>433</sup> Cary J. Nederman, *A Duty to Kill: John of Salisbury’s Theory of Tyrannicide*, 50 REV. POL. 365, 368 (1988).

<sup>434</sup> See Exec. Order No. 11905, 41 Fed. Reg. 7703 (Feb. 18, 1976). This Executive Order, issued by U.S. President Gerald Ford, prohibited any member of the U.S. government from engaging or conspiring to engage in any political assassination anywhere in the world. See also Exec. Order No. 12333, 46 Fed. Reg. 59941 (Dec. 4, 1981). The assassination of a foreign leader creates a tsunami of confusion for political reasons and

argue that tyrannical dictators such as Hitler and Kim Jong Un should be included in the scope of the prohibition of decapitation, reinforced by this practice, would amount to a dogmatic and mechanical interpretation of the norm.

According to Bynkershoek, “If we follow reason, the teacher of international law, then all means used against the enemy are lawful.”<sup>435</sup> In Walzer’s words, what is at issue here is the “moral plausibility” of the prohibition of decapitation norms.<sup>436</sup> Thus, the question he asks is whether this norm “conforms with our perception of what is right” on an intuitive level.<sup>437</sup> In short, there is no international law (including United States domestic law) that explicitly prohibits the killing of an adversary’s leader. It also raises the question of why the “right thing” (eliminating a dictator who causes the death of countless innocent people) should be thwarted by the international norm of banning decapitation operations. However, in reality, there are many cases where the exact opposite has been practiced.

For example, Nicolae Ceaușescu ruled Romania with an iron fist as president for twenty-four years before being ousted by a popular uprising in December 1989 and sentenced to death by a military court. He was executed by firing squad along with his wife a few days later. Additionally, after Slobodan Milošević was elected President of Serbia in 1989, he carried out ethnic cleansing against Albanian Kosovar residents. After being overthrown by a popular uprising in 2000, he was arrested by Serbian police the following year, tried for war crimes in The Hague, and died in prison in 2006.

If a country’s leader, like Kim Jong Un, also serves as the supreme commander who commands the armed forces, he is considered a “legitimate military target.” Even now, the United States has retained the “counterforce” option to remove foreign leaders as a way to end hostilities early in its war plans against China and Russia.

With respect to Kim Jong Un, it is necessary to establish and implement an active decapitation operation, not just rely on simple “deterrence.” He is already committing the most heinous crime of

---

makes legal judgment impossible. Michael N. Schmitt, *State-Sponsored Assassination in International and Domestic Law*, 17 YALE J. INT’L. L. 609, 662–75 (1992) (introducing the ban on assassination, interpreted in light of U.S. practice).

<sup>435</sup> See generally Coleman Phillipson, *Cornelius van Bynkershoek*, 9 J. SOC’Y COMPAR. LEGIS. 27 (1908).

<sup>436</sup> Brian Orend, *Just and Lawful Conduct in War: Reflections on Michael Walzer*, 20 L. & PHIL. 1, 6 (2001); MICHAEL WALZER, *JUST AND UNJUST WARS* 158–210 (2d ed. 1991).

<sup>437</sup> WALZER, *supra* note 436.

human rights abuse in human history, with a tyrannical despotic regime that surpasses even the worst Roman emperor in history, or “Big Brother” in George Orwell’s *1984*.<sup>438</sup> Even more serious is the fact that Kim Jong Un is holding nuclear weapons, which have not been used since the United States dropped them on Hiroshima and Nagasaki, but could be launched at any moment. In a case study of a decapitation operations, Benjamin Jones and Benjamin Olken found that a leader’s death affected systemic change in the country’s political system.<sup>439</sup> In particular, according to them, a successful decapitation attack on a dictator increases the probability that a country will transition to democracy “substantially” by bringing about institutional changes.<sup>440</sup> This democratization appears after approximately ten years.<sup>441</sup>

The effects of killing leaders in warfare had fewer systemic consequences, as it exacerbated moderate conflicts in some cases, but the effect of promoting an early end to conflict was evident. More importantly, no evidence has been found that the leaders’ assassination sparked a new war.<sup>442</sup> If international systems and legal regimes can contribute to eliminating security threats, resulting in the peace of other states, and if more effective means of coercion are available to deter or punish such behavior, the legality, morality, and utility of decapitation operations would be superfluous.

In a world in which an effective collective security system is absent, and such dangerous weapons of mass destruction are in the hands of actors like Kim Jong Un, decapitation of such leaders would be considered an appropriate policy option. In considering the complex consequences of such policies, policymakers will need to consider ways to meet the following requirements:

---

<sup>438</sup> Big Brother represents a person in power, stemming from a fictional and symbolic character in George Orwell’s novel, *1984*. David Aaronovitch, *1984: George Orwell’s Road to Dystopia*, BBC NEWS (Feb. 8, 2013), <https://www.bbc.com/news/magazine-21337504> [<https://perma.cc/A7GF-L9WD>].

<sup>439</sup> Benjamin F. Jones & Benjamin A. Olken, *Hit or Miss? The Effect of Assassinations on Institutions and War*, AM. ECON. J., July 2005, at 55.

<sup>440</sup> *Id.* at 84.

<sup>441</sup> *Id.*

<sup>442</sup> Laurent Belsie, *Do Assassinations Change History?*, NBER (Mar. 2008), <https://www.nber.org/digest/mar08/do-assassinations-change-history> [<https://perma.cc/742J-YYFG>]. See also Stephen Jackson, *An Imperfect War: The Legality of the ‘Soleimani Strike’ and Why the Biden Administration Should Adopt Its Precedent for Future Operations in Iraq and Afghanistan*, 11 PENN. ST. J.L. & INT’L AFFS. 34, 49–50 (2023).

1. *Target*: Decapitation is limited strictly to the highest-ranking person in the regime who is responsible for the threat.
2. *Degree of certainty*: Relies on the availability of accurate and reliable intelligence and information that provides a high degree of certainty about the threat actor's identity.
3. *Probability of success*: It must be the case that the leader's elimination attempt is successful, that his elimination remedies the problem, and will reduce the harm to civilians more than any other course of action.
4. *Necessity for action*: It must be the case that no other reasonable and less extreme measures exist to prevent the regime's leader from taking action.
5. *Proportionality of action*: The removal of a regime leader is proportionate to the threat that he poses, and his removal is less destructive than the use of conventional warfare to address that threat.
6. *Prudence of action*: It must be the case that eliminating the responsible individual will prevent the death of innocent victims.

Among these requirements, those that are problematic are information certainty (#2) and success potential (#3). If this is the premise, there are no obstacles in the way of Kim Jong Un's decapitation operation. Rather, what matters most is the political will, not the action's lawfulness and viability. When the North Korean nuclear crisis has crossed the critical point, the operation to decapitate Kim Jong Un should be seriously considered as a useful policy alternative to resolve the crisis, given the satisfaction of the requirements above. The likelihood that the North Korean government will transition to democracy by removing Kim Jong Un can also be increased greatly. However, in addition to meeting these requirements, the following items should be considered first for the effective execution of the operation to decapitate Kim Jong Un.

First, the operation to decapitate Kim Jong Un must be distinguished clearly from immoral and illegal acts, such as assassination-specialized agencies or United States interference in internal affairs on the part of the CIA, which were prevalent in Italy in the fifteenth and sixteenth centuries. The international norm of prohibiting decapitation is not fixed and immutable, but a variable entity that changes in domestic and international circumstances. In particular, when signs of using nuclear weapons are clear, a decapitation operation on the North Korean leadership, including Kim Jong Un, falls under Article 51 of the U.N. Charter and constitutes a legitimate exercise of the individual country's right to self-defense.

Second, among the requirements mentioned above, it is necessary to devise measures to enhance information certainty and success potential. It is impossible to guarantee certainty and success with any precision attack. However, to improve certainty and the potential for success, by using reconnaissance assets such as satellites, UAVs, and HUMINT that can detect Kim Jong Un’s movements, and means of infiltration with terrain tracking and radar avoidance functions, such as the MC-130 transport aircraft or the improved MH-47, are required.

Third, the ROK-U.S. joint training for decapitation operations should be strengthened. It is known that the ROK and U.S. forces have already conducted a “North Korean War Leadership Elimination Training” jointly with the U.S. Navy Special Forces, which were involved in the operation to kill Osama bin Laden in 2011 during joint training.<sup>443</sup> Prior to the Korean Three-Axis systems, composed of the Korean Air and Missile Defense (KAMD), the Kill Chain, and the Korea Massive Punishment and Retaliation (KMPPR) campaign, which are expected to take a considerable amount of time to complete, the creation and operation of a unit dedicated to the decapitation operation of the Korean military through intensive combined training is necessary to increase the military’s skills.

Lastly, according to the principle of selection and concentration, together with psychological warfare, information superiority, and precision strike capabilities, the decapitation operation must be deployed as an asymmetric means against North Korea. North Korea opposes a decapitation operation strongly, referring to it as the “height of hostile acts.”<sup>444</sup> Violent opposition is an expression of fear. Therefore, a decapitation attack can be considered a military method with high cost-effectiveness that can strike the vital points the enemy fears accurately. It is also a way to achieve two benefits with one action that can accelerate the transition of North Korea to democracy through the removal of Kim Jong Un.

---

<sup>443</sup> JOSEPH S. BERMUDEZ JR., *North Korea’s Development of a Nuclear Weapons Strategy*, in NORTH KOREA’S NUCLEAR FUTURES SERIES 7, 17 (2015).

<sup>444</sup> *Talk of Kim Jong Un “Beheading Mission” Fans Korea Tension*, CBS NEWS (Mar. 8, 2016, 11:34 AM), <https://www.cbsnews.com/news/north-korea-south-korea-talk-of-beheading-strike-option-fans-tension/> [<https://perma.cc/K24Y-RD8S>].

### CONCLUSION

Combat strategies in modern warfare based on unmanned automated systems are attracting attention. In particular, the UAV targeted killing strategy implemented recently is being considered a means to reduce the defense budget and gain an advantage in psychological warfare by eliminating the enemy's leader before a full-scale war. UAVs' targeted killing strategy has not been discussed to a great extent in Korea, but it is necessary to consider introducing it as a strategy to keep peace on the Korean Peninsula. This is because the United States and Europe already consider this strategy an important policy to protect one's country. Therefore, as it is necessary to discuss strategies based upon such an unmanned, automated system, and to dispel concerns about certain problems, transparency and legitimacy must be secured.

The U.S. strategy of targeted killing has proven to dramatically reduce terrorist groups' activity and has given the United States an advantage in warfare. However, there are also formidable side effects, such as the fact that innocent civilians can be killed by missile attacks, misfires can be fired against the national army, and pilots can experience psychological combat stress. Despite these problems, the U.S. drone-targeted killing strategy is justified because it expresses respect for human rights, civil liberties, and the execution of the rule of law, and it guarantees national security, as it is a transparent procedure to protect the core values of democracy. However, not all citizens consider this killing strategy justified. Therefore, we believe that it is necessary to enact an "Unmanned Aerial Vehicle Targeted Killing Guideline" to secure the strategy's legitimacy.

The core of this guideline is the strict implementation of the UAV killing strategy and a plan to prevent abuse; further, this guideline is a measure to secure public trust. In addition, it can be said that clearly stating the advantages and disadvantages of the UAV targeted killing strategy is the best way to secure legitimacy and transparency. In this guideline, we believe that it is necessary to obtain the consent of the National Assembly, rather than allow the President to decide to implement a strategy arbitrarily, as in the United States. Thus, we believe that if the National Assembly can control the implementation of the targeted killing strategy by monitoring the government's arbitrary execution, it will gain more public trust.

As we have seen thus far, there is no international law that prohibits the use of drones themselves. This is because they are nothing more than carriers on which equipment can be mounted and are value-neutral

objects that can prevent threats to our lives. Even drones that can kill opponents are not illegal as weapons able to mitigate armed conflict damage as long as they conform to relevant international law. The question is whether the drones are being used in this way. In particular, the use of drones, which can take lives, is of great concern to the international community. The right to life is one of the most important rules in international human rights law. Exceptions to this rule are recognized in individual self-defense to protect one’s life or the lives of others in peacetime and, in the case of fighting, in accordance with international humanitarian law in times of armed conflict. If these exceptions do not apply, it is a violation of the right to life and of international law. In addition, even if these exceptions do not result in a violation of the right to life (a violation of international human rights law), the use of armed drones abroad may also violate other international laws (armed acts).

Drones have a strong image of new technology, so they may give the impression that the regulation of international law is beyond reach, but at least as far as the state is concerned, this existing framework of international law can cope with regulating armed drones. What matters more is that the use of drones according to these international laws is not explained fully and transparently. New regulations are also being considered from the perspective of LAWS and export management. However, it can be said that the emphasis on securing transparency also indicates the severity of this problem. With respect to restrictions on nonstate actors, such as terrorists’ use of drones, it is undeniable that international regulations are insufficient. Not limited to the drones’ problems, and unless they are used in armed conflict, their actions are subject largely to the regulations of the country in which they are located. Difficulties in international regulation that transcend the state are also marked in this matter, and the challenge to the international community continues.

Concerns have emerged since the first drone attack was conducted on North Korea’s nuclear missile facilities, after which North Korea continued nuclear testing, and since the MQ-9 Reaper drone was used to assassinate Soleimani, commander of the Iranian Revolutionary Guard’s elite troops. Legal issues related to permits have emerged as well. Assaults or preemptive attacks by state agencies against people or facilities that threaten the safety of the country are referred to as

targeted attacks and are gaining attention as a new means of force in the international community, including the United Nations.

Preemptive strikes based upon anticipatory self-defense are permitted only in proportion to the extent to which the threat of an enemy's attack is imminent and there is no other means of defense under international law. Since the 9/11 terror attacks in 2001, it has been argued that the enemy's ability and goals should be considered more important criteria than the impending attack. The use of UAVs, which began in secret spy missions, not military operations, was discussed in the 9/11 situation as a means of war, and their status and legitimacy were debated. The designation of the responsibility for targeted killing is a problem because of the unification of the military and CIA, and a plan to resolve it is required. There is a case in which a lawsuit was filed seeking the disclosure of information on the killing of Anwar al-Awlaki and the DOJ's Office of Legal Counsel memo.<sup>445</sup>

With respect to the review of the illegality of preemptive drone strikes, as targeted killing operations are carried out in accordance with the basic principles of war law, it is not an international illegal act, but an administrative order that prohibits government agencies' assassination as a legal act for the state. According to the position that it does not violate such federal laws as Executive Order 12333, targeted killings executed by the state as a last resort to protect its citizens will be recognized to have exercised a legitimate violence monopoly.<sup>446</sup> Finally, with respect to targeted killing, it is necessary to comply with the principles of due process and prepare a plan to clarify who is responsible for such actions.

---

<sup>445</sup> Barry Sullivan, *Reforming the Office of Legal Counsel*, 35 NOTRE DAME J.L. ETHICS & PUB. POL'Y 723, 725–26 (2021).

<sup>446</sup> See generally Michael E. Newell, *How the Normative Resistance of Anarchism Shaped the State Monopoly on Violence*, 25 EUR. J. INT'L RELS. 1236 (2019).