

Killing Them Softly: Drone Regulation through Soft Law

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I. INTRODUCTION		311
II. EVOLUTION OF THE DRONE		312
A. <i>Drone Development Through the 20th Century</i>		312
B. <i>Role of Drones Goes from Exploration to Deadly</i>		313
C. <i>Drone Use Outside the United States</i>		313
III. CURRENT INTERNATIONAL LEGAL FRAMEWORK		314
A. <i>UAVs and Jus ad Bellum Law</i>		314
B. <i>Who Is Responsible for a Drone Strike?</i>		316
IV. DRONES AND INTERNATIONAL HUMANITARIAN LAW (IHL)		316
A. <i>Distinction</i>		317
B. <i>The Rule of Proportionality</i>		320
C. <i>Unnecessary Suffering</i>		321
D. <i>Military Necessity</i>		322
E. <i>Summary</i>		322
V. DRONES AND INTERNATIONAL HUMAN RIGHTS LAW (IHRL)		322
A. <i>Transfer/Sale of Drones, An Example of Soft Law Success</i>		324
VI. ACCOUNTABILITY		326
VII. SOLUTION		329
A. <i>Soft Law</i>		329
B. <i>Conclusion</i>		330

I. INTRODUCTION

In the early hours of January 3, 2020, the United States, under orders from President Trump, executed a drone strike near Baghdad, Iraq, killing 10.¹ The target of the strike was Iranian General Qasem Soleimani, widely regarded as

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¹ Zachary Cohen et al., *U.S. Drone Strike Ordered by Trump Kills Top Iranian Commander in Baghdad*, CNN (Jan. 4, 2020), <https://www.cnn.com/2020/01/02/middleeast/baghdad-airport-rockets/index.html>; see also Tom O'Connor & James LaPorta, *Trump Orders US Drone Strike, Killing Iranian General Who 'Plans to Attack' Americans*, NEWSWEEK (Jan. 2, 2020), <https://www.newsweek.com/iraq-militia-official-killed-us-iran-tensions-1480181>.

the second most powerful person in Iran behind the Ayatollah Ali Khamenei.² Soleimani was the head of the Iranian Revolutionary Guard Corps Quds Force and widely regarded as the architect of Iran's proxy conflicts throughout the Middle East.³ While this strike stoked fears of reigniting another conflict in the Middle East, it also led to questions as to the legal oversight of drones as they become more integral to modern militaries.

First, this piece addresses the history and evolution of the drone, and the ways the role changed from a tool for reconnaissance to an indispensable deadly weapon of war. Second, this piece examines the current international legal patchwork that governs the use of drones. Third, this piece examines drones under humanitarian law and explores the issue of countries transferring drones to one another. Finally, the piece explores the idea of using soft law to fill in the gaps left in the current international legal framework and keep up with the rapid development of drone technology.

It is the contention of this piece that the continued rapid development of drone technology is evolving too fast for traditional international law to address it, and therefore more malleable "soft law" regulations should be used in its place to address drone technology in the theatre of combat.

II. EVOLUTION OF THE DRONE

This section will explore the early uses of drones, and their rapid development and increased use throughout the major wars of the 20th Century. Then it will look at the point at which the drone moved from a tool for reconnaissance to a weapon utilized to destroy enemy objectives. Finally, this section will explore how integral drones are to the militaries that currently possess drone technology.

A. Drone Development Through the 20th Century

The concept behind drones has been in existence since at least the American Civil War with armies using gas-filled balloons to fly overhead and scout enemy positions and geographical conditions ahead.⁴ This concept evolved with technology as airplanes took over the same duty of scouting in World War II and incorporated the taking of photographs of the enemy positions for later use.⁵ Still searching for better ways to accomplish their mission, military engineers moved beyond the constraints of machines piloted by a person to spy satellites.⁶ However satellites were much too expensive to

² *Id.*

³ *Id.*

⁴ Mark Bowden, *How the Predator Drone Changed the Character of War*, SMITHSONIAN (2013), <https://www.smithsonianmag.com/history/how-the-predator-drone-changed-the-character-of-war-3794671/>.

⁵ *See id.*

⁶ JOHN EDWARD JACKSON ET AL., ONE NATION, UNDER DRONES: LEGALITY, MORALITY, AND UTILITY OF UNMANNED COMBAT SYSTEMS 8 (2018).

mass produce, few in number, and not always available when needed.⁷ The United States military poured money into the development of an effective scouting tool and came up with the drone that we know of today.⁸ Named Unmanned Aerial Vehicles (UAVs), these machines were equipped with video cameras and provided real time movements of the enemy, quickly becoming the preferred scouting tool of the U.S. military.⁹ The UAVs were cheaper than other effective observation technologies such as spy satellites, able to photograph smaller objects than the satellites, and could be deployed where they were needed, for however long they were needed, unlike piloted vehicles.¹⁰

B. Role of Drones Goes from Exploration to Deadly

Following the terrorist attacks of September 11, 2001, the role of the UAV changed and, instead of carrying video cameras, they were now equipped with Hellfire missiles.¹¹ The United States turned to drones to track and destroy individual terrorists; and in its effort to fight the war on terror, another fundamental change was made to add drones to “the arsenal of democracy.”¹² This quickly became the preferred method of attack for the U.S. military. It gave the United States the ability to attack its enemies without deploying troops and minimize the risk of casualties. The program began under former President George W. Bush, and the utilization of drone strikes was drastically increased under the Obama administration and has continued to be exacerbated under the Trump administration.¹³

C. Drone Use Outside the United States

While the United States was the catalyst for the creation and implementation of drone technology in the military, it is no longer the only nation that has the ability to use them. So far only nine countries have used

⁷ Bowden, *supra* note 4.

⁸ *See id.*

⁹ *Id.*

¹⁰ JACKSON, *supra* note 6, at 8.

¹¹ Bowden, *supra* note 4.

¹² JACKSON, *supra* note 6, at 7.

¹³ Jessica Purkiss & Jack Serle, *Obama's Covert Drone War in Numbers: Ten Times More Strikes Than Bush*, BUREAU OF INVESTIGATIVE JOURNALISM (Jan. 17, 2017), <https://www.thebureauinvestigates.com/stories/2017-01-17/obamas-covert-drone-war-in-numbers-ten-times-more-strikes-than-bush>; *see also* Spencer Ackerman, *Trump Ramped Up Drone Strikes in America's Shadow Wars*, DAILY BEAST (Nov. 26, 2018), <https://www.thedailybeast.com/trump-ramped-up-drone-strikes-in-americas-shadow-wars>; *see generally* Allison Jackson, *If Obama apologized for 1 civilian drone victim every day, it would take him 3 years*, WORLD <https://www.pri.org/stories/if-obama-apologized-1-civilian-drone-victim-every-day-it-would-take-him-3-years> (last visited May 5, 2021); *see also* Maggie Michael & Maad al-Zickry, *Hidden Toll of US Drone Strikes in Yemen: Nearly a Third of Deaths are Civilians, Not al-Qaida*, MILITARY TIMES (Nov. 14, 2018), <https://www.militarytimes.com/news/your-military/2018/11/14/hidden-toll-of-us-drone-strikes-in-yemen-nearly-a-third-of-deaths-are-civilians-not-al-qaida/> (Showing that drones' inability to discriminate between combatants and civilians is a persisting issue that spans across multiple presidencies).

armed drones in combat (United States, United Kingdom, Israel, Pakistan, Iraq, Nigeria, Iran, Turkey, and Azerbaijan) but questions have already been raised about the humaneness of the use of drones, and if existing law is sufficient to govern them.¹⁴ While a limited number of countries have used them to attack a target, drones are quickly becoming commonplace among world militaries. It is estimated that 80 countries have UAV systems in their military, and 65 countries produce and export them.¹⁵ Currently, there are no laws or treaties that specifically pertain to drones; instead, it is covered by a patchwork of legislation that covers humanitarian law and the Law of Armed Conflict, among other things. In fact, drones even seem to attack the accepted core meaning of several legal definitions governing the law of war.¹⁶

III. CURRENT INTERNATIONAL LEGAL FRAMEWORK

The following section will walk through the current legal patchwork which addresses drone use in the international community. It will begin with *Jus as Bellum* law, which is a set of criteria that determines the legality of acts of war. Then it will move on to the issue of who is responsible when a drone kills someone.

A. UAVs and *Jus ad Bellum* Law

“*Jus ad Bellum* ... is the body of international law that determines the legality of use of force by one state against or on another state’s territory.”¹⁷ The United Nations (UN) Charter is the foundational document for modern *Jus ad Bellum* law and still generally governs to this day.¹⁸ The most significant portion of the UN Charter is Article 2(4) which states, “All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.”¹⁹ The International Court of Justice (ICJ) has described this as the “cornerstone” of the UN Charter.²⁰ There are only two generally permitted exceptions to the general prohibition on inter-state use of force.²¹ The first is self-defense against

¹⁴ JACKSON, *supra* note 6, at 27.

¹⁵ *Id.*

¹⁶ Rosa Brooks, *Drones and the International Rule of Law*, 28 ETHICS & INT’L AFF. 83, 83-84 (2014).

¹⁷ STUART CASEY-MASLEN ET AL., DRONES AND OTHER UNMANNED WEAPONS SYSTEMS UNDER INTERNATIONAL LAW 62 (Sir Christopher Greenwood & Timothy L.H. McCormack eds., 2018).

¹⁸ *Id.* at 64.

¹⁹ U.N. Charter art. 2, ¶4.

²⁰ Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Judgement, 2005 I.C.J. 168, ¶ 148 (Dec. 19).

²¹ CASEY-MASLEN, *supra* note 17, at 74.

an armed attack²² and second is when force is undertaken in accordance with a UN Security Council resolution.²³

When it comes to the application of drones, countries almost always attempt to use the former exception: self-defense. The controversy does not come with the use of drones against state actors, but rather the use of drones against non-state actors. The landmark ICJ case of *Nicaragua v. United States* limits the degree to which a state can intervene against non-state actors in another state.²⁴ Despite this, it has been generally accepted that the United States would have a valid excuse of self-defense when targeting al-Qaeda post 9/11. The United States took the position that any “armed attack” grants it the inherent right of self-defense, not just attacks from other states.²⁵ This caused the United States to use the self-defense exception in some precarious areas such as when attacking other states or while applying pressure or sanctions.²⁶

The United States is not the only country that has attempted to use the self-defense justification in order to take out a non-state actor. In 2015, the United Kingdom launched its first ever drone strike outside an area of ongoing hostilities.²⁷ Reyaad Khan, a British national who left the United Kingdom to join ISIS, was assassinated by an RAF drone.²⁸ Then Prime Minister David Cameron, immediately justified his actions by emphasizing that there was a specific attack planned by Khan, leaving the United Kingdom with no alternative:

We should be under no illusion. Their intention was the murder of British citizens. So on this occasion we ourselves took action. Today I can inform the House that in an act of self-defence and after meticulous planning Reyaad Khan was killed in a precision air strike carried out on 21st August by an RAF remotely piloted aircraft while he was travelling in a vehicle in the area of Raqqah in Syria. They were Isil fighters and I can confirm there were no civilian casualties. We took this action because there was no alternative. ²⁹

²² U.N. Charter art. 51; *see also* CASEY-MASLEN, *supra* note 17, at 74.

²³ U.N. Charter art. 48, ¶1; *see also* CASEY-MASLEN, *supra* note 17, at 74.

²⁴ *Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.)*, Judgement, 1986 I.C.J. 14, ¶ 55 (June 27).

²⁵ CASEY-MASLEN, *supra* note 17, at 78.

²⁶ *Id.* at 79; *see generally* Andrew Chung, *U.S. ‘Self-Defense’ Argument for Killing Soleimani Meets Skepticism*, REUTERS (Jan. 3, 2020), <https://www.reuters.com/article/us-iraq-security-blast-legal-analysis/us-self-defense-argument-for-killing-soleimani-meets-skepticism-idUSKBN1Z301R>.

²⁷ Michael Wilkinson, *David Cameron: Britain Mounted Fatal Air Strike in Syria*, DAILY TELEGRAPH (Sept. 7, 2015), <https://www.telegraph.co.uk/news/uknews/terrorism-in-the-uk/11848600/David-Cameron-Britain-mounted-fatal-air-strike-in-Syria-live.html>.

²⁸ *Id.*

²⁹ *Id.*

Many decried the killing of Khan as an assassination, as there seemed to be little to no evidence of an imminent terrorist attack to be executed in the United Kingdom.³⁰ Despite the United Kingdom's seemingly nonsensical justifications, eventually the matter was simply dropped after the outrage died down.³¹

B. *Who Is Responsible for a Drone Strike?*

A current and continuing issue regarding international law and the use of drone strikes is the ability to assign responsibility to a person who used force. With the development of Artificial Intelligence (AI) drones are essentially autonomous now, with the ability to fly on auto-pilot and identify targets without the direct control of a human being, and by 2025 the Department of Defense expects AI technology to have advanced enough where drones will be able to "make and execute complex decisions."³² Furthermore, the Trump administration has taken steps to remove its actions and responsibilities from the public eye by rolling back the Obama Administration's requirement of reporting civilians killed by drones in non-combat areas.³³ Many countries continue to operate under the guise of self-defense.³⁴ While there is clearly a need to balance some degree of secrecy in order to protect national interests, in the words of former President Obama, "If we want other nations to use these technologies responsibly, we must use them responsibly."³⁵

IV. DRONES AND INTERNATIONAL HUMANITARIAN LAW (IHL)

A major concern with the continued use of drones has been its ability to dehumanize enemy targets.

When a drone looks at a thing, that thing has a way of looking like a target. People become silhouettes at a shooting range. Buildings look vulnerable, their roofs helplessly exposed and defenseless. Most colors disappear, and the remaining blacks, whites, and grays evacuate the scene of all human meaning.

³⁰ CASEY-MASLEN, *supra* note 17, at 85.

³¹ *Id.*; see also Parliamentary Joint Committee on Human Rights, "The Government's policy on the use of drones for targeted killing," May 2016.

³² CASEY-MASLEN, *supra* note 17, at 86.

³³ Sinead Baker, *Trump quietly rewrote the rules of drone warfare, which means the US can now kill civilians in secret*, BUS. INSIDER, (Mar. 7, 2019), <https://www.businessinsider.com/trump-executive-order-stop-reporting-civilian-drone-strike-deaths-2019-3>.

³⁴ See generally *All drone strikes 'in self-defence' should go before Security Council, argues independent rights expert*, UN NEWS (July 9, 2020) <https://news.un.org/en/story/2020/07/1068041> (stating "[s]uch a move was necessary because 'a small number of rather influential States' had sought to reinterpret the law of self-defence under Article 51 of the UN Charter").

³⁵ FRED AJA AGWU, ARMED DRONES AND GLOBALIZATION IN THE ASYMMETRIC WAR ON TERROR: CHALLENGES FOR THE LAW OF ARMED CONFLICT AND GLOBAL POLITICAL ECONOMY, 181 (2018).

What we see becomes data: body counts, damage reports, strategic value.³⁶

Drones have made it easier to dehumanize a potential target than ever before, which makes adhering to human rights law all the more important. Another body of international law which governs warfare is International Humanitarian Law (IHL), also known as the Law of Armed Conflict (LOAC). LOAC regulates the attacks on objects and individuals during an armed conflict.³⁷ The goal of LOAC is to balance the “necessities of war” and “requirements of humanity.”³⁸ The LOAC regulates, among other things, the means and methods of warfare – the weapons used and the tactics employed.³⁹ LOAC is mostly based upon the Geneva Conventions, and the Additional Protocols that have been added.⁴⁰ It also regulates the types of weapons that can be used in war, including the review of new technology.⁴¹ Weapons that cannot be directed at specific military objectives and that by their very nature violate the principle of distinction are unlawful per se.⁴² Furthermore, even if a specific type of weapon is not unlawful per se or is not specifically prohibited by particular treaties, governments may not use it improperly—in a manner that would result in unnecessary suffering or in the targeting of civilian population.⁴³ Such use is also unlawful under the relevant rules of LOAC.⁴⁴ The rules of LOAC are based on four key principles: distinction, proportionality, unnecessary suffering, and military necessity.⁴⁵ Collectively, the LOAC principles undergird the spirit and purpose of the law and drive determinations in areas such as targeting, detention, and treatment of persons.⁴⁶

A. *Distinction*

Generally considered the most important of the four principles, distinction requires that parties to an armed conflict distinguish between civilian persons

³⁶ *Id.* at 205.

³⁷ NATHALIE WEIZMANN, ARMED DRONES AND THE LAW OF ARMED CONFLICT 90 (Sir Christopher Greenwood & Timothy L.H. McCormack eds., 2018).

³⁸ *Id.*

³⁹ Vivek Sehrawat, *Legal Status of Drones under LOAC and International Law*, 5 PENN. ST. J.L. & INT'L AFF. 164, 175 (2017).

⁴⁰ LTC RYAN DOWDY ET AL., LAW OF ARMED CONFLICT DESKBOOK (5th ed. 2015), https://www.loc.gov/rr/frd/Military_Law/pdf/LOAC-Deskbook-2015.pdf.

⁴¹ *Id.* at 151 (“Legal review of new weapons is also required under AP I, art. 36”).

⁴² Oren Gross, *The New Way of War: Is There A Duty to Use Drones?*, 67 FLA. L. REV. 1, 25 (2016).

⁴³ *Id.*

⁴⁴ DOWDY, *supra* note 40, at 112.

⁴⁵ Vivek Sehrawat, *Legal Status of Drones under LOAC and International Law*, 5 PENN. ST. J.L. & INT'L AFF. 164, 175 (2017).

⁴⁶ *Id.*

and objects and military combatants and objectives.⁴⁷ The parties are only allowed to target combatants and military objectives.⁴⁸

An object is a military objective if, by its nature, location, purpose or use, it contributes effectively to the military action of the enemy and its partial or total destruction, capture, or neutralization, in the circumstances ruling at the time, offers a definite military advantage. Any object that does not fall under the definition of a military objective is a civilian object and must not be attacked.⁴⁹

Those who are not members of the armed forces or a part of an organized armed group of a party to a conflict, are seen as civilians entitled to protection against direct attack.⁵⁰ Unless the civilians decide to participate in hostilities, then their legal status changes to an armed member and the protections given to civilians are stripped away.⁵¹ When civilians who do participate in hostilities cease their direct involvement, they are once again entitled to the full protections of civilians against direct attack.⁵² In case of any doubt, the person is entitled to the presumption that they are a civilian.⁵³ The same applies to civilian objects.⁵⁴ Indiscriminate attacks are expressly prohibited under LOAC; an indiscriminate attack is defined as:

- (a) an attack by bombardment by any methods or means which treats as a single military objective a number of clearly separated and distinct military objectives located in a city, town, village or other area containing a similar concentration of civilians or civilian objects; and
- (b) an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.⁵⁵

⁴⁷ WEIZMANN, *supra* note 37, at 101; *see also* 1977 Additional Protocol I, art. 48.

⁴⁸ *Id.*

⁴⁹ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), Art. 52(2), June 8, 1977.

⁵⁰ WEIZMANN, *supra* note 37, at 102; *see also* Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), Art. 51, June 8, 1977.

⁵¹ *Id.*

⁵² *Id.*; *see also* Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), Art. 13, June 8, 1977.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *See* Art. 51(5), Additional Protocol I (1977).

With the rise of advanced video and GPS technology and its subsequent application to drones, it seems that drones should now be considered a legal weapon to use in war. However, the United States has had major policy issues in satisfying the ability to discriminate between civilians and military combatants.⁵⁶ An example of this is the CIA's targeted killing of terrorists or so-called Signature Strikes (also referred to as "crowd killing" or "terrorist disruption strikes").⁵⁷ These strikes occurred on the basis of "suspicious activity"⁵⁸ and were initially used at the height of the War on Terror to, theoretically, target suspected members that bear the characteristics of al-Qaeda Taliban leaders.⁵⁹ This policy ended up targeting "all military-age males in a strike zone as combatants."⁶⁰ The intent behind the use of the word "signature" was that it would only target key members and leaders of these groups, but the meaning evolved to include any "young men toting arms in an area controlled by extremist groups."⁶¹ The "suspicious activity" used as justification turned out to be as mundane as riding in a pickup truck.⁶² The most horrific part of the signature strike is the second strike, which is principally aimed at the first responders who come to the aid of the initial targets.⁶³ There is no way to legally justify the strikes as they are in clear violation of IHL.⁶⁴ Signature strikes are conducted on the basis of suspected terrorists, not actual or confirmed terrorists. To cover their actions the government uses the term "collateral damage" as a euphemism for civilian deaths or high civilian casualties on the strike that follows the initial one.⁶⁵ The targeting of civilians who are not directly involved in hostilities violates this principle of distinction and therefore constitutes evidence of a war crime under LOAC.⁶⁶

Former President Obama came under heavy criticism for his administration's role in these strikes, but he eventually transferred the control

⁵⁶ Jack Serle & Jessica Purkiss, *Drone Wars: The Full Data*, BUREAU OF INVESTIGATIVE JOURNALISM (Jan. 1, 2017), <https://www.thebureauinvestigates.com/stories/2017-01-01/drone-wars-the-full-data>.

⁵⁷ AGWU, *supra* note 35, at 210.

⁵⁸ Stuart Casey-Maslen, *The Use of Armed Drones, in WEAPONS UNDER INTERNATIONAL HUMAN RIGHTS LAW* 382, 393 (Stuart Casey-Maslen ed., 2014).

⁵⁹ AGWU, *supra* note 35, at 211.

⁶⁰ MICAH ZENKO, COUNCIL ON FOREIGN RELS., REFORMING U.S. DRONE STRIKE POLICIES 12 (Jan. 2013), <https://www.cfr.org/report/reforming-us-drone-strike-policies>.

⁶¹ Scott Shane, *Election Spurred a Move to Codify US Drone Policy*, N.Y. TIMES (Nov. 24, 2012), <https://www.nytimes.com/2012/11/25/world/white-house-presses-for-drone-rule-book.html>.

⁶² Casey-Maslen, *supra* note 58, at 393.

⁶³ AGWU, *supra* note 35, at 211.

⁶⁴ See Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, art. 50-51, Jun. 8, 1977, 1125 U.N.T.S. 17512 [hereinafter Protocol I].

⁶⁵ AGWU, *supra* note 35, at 212.

⁶⁶ See Protocol I, *supra* note 64.

of the drone strikes from the CIA, who did not need to disclose the number of suspected terrorists and civilians killed in a drone strike, to the U.S. military to provide more transparency and accountability as the Pentagon must publicly disclose most airstrikes.⁶⁷ In 2017, President Trump reversed that decision.⁶⁸ There is a definite need to restore transparency and accountability to the rationale for these drone strikes and move them back to the Executive Branch, as the 2nd Circuit held that the Justice Department must comply with FOIA requests regarding drone strikes.⁶⁹ More must be done to hold the government accountable.

B. *The Rule of Proportionality*

Even if a target is a lawful military objective under IHL, the law still stipulates that expected loss of civilian life and damage to civilian property incidental to attack must not be excessive in relation to the concrete and direct military advantage anticipated from striking the target.⁷⁰ Violation of the rule of proportionality constitutes an indiscriminate attack according to Additional Protocol I.⁷¹ The goal of this rule is to “prevent means or methods of warfare that are of a nature to cause superfluous injury or unnecessary suffering.”⁷² The difficulty lies in determining what is “excessive.” The 1987 commentary to Article 51(5) of the 1977 Additional Protocol I states, “[o]f course, the disproportion between losses and damages caused and the military advantages anticipated raises a delicate problem; in some situations there will be no room for doubt, while in other situations there may be reason for hesitation. In such situations the interests of the civilian population should prevail.”⁷³ Yet countries’ definitions of what is deemed excessive varies widely, even among allies. The United Kingdom issued an apology when it inadvertently killed four Afghan civilians while targeting “insurgent leaders” and prompted an apology from the Ministry of Defense.⁷⁴ Whereas no such response came from the United States when news of signature strikes became public.

The use of drones on their own seem to satisfy the rule of proportionality. Most armed UAVs today have a “live” video feed that can provide real time updates on the target and ensure the minimalization of the loss of civilian life

⁶⁷ Gordon Lubold & Shane Harris, *Trump Broadens CIA Powers, Allows Deadly Drone Strikes*, WALL ST. J. (Mar. 13, 2017), <https://www.wsj.com/articles/trump-gave-cia-power-to-launch-drone-strikes-1489444374>.

⁶⁸ *Id.*

⁶⁹ See *New York Times Co. v. U.S. Dep’t. of Justice*, 756 F.3d 100 (2d Cir. 2014).

⁷⁰ Vivek Sehrawat, *Legal Status of Drones under LOAC and International Law*, 5 PENN. ST. J. L. & INT’L AFFS. 164, 178 (2017).

⁷¹ See Protocol I, *supra* note 64, art. 51(5)(b), art. 57(2)(a)(iii).

⁷² *Id.* art. 35(2).

⁷³ Commentary of 1987 Commentary on Art. 51(5) of 1977 Additional Protocol I.

⁷⁴ Nick Hopkins, *Afghan Civilians Killed by RAF Drone*, GUARDIAN (July 5, 2011), <https://www.theguardian.com/uk/2011/jul/05/afghanistan-raf-drone-civilian-deaths>.

in property.⁷⁵ Furthermore, in hostile areas where the United States has a military presence, nearby forces are capable of monitoring the strike from the ground.⁷⁶ The missiles typically fired from a drone have smaller blast radiuses than those fired from fighter jets or any other type of surface-to-air missile.⁷⁷ While these certainly do not eliminate the loss of civilian life, drones generally do reduce the risk. Overall, drones comply well with the rule of proportionality. The issue does not seem to be in the choice of weapon but rather its implementation.⁷⁸ This was the issue with the killing of Iranian General Qasem Soleimani, who was targeted while in a convoy of vehicles with several officials from Iran-backed militias leaving Baghdad airport.⁷⁹ Several missiles were launched, and the entire convoy was destroyed.⁸⁰ This led to questions about the appropriateness of destroying an entire convoy to reach one man.

C. Unnecessary Suffering

This principle is encapsulated in Additional Protocol I which states, “it is prohibited to employ weapons, projectiles and materials and methods of warfare of a nature to cause superfluous injury or unnecessary suffering.”⁸¹ This is a high standard, a weapon is not banned on the ground of superfluous injury or unnecessary suffering merely because it causes great, or even horrendous suffering or injury.⁸² NYU Law Professor Phillip Alston served as a UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions and conducted a study of the U.S. Drone strikes.⁸³ In his report Alston commented:

It is true that IHL places limits on the weapons States may use, and weapons that are, for example, inherently indiscriminate (such as biological weapons) are prohibited. However, a missile fired from a drone is no different from any other commonly used weapon, including a gun fired by a soldier or a helicopter or gunship that fires missiles. The critical legal question is the same for each weapon: whether its specific use complies with IHL.⁸⁴

⁷⁵ Maslen-Casey, *supra* note 58, at 398.

⁷⁶ *Id.*

⁷⁷ Sehwat, *supra* note 39, at 179.

⁷⁸ *See generally* Part II. A.

⁷⁹ Lyse Doucet, *Qasem Soleimani: US Kills Top Iranian General in Baghdad Airstrike*, BBC NEWS, (Jan. 3, 2020), <https://www.bbc.com/news/world-middle-east-50979463>.

⁸⁰ *Id.*

⁸¹ Protocol I, *supra* note 64, art. 35(2).

⁸² Sehwat, *supra* note 39, at 180.

⁸³ Philip Alston (Special Rapporteur), Hum. Rts. Council, Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions: Study on Targeted Killings, U.N. Doc. A/HRC/14/24/Add.6, at ¶79 (May 28, 2010).

⁸⁴ *Id.*

Compliance with the IHL standard of unnecessary suffering is typically easy, as “unnecessary suffering” is a term of art with no universally accepted definition.⁸⁵ Thus, drones fall within the accepted standard of compliance with weapons to not cause unnecessary suffering.

D. Military Necessity

While not defined in treaty law, military necessity is generally accepted as authorizing the use of force so long as it is not forbidden by international law and is necessary and indeed indispensable for securing the submission of the enemy as soon as possible.⁸⁶ Because they have now become so common and integral to many of the world’s most influential militaries, drones clearly are within the acceptable means as a tool when applying military necessity. With their ability to target precise individuals and pinpoint target areas, drones have become indispensable in America’s war on terror in the Middle East.⁸⁷ One controversy with military necessity is the dilemma of deciding whether there is an obligation to capture rather than simply kill legitimate targets.⁸⁸ Whether a robot is capable of making that decision autonomously and whether it would be better or worse than a soldier at doing it.⁸⁹

E. Summary

This all goes to show that often times, the countries themselves are the ones who end up defining the law around their own definition of what is a normal activity. While these distinctions create a nice framework to operate in, there must be a more objective way to determine if a country violated one of the four principles and not simply rely on that nation to self-report.

V. DRONES AND INTERNATIONAL HUMAN RIGHTS LAW (IHRL)

Absent an armed conflict, International Human Rights Law (IHRL) applies rather than IHL.⁹⁰ IHRL does not permit targeting based solely on the status of the individual (i.e. a member of the armed forces or an organized armed group).⁹¹ While the human rights community takes the position that IHRL applies alongside IHL, the United States has been hesitant to adopt that same standard, but in 2011 the United States finally acknowledged that both

⁸⁵ Sehrawat, *supra* note 39, at 180.

⁸⁶ Oren Gross, *The New Way of War: Is There A Duty to Use Drones?*, 67 FLA. L. REV. 1, 28 (2016).

⁸⁷ Leila Hudson, Colin S. Owen, & Matt Flannes, *Drone Warfare: Blowback from the New American Way of War*, MIDDLE EAST POLICY COUNCIL, Vol. XVIII Fall (2011).

⁸⁸ Marco Sassóli, *Autonomous Weapons and International Humanitarian Law: Advantages, Open Technical Questions and Legal Issues to be Clarified*, 90 INT’L L. STUD. 308 (2014).

⁸⁹ *Id.*

⁹⁰ JACKSON, *supra* note 6, at 138.

⁹¹ *Id.* at 139; see also *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, OFFICE OF THE HIGH COMM’R FOR HUMAN RIGHTS (Sept. 7, 1990), <https://www.ohchr.org/en/professionalinterest/pages/useofforceandfirearms.aspx>.

IHL and IHRL can apply.⁹² However, the law governing lethal attacks will still be judged under IHL standards, which allows the United States to keep using drones even when there is no armed conflict.⁹³

According to the 1966 International Covenant on Civil and Political Rights (ICCPR), each party state “undertakes to respect and ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant.”⁹⁴ Thus, it is generally agreed that jurisdiction extends to territory controlled by a state abroad.⁹⁵ The United States and Israel have traditionally been opposed to this principle.⁹⁶ While both countries have softened recently, neither has been willing to fully acknowledge this principle yet.⁹⁷

One of the reasons the United States and Israel remain opposed may be because of the Right to Life.⁹⁸ The Right to Life is so fundamental a right that its deprivation results in the nullification of any other right. The United States’ conditional acceptance of these principles has been subject to much scrutiny from other member states. Yet, if formally recognized in all circumstances, and a drone strike is conducted without sufficient nexus to an armed conflict, it is likely to be categorized as a targeted killing.⁹⁹ This would negate the justification of self-defense which has been used by the last three U.S. presidential administrations.

One other big distinction between IHRL and IHL or *Jus ad Bellum* law is there is far more accountability within the IHRL framework. Human Rights courts throughout the world all offer to oversee investigations of alleged violations.¹⁰⁰ An integral element of the Right to Life is the duty to investigate any alleged violations.¹⁰¹ This applies in both situations of law enforcement and during armed conflict.¹⁰² In 2017, the Office of the UN High Commissioner

⁹² *Fourth Periodic Report of the United States of America to the United Nations Committee on Human Rights Concerning the International Covenant on Civil and Political Rights, 506-07*, U.S. DEPT. OF STATE (2011), <https://2009-2017.state.gov/j/drl/rls/179781.htm>.

⁹³ International Court of Justice, *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, I.C.J. 240 ¶25 (July 8, 1996), <https://www.icj-cij.org/files/case-related/95/095-19960708-ADV-01-00-EN.pdf>.

⁹⁴ International Covenant on Civil and Political Rights, Art. 2 ¶1, <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

⁹⁵ Casey-Maslen, *supra* note 58, at 159.

⁹⁶ *Id.* at 159.

⁹⁷ *Id.*

⁹⁸ UN Universal Declaration of Human Rights, Art. 3, https://www.un.org/en/udhrbook/pdf/udhr_booklet_en_web.pdf.

⁹⁹ Casey-Maslen, *supra* note 58, at 400.

¹⁰⁰ CASEY-MASLEN, *supra* note 17, at 191.

¹⁰¹ *Id.*

¹⁰² *Id.*

for Human Rights published The Minnesota Protocol on the Investigation of Potentially Unlawful Deaths, a soft-law instrument which states that:

Where, during the conduct of hostilities, it appears that casualties have resulted from an attack, a post-operation assessment should be conducted to establish the facts, including the accuracy of the targeting. Where there are reasonable grounds to suspect that a war crime was committed, the State must conduct a full investigation and prosecute those who are responsible.¹⁰³

While this is a step in the right direction regarding the violation of IHRL, the application of investigation under the Minnesota Protocol will likely be limited because the default framework that governs the use of armed drones is still the IHL.

A. Transfer/Sale of Drones, An Example of Soft Law Success

The closest that countries have come to any sort of direct regulation of drones has been the 1987 Missile Technology Control Regime (MTCR).¹⁰⁴ However, this is not in fact a direct regulation. The MTCR only regulates the use of the drone technology by attribution.¹⁰⁵ The MTCR is a “formal and voluntary multilateral arrangement comprising of thirty-four states that attempt to constrain ballistic missile proliferation.”¹⁰⁶ Thus, all parties who are members have agreed to abide by these regulations in terms of the transfer and selling of drones to other states.

The MTCR creates distinctions as to which drones are transferrable based off the size of payload it is able to carry. “[D]rones capable of delivering a five-hundred-kilogram payload for a minimum of three hundred kilometers are classified as Category I.”¹⁰⁷ For items deemed Category I, there will be a strong presumption to deny transfers.¹⁰⁸ The United States is a member of the MTCR and thus subject to these restrictions.¹⁰⁹ The MTCR was designed to assist countries with drones for the purpose of reconnaissance while limiting those who have drones that can shoot missiles.¹¹⁰ Under the MTCR the United States has refrained from selling drones to Pakistan, Turkey, Saudi Arabia, and the

¹⁰³ Minnesota Protocol, Office of UN High Commissioner for Human Rights, (2017) ¶21, <https://www.ohchr.org/Documents/Publications/MinnesotaProtocol.pdf>.

¹⁰⁴ ZENKO, *supra* note 60, at 19.

¹⁰⁵ AGWU, *supra* note 35, at 133.

¹⁰⁶ ZENKO, *supra* note 60, at 19.

¹⁰⁷ *Id.* at 20.

¹⁰⁸ *Id.*

¹⁰⁹ *MTCR Partners*, MISSILE TECH. CONTROL REGIME, <https://mtrc.info/partners/> (last visited May 5, 2021).

¹¹⁰ *MTCR Guidelines and the Equipment, Technology and Software Annex*, MISSILE TECH. CONTROL REGIME, <https://mtrc.info/mtrc-guidelines/> (last visited May 5, 2021).

United Arab Emirates (UAE).¹¹¹ When transferring these drones, the United States makes sure that they are specifically outfitted with restrictions preventing the state receiving the drones from weaponizing them.¹¹² While this works well for countries that are members of the MTCR, any nonmember state with the ability to make and sell weaponized drones can.

While the MTCR is the only regulation that deals with the transfer of drones in any direct way, it is not the only body of law which governs the transfer of arms. The most notable international agreement dealing with arms transfers is the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies.¹¹³ This Agreement became operational in July 1996 with the implementation of the “Initial Elements.”¹¹⁴ There are currently 42 members that are part of the Wassenaar Arrangement including the United States, U.K., and Russia.¹¹⁵ The purpose of the Arrangement was:

[I]n order to contribute to regional and international security and stability, by promoting transparency and greater responsibility in transfers of conventional arms and dual-use goods and technologies, thus preventing destabilizing accumulations. The aim is also to prevent the acquisition of these items by terrorists.

Participating States seek, through their national policies, to ensure that transfers of these items do not contribute to the development or enhancement of military capabilities which undermine these goals, and are not diverted to support such capabilities.¹¹⁶

The participating states undertake to meet on a regular basis to ensure that transfers of arms and dual use goods are handled responsibly.¹¹⁷ However, the decision to transfer or deny the transfer of any item remains the sole responsibility of each individual state.¹¹⁸

There can be an argument made that there is an obligation under IHRL to not transfer arms when there is a substantial risk that the recipient of the arms will use them to violate rights.¹¹⁹ To the extent that this would exist, it

¹¹¹ *Id.*

¹¹² AGWU, *supra* note 35, at 133.

¹¹³ *Introduction*, WASSENAAR ARRANGEMENT, <https://www.wassenaar.org/> (last visited Jan. 25, 2021) [hereinafter WASSENAAR ARRANGEMENT].

¹¹⁴ Casey-Maslen, *supra* note 58, at 467.

¹¹⁵ WASSENAAR ARRANGEMENT, *supra* note 113.

¹¹⁶ WASSENAAR ARRANGEMENT, *supra* note 113.

¹¹⁷ Casey-Maslen, *supra* note 58, at 468.

¹¹⁸ *Id.*

¹¹⁹ CASEY-MASLEN, *supra* note 17, at 190.

would invoke duties under the 2013 Arms Trade Treaty (ATT).¹²⁰ Article 6(2) of the ATT states:

A State Party shall not authorize any transfer of conventional arms covered under Article 2 (1) or of items covered under Article 3 or Article 4, if the transfer would violate its relevant international obligations under international agreements to which it is a Party, in particular those relating to the transfer of, or illicit trafficking in, conventional arms.”¹²¹

Both armed drones and the weapons they fire fall within the jurisdiction of the treaty.¹²² Another unique aspect of this treaty is that it incorporates human rights concerns within it. Article 7 of the ATT prohibits the sale of otherwise acceptable items if they were to undermine peace and security or contribute to a “serious violation of international humanitarian law.”¹²³ While there is no current definition of what constitutes a “serious violation”¹²⁴ this is clearly a step in the right direction as this is an almost universally recognized Treaty (130 signatories) and it is one of the rare few that has even included a provision to address these violations.

VI. ACCOUNTABILITY

One of the major problems facing the regulation of drones in armed conflicts is a lack of overall accountability. As shown above, the only thing that has been able to force states who have vast arsenals to change policies has been third party scrutiny from watchdogs and reporters combined with a plethora of social pressure. Both *Jus ad Bellum* and IHL law lack any sort of investigative mechanisms, and the one that does, IHRL only applies in peace time and doesn’t even have full recognition of some of its key tenets by the United States.

States that are major manufacturers and operators of drones have ardently resisted any form of independent adjudication of international law.¹²⁵ While an adjudication of a normal scenario is difficult enough, it would be difficult to assess the LOAC rules in the context of a drone manned by a person thousands of miles away, entering the airspace of a country it is not at war with in order to kill members of a non-state group.¹²⁶

¹²⁰ *Id.*

¹²¹ U.N. Arms Trade Treaty, art. 6(2), <https://unoda-web.s3-accelerate.amazonaws.com/wp-content/uploads/2013/06/English7.pdf>.

¹²² CASEY-MASLEN, *supra* note 17, at 190.

¹²³ U.N. Arms Trade Treaty, art. 7(1), <https://unoda-web.s3-accelerate.amazonaws.com/wp-content/uploads/2013/06/English7.pdf>

¹²⁴ Casey-Maslen, *supra* note 58, at 470.

¹²⁵ CASEY-MASLEN, *supra* note 17, at 195.

¹²⁶ *Id.* at 196.

The United States has accounted for nearly two-thirds of the global UAV market.¹²⁷ The United States has generally maintained that all of its actions regarding drones are lawful, and well within the purview of applicable international law.¹²⁸ The Obama Administration rarely admitted to the killing of civilians. The Trump Administration has done it even less so. The United States has adjusted its interpretation of applicable law with the general legal community in order to implement its desired policy while still maintaining its compliance with pertinent law.¹²⁹ Even if one could prove that the United States did execute an illegal drone strike in violation of international law, it seems unlikely that an international adjudicative body would be able to maintain jurisdiction over the United States.¹³⁰

The United States is not alone in shrouding its practices and procedures relating to drone strikes in mystery. Ben Emmerson, a Special Rapporteur for the promotion and protection human rights and fundamental freedoms, found in a 2013 report that the United Kingdom and Israel refused to publicly disclose or acknowledge any role the remote piloted aircraft played in its counterterrorism operations.¹³¹

Furthermore, the International Criminal Court (ICC) is also not an ideal fit for increasing accountability because several key players in the drone development and operation industry are notably non-members.¹³² This includes the United States, Israel, China, as well as Russia.¹³³ Regarding the United States, none of the states which are the primary targets of the drone strikes which the United States is not engaged in a war with (Pakistan, Yemen, Somalia) are members of the ICC either. This makes the ICC impractical to expect adjudication due to lack of jurisdiction over any of the areas in controversy and effectively useless.

The Arms Trade Treaty (ATT) has over 130 signatories.¹³⁴ The United States and other key states are notably signatories only and not state parties.¹³⁵ This absolves them from taking responsibility in implementing any of the requirements set by the treaty if they do not wish to. The lack of enforcement mechanisms does not place any pressure upon the United States or other non-party signatories like Israel to join or maintain the standard set by states who are parties to the treaty.

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.* at 197.

¹³² CASEY-MASLEN, *supra* note 17, at 198.

¹³³ *Id.*

¹³⁴ Arms Trade Treaty, Dec. 23, 2014, 3013 U.N.T.S.

¹³⁵ *Id.*

The MTCR is one of the best examples of the successful implementation of a soft law regulation that is generally respected. However, there should still be some sort of watchdog or enforcement mechanism as not all countries take the transfer restrictions seriously. On the 25th anniversary of the founding of the MTCR, the U.S. Department of State characterized the agreement as:

an informal political understanding among states that seek to limit the proliferation of missiles and related technology; it is not a treaty . . . [o]riginally focused on restricting exports of nuclear-capable ballistic missiles and related technology, the Regime expanded its scope in 1993 to cover unmanned delivery systems capable of carrying all types of weapons of mass destruction (WMD) -- chemical, biological, and nuclear.¹³⁶

Critics of the MTCR point out that while it may serve as a deterrent, there is nothing preventing the United States or any other member from not complying with the agreement.¹³⁷

Another one of the most difficult aspects of drones that needs to be addressed soon will be their ability to operate fully autonomously. While the Law of Armed Conflict will still apply to the drones, there are still many questions that need to be answered. Most notably it comes with the first principle of LOAC: the need to distinguish. There are still many questions on the effectiveness of a fully autonomous drone's ability to separate an enemy combatant from a civilian. Or its ability to distinguish a civilian object from a military objective. Even in terms of proportionality, can a fully autonomous drone calculate anticipated collateral damage and civilian casualties?

While we are unsure of the answers to these questions now, we know that they are coming. It is estimated that by 2025, the U.S. military will have advanced artificial intelligence enough to begin implementing it in drone warfare.¹³⁸ Furthermore if something does go wrong, who will take responsibility? The global body of laws as currently written are all created to specifically apply to human beings.¹³⁹ This may provide even more incentive for some states to develop autonomous weapons even faster as they may be able to loophole around accepted international law and norms. It could even theoretically shield human commanders from liability for an act that would otherwise be considered a war crime.¹⁴⁰

¹³⁶ *MTCR 25th Anniversary Factsheet*, BUREAU OF INT'L SEC. AND NONPROLIFERATION, <https://2009-2017.state.gov/t/isn/rls/fs/187935.htm> (last visited May 5, 2021).

¹³⁷ CASEY-MASLEN, *supra* note 17, at 199.

¹³⁸ JACKSON, *supra* note 6, at 123.

¹³⁹ CASEY-MASLEN, *supra* note 17, at 201.

¹⁴⁰ *Id.*

VII. SOLUTION

A. *Soft Law*

This note proposes that the international community seriously reconsiders looking into soft law regulations taking on a larger role in determining the regulations and norms in the international community. The traditional apparatus for creating international law is incredibly time consuming and cannot keep pace with the development of drone technology. For example, the fastest negotiated human rights treaty was the United Nations' Convention on the Rights of Persons with Disabilities (CRPD).¹⁴¹ The fastest negotiated human rights treaty to date was adopted on December 13, 2006 after being negotiated from 2002 to 2006.¹⁴² The last update to the Geneva Conventions, one of the main international bases of governing drones was 15 years ago.¹⁴³

Meanwhile drone technology is progressing at such a rapid pace that it may make any current conventions addressing the issue moot by the time they are able to pass the regulation. Investment in drones is projected to be over \$12 billion next year.¹⁴⁴ The Army's Rapid Equipping Force (REF) now has a timeline of 180 days from receiving a request to developing and deploying a new drone to fulfill it.¹⁴⁵ Also, with drones now at the forefront for any international conflict their use and the lack of rules governing them simply cannot be ignored.

Soft law is a series of "normative statements in non-binding political instruments such as declarations, resolutions, and programs of action, and has signaled that compliance is expected with the norms that these texts contain."¹⁴⁶ These proposals and resolutions are not binding upon any member of the group or organization to which they are proposed, but they are treated as the new norm with the expectation that they will become law.¹⁴⁷ A common criticism of soft law is that actually enforcing it is much more difficult.¹⁴⁸ However, the same could be said about any traditional means of establishing

¹⁴¹ Convention on the Rights of Persons with Disabilities, May 3, 2008, 2515 U.N.T.S. 3.

¹⁴² *Id.*

¹⁴³ Protocol Additional to Geneva Conventions of 12 August 1949, relating to the Adoption of a Distinctive Emblem (Protocol III), Dec. 8, 2005.

¹⁴⁴ *Drone Technology Uses and Applications for Commercial, Industrial, and Military Drones in 2020 and the Future*, BUS. INSIDER (Jan. 12, 2021, 10:15 AM), <https://www.businessinsider.com/drone-technology-uses-applications?op=1>.

¹⁴⁵ Todd South, *Army Constantly Upgrading Drone, Counter-Drone Gear*, ARMY TIMES (Feb. 28, 2018), <https://www.armytimes.com/news/your-army/2018/02/28/army-constantly-upgrading-drone-counter-drone-gear/>.

¹⁴⁶ Dinah Shelton, *Soft Law*, in ROUTLEDGE HANDBOOK OF INTERNATIONAL LAW 1 (David Armstrong et al. eds., 2008).

¹⁴⁷ *Id.*

¹⁴⁸ Gregory C. Shaffer & Mark A. Pollack, *Soft Law: Alternatives, Complements, and Antagonists in International Governance*, 94 MINN. L. REV. 712, 799 (2010).

rules and regulations, international law is a largely consensual system.¹⁴⁹ Furthermore, a study conducted on compliance with the Basle Accord, a banking supervision regulation, found that a majority of the 107 countries, especially democracies, were likely to comply.¹⁵⁰ The main difference is that soft law will be able to keep up with the rapid pace at which technological advances are being made today in the military. Trying to apply law from conventions that occurred right after World War II cannot be the most effective means of establishing law. The only example we have, the MTCR adhered to by all of its signatories and has been lauded as successful in the prevention of the proliferation of armed drones worldwide. Under the current legal regime, strikes such as the one conducted upon Qasem Soleimani will likely continue if new norms are not developed to curtail this behavior. With this technology now the most used in the “arsenal of democracy” it is important to have rules to govern it and minimize civilian casualties as much as possible.

Drones are not going away anytime soon. While the United States has pioneered the use of drones in international conflict other countries have also adopted the U.S. method of drone foreign policy, notably Iran who has found it to be a cost-effective way to support itself and its proxies.¹⁵¹ Soft law, especially without any current international law governing drones, provides a timely and effective method of dealing with the issue.¹⁵²

B. Conclusion

The MTCR is a good start and example of the potential effectiveness of a voluntary regulation agreement. The issue will be getting other countries who do not wish to place constraints upon their ability to create and use drones to join such an agreement. Therefore, this note proposes that the same logic used to govern nuclear agreements, the use of the fear of consequences, be applied to drone agreements. If other nations are not already convinced, show them how devastating the use of drones can be. A single person in a warehouse halfway across the world now has the ability to wipe out people and buildings with the click of a button. The realm of international conflict has been fundamentally shifted and there is no longer the necessity for a human being to be in a combat zone in order to engage in conflict. Not only can drones be justified by more powerful nations as being able to protect interests without putting any lives at risk, they are also attractive because they are extremely cost effective compared to using satellites or the human toll put on the families of soldiers who lose their loved one in battle. However, there are still significant

¹⁴⁹ *Id.*

¹⁵⁰ Daniel E. Ho, *Compliance and International Soft Law: Why Do Countries Implement the Basle Accord?*, 5 J. INT'L ECON. L. 647 (2002).

¹⁵¹ Geoff Brumfiel, *In Yemen Conflict, Some See a New Age of Drone Warfare*, NPR (May 29, 2019, 10:07 AM), <https://www.npr.org/2019/05/29/726760128/in-yemen-conflict-some-see-a-new-age-of-drone-warfare>.

¹⁵² ALLIED COMMAND TRANSFORMATION, AUTONOMOUS SYSTEMS: ISSUES FOR DEFENCE POLICYMAKERS (Andrew P. Williams & Paul Scharre eds., 2015); see also INT'L BAR ASS'N'S HUM. RTS. INST., THE LEGALITY OF ARMED DRONES UNDER INTERNATIONAL LAW (2017).

Summer 2021]

DRONE REGULATION THROUGH SOFT LAW

331

issues with the ability to distinguish civilians and enemies, now more than ever with the rise of terrorism and asymmetric warfare which combatants actively seek to blend in with civilians. Now more than ever the use of drones needs to be brought to heel, and soft law regulations can be implemented quickly and effectively to the international community.