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International Law as Enabler and Preventer – US Drone Strikes in Yemen and Pakistan

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Fokus

Human Rights Watch and Amnesty International have published excellent reports of US drone strikes in Yemen and Pakistan, analyzing the important legal issues. Only minor criticism is needed.

Human Rights Watch, Between a Drone and Al-Qaeda,
<http://www.hrw.org/de/node/119909>

Amnesty International, Will it be next?,
<http://www.amnestyusa.org/sites/default/files/asa330132013en.pdf>

“Between a drone and Al-Qaeda” stands international law. Human Rights Watch (HRW) and Amnesty International (AI) base their new reports on US drone strikes in Yemen (HRW) and Pakistan (AI) on this simple fact. **IHL in Yemen and Pakistan**: International law is not a single set of rules, applicable in every situation and everywhere. HRW must be praised for scrutinizing the situation in Yemen, subsuming the facts under the law and concluding that the situation in Yemen is a non-international armed conflict in the sense of international humanitarian law (IHL). This important step is left out by other reports (BOFAX Nr. 414E). Here, HRW clearly states that a non-international armed conflict depends on the facts on the ground, not the motives of the warring parties. Consequently, the intensity of hostilities and the parties involved lead HRW to the said and correct assumption. Apparently contradicting its own standard, however, the report claims that according to US officials the USA is not a party to an armed conflict in Yemen, because the US is not conducting its strikes in order to help the Yemeni government but in order to protect US interests. Thus, HRW argues, the US is violating its own policy (Wuschka, BOFAX Nr. 429D) and international human rights law, which provides higher protection than IHL. This cannot be followed. From a legal standpoint, facts matter. And if the facts show that the US is working together with the Yemeni government, motives are not important. Measuring US actions against new US policy is a political tool, not a legal test. Thus, the US is helping Yemen in a non-international armed conflict. In the same vein, but a little less determined, AI suggests that the US is taking part in a non-international armed conflict in Pakistan. With regard to **substantial IHL**, both reports claim that a high number of civilians are killed by drone strikes and that civilian casualties exceed the acceptable number of collateral deaths. Even more troubling is the accusation of ‘rescuer attacks’. Allegedly, after an attack has taken place, the drones return to attack again, this time aiming for rescuers. If this accusation is true, then the US is in violation of international law. Sadly, AI takes the ludicrous judgment of the Peshawar High Court of April 2013 seriously (BOFAX NR. 427E) and demands that the Pakistani government fulfills the bizarre demands that the Court has made.

Both reports fail, however, to clearly state why **Human Rights Law** is applicable. It is just stated that outside of an armed conflict, human rights law applies. No word is lost on whether or not this regime applies extraterritorially. Keeping in mind that the requirement for extraterritorial application is the exercise of jurisdiction, meaning effective control, the authors should have paid more scrutiny on this issue. Again, an opportunity to take a stand has been missed.

It is evident from both reports that Pakistan and Yemen gave and still give their consent to US military operations on their territory. Hence, a violation of the **prohibition of the use of force** is out of the question. In **conclusion**, both reports are very valuable in the debate about targeted killings with drones. While both reports clearly and correctly state that the means used do not alter the applicable law, drones nevertheless pose a real challenge to policy-makers and lawyers. The legal analysis in both reports is of the highest quality and is to be taken very seriously.

Verantwortung

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