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The "Living under Drones" Report – A Critical Appraisal

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Fokus

The report "Living under Drones" by Stanford and New York Universities provides a thorough analysis of US drone strike practice. It must be praised for raising awareness of the issue. However, their legal findings merit special attention, for crucial points are missing.

<http://livingunderdrones.org>.

<http://www.nytimes.com/2012/10/08/world/asia/in-pakistan-drone-protest-led-by-imran-khan-takes-detour-for-safety.html?smid=pl-share>.

R. Frau, Drones and Extraterritorial Application of Human Rights Law, Groningen Journal of International Law, www.groijl.org (forthcoming).

A winner of the Nobel Peace Prize throwing around orders to kill 'enemies' thousands of miles away: something is wrong with that picture. From the great deal of criticism, one recently published report stands out. However, the much noticed report "Living under Drones: Death, Injury and Trauma to Civilians From US Drone Practices in Pakistan" by the International Human Rights and Conflict Resolution Clinic (Stanford Law School) and the Global Justice Clinic (NYU) requires a critical appraisal. The report draws from numerous interviews, on-site visits, newspaper and NGO-reports as well as governmental records and physical evidence: a very thoroughly researched report. At the outset, the report clarifies the **decision-making process** within the US administration. According to its findings, every strike with the risk of civilian deaths has to be personally authorized by President Obama. Only if a strike will with 'near certainty' result in zero civilian casualty, the respective agency makes the call by itself. So called 'personality strikes', which target known alleged leaders of non-State armed groups, are not the only manner in which strikes occur. 'Signature strikes' are based on a pattern-of-life analysis of those individuals encountered by a drone. If suspicious behavior is identified, a decision to attack may be taken. Most of the time, the identities of those individuals remain unknown. **Pakistani sovereignty** While Pakistani officials were indifferent to strikes on their soil at first, criticism has become louder and more sincere. However, it cannot be established if there is a violation of Art. 2 (4) UN-Charter. One cannot commend the report enough for the 'numbers'-part. The authors of the present report combine conflicting reports' data. Some of those reports follow a political agenda. Troubling is the US administration's policy of classifying any male killed by a drone strike as 'enemy combatant'. Not surprisingly, this massively reduces the number of killed civilians. The report holds that the most likely number of deaths between June 2004 and September 2012 is between 2.562-3.325, including 474-881 civilians killed. It is estimated that about 2% of those killed were high-level-targets. A chapter called 'living under drones' illustrates the life of those living in areas where drone strikes happen daily. Its value is evident. In the debate about the impact of drone strikes, the report clearly states that they are detrimental to US safety. Islamic recruiters in Pakistan and elsewhere use the high number of civilian deaths and the 'cowardly' use of drones to advocate the fight against the USA. Other parts of the report evoke critical remarks. Sadly, the report only focuses on Pakistan. There are other parts of the world in which drone strikes take place on a regular basis, e.g. Somalia and Yemen. It is worthwhile to scrutinize those strikes as well. Regarding **international humanitarian law**, the report emphasizes the need to establish whether or not an armed conflict is taking place. Sadly, the report does not take a clear stand either; only from the following the reader may assume the opinion of the authors. Also, the aspect of precautions in attack is given little attention to. Passive precautions are not mentioned. Most troubling, the analysis of **human rights law** is flawed. The authors state that outside of an armed conflict, human rights law applies. No word is lost on the issue of whether or not this regime applies extraterritorially. Keeping in mind that the requirement is the exercise of jurisdiction, meaning effective control, the report should have paid more scrutiny on this issue. The authors have thus lost an opportunity to take a stand. **Concluding**, the report will remain an important landmark in the discussion about drone practices and international law. No one working in this field can ignore this outstanding report.

Verantwortung

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