

Legal Assessment and the Role of Courts in Armed Drone Operations in the Iraqi Kurdistan Region

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Abstract

According to the domestic and international law, the use of force is generally prohibited, whether by drone or any other weapon, and problems should be solved by peaceful means. However, internal groups such as the Islamic Resistance Militia and international forces like Turkey and Iran have repeatedly violated the sovereignty of the Kurdistan Region as part of Iraq under the name of self-defense right. Because of these violations, hundreds of civilians in the Kurdistan Region has been killed, injured, their fields and houses burned and their villages evacuated. These drone and missile attacks have had a negative impact on the lives, economy, psychology, social and political aspects of the people, but the important question is what rights the victims have in respect of all the violations committed against them. This study aims to assess the legality of the use of armed drones against the Kurdistan Region and to investigate the role and impact of domestic and international courts in the judging of criminals, to achieve this goal, analytical and descriptive methods were used in the study. The research concluded that the use of drones against people is illegitimate and illegal. Therefore, the perpetrators can be punished, and the victims compensated before domestic and international courts.

Keyword: Armed Drones, International Forces, Sovereignty, Discrimination, Proportionality, Prosecuting, Compensating.

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1. Introduction

The Kurdistan Region is a constitutionally recognized autonomous region within the Federal Republic of Iraq, with legislative, judicial, and executive authority under the 2005 Iraqi Constitution. There are dozens of international consulates, organizations and companies there and it has international protection within Iraq and its sovereignty should not be violated.

Domestically, during the war against ISIS, various Iran-backed militia groups emerged in Iraq, some of which have targeted the Kurdistan Region with missile and drone attacks on public and diplomatic sites. This has had a negative impact on the political, security and economic aspects of the region. For example, it has weakened the KRG's political authority and caused civilian casualties in the security sector.

At the international level, Turkey and Iran have repeatedly carried out military incursions and airstrikes in the Kurdistan Region. These two states have continuously violated the Regions sovereignty, while according to non-violation of international legal principles of sovereignty and non-intervention, the sovereignty of countries must be respected and citizens must be protected from armed conflict.

In the context of the Kurdistan Region, drone operations have generated significant debate over their compliance with international humanitarian law and respect for regional sovereignty.

Although the current advanced world in terms of technology and artificial intelligence has made it very difficult to limit and regulate the use of force. New rules and laws can be enacted, and the relationship between law and the use of force should be redefined within the framework of the Geneva Conventions, the UN Charter, human rights laws, and international humanitarian law.

With the use of drones in military operations, aggression and violation of state sovereignty has taken on a new form. Drones have become a threat not only at the level of war strategy, but also at the level of international humanitarian law and international human rights law. Under

international law, any military intervention must be justified by self-defense, yet the ambiguous nature of drone strikes often leaves room for debate about their legality.

Importance of the Research:

1. Highlight the use of drones within the framework of public international law, international humanitarian law, international human rights law and Iraqi law.
2. This study analyzes the impact and role of domestic and international courts in prosecuting perpetrators and compensating victims through the filing of legal complaints by victims, prosecutors and relevant agencies.
3. The Kurdistan Region has its own sovereignty within the framework of the Iraqi Constitution and according to international rules and laws, its sovereignty should not be violated by neighboring states for any reason, because according to the international principle of good neighborliness, states must respect each other's sovereignty.

Aim of the Research:

1. This study aims to assist victims in the Kurdistan Region by guiding them to file legal complaints in domestic and international courts such as the International Criminal Court and the European Court of Human Rights, of which Turkey is a member.
2. Despite the significant number of victims of drone strikes in the Kurdistan Region, there is limited scholarly research on the legal and humanitarian implications of these attacks. This study aims to fill this gap by providing a comprehensive legal analysis of drone use in the region.
3. Another objective is to try to answer research questions in an academic and scientific manner within the framework of domestic and international law.

Research Problem and Research Question:

For many years, the Kurdistan Region, especially its border areas with Turkey and Iran has been subjected to air and drone strikes, causing significant humanitarian and legal challenges. These attacks have resulted in civilian casualties and injuries, while at the same time, victims face uncertainty about their legal rights and the appropriate judicial avenues whether domestic or international, for seeking justice. Domestically, the use of drones by Iraqi armed militia groups against the Kurdistan Region has become a problem for stability and security in the region. Within the framework of the research problem, researcher try to answer the following questions:

1. Is the use of drones as a modern weapon legally permissible at the domestic and international levels?

2. What are the political, Social, psychological, humanitarian, and legal consequences of drone strikes on the Kurdistan Region?
3. What is the role of domestic and international courts in prosecuting criminals and compensating victims?

Research Methodology:

This research adopts an analytical and descriptive methodology to examine the legality and impact of armed drone strikes based on relevant cases, domestic and international laws, scholarly opinions and international court judgments.

Structure of the Research:

This research consists of three parts. First of all, understanding of the armed drones will be explained. In addition, the legality and effect of armed drone strikes within the Kurdistan Region of Iraq would be discussed under the domestic and international law. Moreover, the role of the national and international courts in prosecuting criminals will be analyzed. For this purpose this part illustrates the role of the Iraqi Courts, International Criminal Court and the role of the European Court of Human Rights. Finally, the paper will be concluded and presented some important recommendations.

2. Understanding armed drones and their use in the Kurdistan Region of Iraq

This paper explores the general use of force at both domestic and international levels, with a particular emphasis on military drones compared to other traditional force methods. Military drones, also known as unmanned combat aerial vehicles (UCAVs), are unmanned aircraft systems (UAS) designed for defense and military operations that primarily used in armed conflict situations. These drones perform various tasks, including reconnaissance and targeted strikes, without exposing human operators to direct risk. The technology behind military drones has advanced rapidly, making them a key area for innovation, especially with new materials, technologies, and advanced communication tools like Light Fidelity, which enhance their field effectiveness (Oledcomm, 2023).

Civilian drones, are employed for non-military purposes, including surveillance, monitoring environmental conditions, or even for recreational activities (Khalifa AL-Dosari, et al., 2023).

While military drones provide significant tactical advantages, their use also entails several serious drawbacks.

The use of armed drones by state and non-state actors in times of war and peace raises many legal problems and questions. The use of armed drones is not explicitly regulated in international humanitarian law and international human rights law. For example, how are operators of armed drones hundreds of kilometers away from the bombed area treated under international humanitarian law? Does their military activity fall within the scope of direct participation in hostilities? (Rosa Brooks, 2023: 83). Therefore, it can be said that the use of drones as a force has many consequences and legal problems.

Drone strikes, although often praised for their accuracy, have consistently resulted in unintended civilian deaths and injuries. The difficulty of accurately identifying targets, particularly in urban areas or densely populated areas, can result in substantial collateral damage. This not only violates humanitarian law but also erodes domestic trust.

Although drone operators are stationed far from the battlefield, when they use drones they can also monitor civilians and restrict their freedom, which is not morally acceptable. (Jordan Cohen and Jonathan Ellis Allen, 2021).

Furthermore, the constant threat of drone strikes leaves civilians in a perpetual state of fear. The unpredictability of these attacks generates chronic anxiety, as people are always uncertain about when the next strike might occur. This heightened state of alertness can lead to long-term mental health issues (Vivian Salama, 2014).

Ongoing fear alters sleep schedules, reduces focus, and undermines mental stability. Normal routines are interrupted, and the absence of a secure home environment heightens the mental stress experienced by individuals and their families. (Vivian Salama, 2014).

In regions where drone activities are common, communities may face displacement or changes in social structures. This can weaken social ties, as shared trauma undermines the collective resilience and the capacity to sustain a supportive community framework (Nemar, 2017: 42-43).

Constant threat and surveillance during childhood can impact emotional growth and social interactions. The persistent fear and uncertainty might result in detrimental long-term changes in how young people develop relationships and view peace and security (same previous source).

"Drones mean death to us, Hamdi Shqwa of the Palestinian Center for Human Rights told the Washington Post: most children in Gaza suffer from post-traumatic stress disorder as a result of the constant noise and attacks of these drones (Medea Benjamin, 2012).

In the Kurdistan Region, particularly in Amedi, Bradost, Balakayety, Kandil Mountain, and other border areas, Turkish drones frequently fly over multiple times a day, creating a loud

noise. While some of these drones are used for surveillance, others are deployed for armed attacks targeting PKK forces and their headquarters.

The residents of these regions have endured significant psychological and social challenges due to the incessant noise of drones and the constant anticipation of potential strikes. The fear of being targeted by military drones, or having their loved ones harmed, is pervasive. This anxiety is compounded by the fact that Turkish drone attacks have previously resulted in the deaths of innocent civilians and the evacuation of numerous villages in the Kurdistan Region's border areas, leading to a host of social issues.

3. The Legality of Armed Drone Strikes within the Kurdistan Region of Iraq (KRI)

It is clear that armed drone attacks have been continuing for many years in different parts of the Kurdistan Region, resulting in hundreds of people killed and injured. Although there is no special law to regulate and limit the use of armed drones, the use of force is generally regulated and legally framed at the domestic and international levels. Below is an academic reading and discussion of drone attacks within the framework of Iraqi and International Law.

3.1. The Legality of Armed Drone Strikes within the Framework of Domestic Law

In recent years, Iraqi militia groups have frequently launched drone and missile strikes against the Kurdistan Region, which is a part of Iraq and should be safeguarded by the constitution. According to the Iraqi constitution of 2005, the Military Penal Code, and the Iraqi Defense and Security Laws, military forces must be official and operate under the oversight of relevant authorities, adhering to diplomatic norms and international agreements when using force. Additionally, armed forces should only use force when necessary for legal and legitimate reasons, whether through armed drones or other means.

According to Articles 117 and 123 of the Iraqi Constitution of 2005, the Kurdistan Region has legal autonomy over its internal security. Militia incursions into the Kurdistan Region, such as attacks on Erbil International Airport or Peshmerga positions, violate Iraqi constitutional provisions that grant the region authority over its security forces. Moreover, these militia actions weaken the Kurdistan Region's role as a frontline ally against ISIS. The 2017 Kurdish independence referendum, although declared unconstitutional by Iraq's Supreme Federal Court¹, did not nullify the Kurdistan Region's legal status. Militia violence against Kurdish civilians or infrastructure, often justified as "defending Iraqi unity," lacks legal basis

¹ "The Federal Court issued the decision to consider the Kurdish region's referendum unconstitutional and this ruling is final," a court spokesman said. "The power of this ruling should now cancel all the results of the referendum".

under domestic law and infringes upon the Kurdistan Region's right to self-administration (International Crisis Group, 2019).

Over the course of two and a half months, Shiite militias have conducted more than 30 drone strikes on Erbil and Harir airports. These drones operate at low altitudes, making them difficult to intercept with conventional defense systems. The technology used in these drones is supported by the Islamic Republic of Iran. For instance, on October 17, 2023, the Islamic Resistance Group² launched a drone attack on the Harir base in Erbil, causing significant damage to US positions (Rebwar, 2020).

On the night of December 30, 2023, militias targeted a Peshmerga headquarters on the Erbil-Pirmam road with two drone bombers. This marked the first time the Peshmerga had been attacked since the escalation of drone strikes. The Kurdistan Regional Government (KRG) accused the militias of using Iraqi weapons and funds, which led to political tensions between the Kurdistan Region and Baghdad (Revolutionary Committee of Kurdistan Workers of Iran, 2024).

In February 2024, al-Arabiya al-Jadeed launched a Katyusha attack on an international coalition base in Erbil. These groups are directly linked to Iranian-backed entities such as Iraqi Hashd al-Shaabi and Hezbollah (Hemn, 2024).

These militia groups function independently of the Iraqi government. While certain political parties may endorse their actions, though this does not make their actions legal. Al-Marashi asserts that attacks targeting the Kurdistan region or diplomatic properties violate both domestic law and international legal obligations (Al-Marashi, 2018). These drone attacks have caused civilian and military fatalities and have contributed to regional instability. The use of force by Iraqi militias against the KRG and consulates is predominantly illegal under domestic law.

Moreover, war has significant and enduring impacts on economic factors over both short- and long-term periods. Following a conflict, infrastructure such as airports, roads, bridges, and power plants are frequently damaged or destroyed, which disrupts production capabilities and hinders the regular flow of trade (Paul Collier and Anke Hoeffler, 2004, 44). This physical devastation reduces a country's productive assets and usually results in a substantial decline in investor confidence, thereby decreasing both domestic and foreign investment.

The bombings have forced residents to leave their homes, leading to a loss of human resources and disruption of local labor markets. This displacement not only diminishes the availability of skilled workers but also increases the financial burden on the state for providing

² The Islamic Resistance in Iraq refers to an informal network of Iranian-backed Shia Islamist armed groups in Iraq. The name is used by members of the network when carrying out attacks against American forces or its allies in the region.

humanitarian assistance and resettlement, which in turn hampers sustained economic development (Katarzyna Filipowicz, Adam Krawiec & Tomasz Tokarski, 2024).

As for the Kurdistan Region, bombing areas by Iraqi armed groups has a huge economic impact. Drone and missile attacks by Shiite armed militias in Iraq, especially the Islamic Resistance Group, on gas fields, airports and consulates have temporarily paralyzed the labor and housing markets.

The political and security differences between KRG and Iraqi Federal Government have made Baghdad authorities not concerned about violations committed by local militia groups and foreign forces against the territory and people of the Kurdistan Region, While the issue of protecting the borders and sovereignty of the state is directly related to the central authorities because according to the Article 109 of the Iraqi constitution, Kurdistan region is an integral part of Iraq (Iraqi Constitution, 2005).

3.2. The Legality of Armed Drone Strikes within the Framework of International Law

The use of force is generally forbidden, though international law permits it under specific conditions. According to the UN Charter, the use of force is not allowed at the international level. "Article 2(4)" of the UN Charter establishes a general prohibition on the use of force, stating: "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" (UN Charter). Despite this, other articles in the Charter also support the prohibition of force. For example, Article 2.3 emphasizes that "all members shall settle their international disputes by peaceful means" (UN Charter, Aram Nabee Mohammed, 2013: 13-14).

According to Article 2 (7), the UN Charter does not grant the UN the authority to intervene in matters that are essentially within a state's domestic jurisdiction, nor does it require member states to resolve these matters under the Charter. This principle, however, does not affect the application of enforcement measures under Chapter VII (UN Charter).

Article 33 states that "the parties involved in any dispute, which if continued could threaten international peace and security, should initially attempt to resolve the issue through negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, utilizing regional agencies or arrangements" (UN Charter).

The General Assembly has clarified the concept of aggression by defining it as "the use of armed force by a state against the sovereignty, territorial integrity, or political independence of another state, or in any other manner inconsistent with the Charter of the United Nations" (UNGA Resolution 3314, 1974). Moreover, in Resolution 2625, the General Assembly emphasized that "no state or group of states has the right to intervene, directly or indirectly, for

any reason whatever, in the internal or external affairs of another state" (UNGA Resolution 2625, 1970).

Although the UN Charter generally prohibits the use of force, it does provide two exceptions to Article 2(4). These exceptions permit the use of force in specific circumstances:

The first exception is the right of states to use force in self-defence against an armed attack. Article 51 of the UN Charter recognizes self-defence as an exception to the general prohibition on the use of force. This article explicitly allows a state to use force in response to an armed attack by another state. UN members are required to report any actions taken in self-defence to the UN Security Council (UN Charter, 1945, Article: 51). For example, Ukraine has the right to defend itself against Russia.

The second exception involves the use of force authorized by the Security Council under Article 42 of the UN Charter against any member state if the Security Council deems that measures not involving force are inadequate to restore and maintain international peace and security (UN Charter, 1945, Article: 42). For example, the Security Council authorized force during the Iraq invasion of Kuwait in 1990 against Iraq to restore international peace and security (UNSC Resolution 678, 1990).

Customary international law also forbids the illegal use of force. This principle is grounded in state practices and opinion juris (the conviction that a particular practice is legally mandated) (ICJ, 1986). It encompasses the prohibition of aggressive actions against the territorial integrity or political independence of any state, as specified in the UN Charter. Furthermore, customary international law acknowledges the right to self-defense in response to an armed attack, as established in the Caroline case and subsequent state practices. This principle limits the use of force to cases of legitimate self-defense (Aram Nabee Mohammed, 2013: 13-14, Armed Activities Case, 2005). Therefore, it can be concluded that the use of armed drones is prohibited internationally, except in the circumstances described in Articles 42 and 51 of the UN Charter.

Furthermore, when the application of force results in a person feeling frightened, injured, or killed, whether through the use of drones or any other weapon, it constitutes a breach of international human rights law, as every individual has the right to live with dignity.

The use of armed drones also brings up significant legal concerns. Legal scholars contend that drone strikes frequently lack sufficient transparency and accountability and can sometimes breach international humanitarian law, especially when civilians are not afforded a fair opportunity to differentiate themselves from combatants.

The deployment of any weapon system, including armed drones, during armed conflicts is governed by the rules of international humanitarian law (ICRC, 2021). This implies that when using drones, conflicting parties must differentiate between combatants and civilians, as well as between military targets and civilian objects. They are required to take all possible

precautions to protect the civilian population and infrastructure. If the anticipated collateral damage to civilians or civilian objects is excessive compared to the expected military advantage, the attack must be halted or canceled (ICRC, 2021).

Drones are usually operated under responsible command, which means that, according to international humanitarian law, drone operators and their chain of command are accountable for their actions. The fact that they are thousands of kilometers away from the battlefield does not relieve them of their responsibilities, which include following the principles of distinction and proportionality, and taking all necessary precautions during attacks (ICRC, 2013). Thus, drone operators are no different from pilots of manned aircraft like helicopters or other combat aircraft in terms of their duty to comply with international humanitarian law, nor are they different in terms of being legitimate targets under the rules of international humanitarian law (ICRC, 2013).

At the international level, Turkish and Iranian forces, especially Turkish forces, have continuously carried out drone and missile attacks on villages, agricultural, tourism and airports in the Kurdistan Region. Hundreds of villages in Erbil, Duhok and Sulaimaniah provinces have been evacuated and nomads, especially shepherds, have suffered heavy losses because they are prevented from entering their pastures and sometimes bombed.

The use of armed drones as a force by neighboring countries has killed, injured and disabled many innocent people in different parts of the Kurdistan Region. According to the Community Peacemaker Teams (CPT), attacks by Turkey and Iran caused 425 civilian deaths and 420 injuries from 1991 to 2024 (CPT, 2024).

Under the guise of targeting the Kurdistan Workers' Party (PKK), Turkish airstrikes and drones have resulted in the deaths and injuries of numerous civilians. For instance, in 2022, a Turkish drone attack in Zakho claimed the lives of a family of six, among them children (CPT, 2024; Shafaq News, 2022). Additionally, on the afternoon of Wednesday, September 4th, 2024, a Turkish drone strike on a civilian Toyota Land Cruiser on the Dokan-Khalkan road in the Sulaymaniyah Governorate of Iraq killed three members of a family, including a child (Airwars, 2023).

According to BasNews Media, an alleged Turkish bombing on July 20, 2022, in the village of Parkh, near a summer resort outside Zakho in the Duhok province of the Kurdistan Region, resulted in the deaths of eight civilians, including three children, and injuries to up to 45 others, including four women and two children (BasNews, 2022).

Turkey claims that PKK forces are in the Kurdistan Region and considers them against itself and believes that they are a threat to Turkish security, so it uses force against them as a right to defend itself. Although the use of force in self-defense is a right recognized in international law, it must not be abused or excessive. Any State may exercise the right of self-defense temporarily when there is a serious existing threat to it, but must notify the Security

Council as soon as possible so that the Security Council can take the necessary measures to end the conflict (Article 51, UN Charter).

It is noteworthy that Turkish forces have exceeded the right to self-defense and have been carrying out armed attacks on the Kurdistan Region without the consent of the Security Council and the international community. For instance, in 18/03/2023, Turkey bombed Arbat airport in Sulaimaniah region, Yahya Rassoul, spokesman for the commander-in-chief of the Iraqi armed forces, said in a statement: Arbat airport in Sulaimaniah city was bombed by a drone that entered Iraqi airspace from across the Turkish border. Three members of the anti-terrorism agency were killed and three others wounded in the blast, he said. The spokesman said the attack violated the sovereignty, security and territorial integrity of Iraq and threatened peace and security in the region, while airports should be protected according to international law and customs (PUKMEDIA, 2023).

Therefore, it could be said that the Turkish forces are abusing the right of self-defense and such military actions fall within the framework of aggression crimes, that is an international crime and against international peace and security.

According to the International Humanitarian Law, parties utilizing drones must adhere to the principles of discrimination, proportionality, and necessity (ICRC, 2021). However, the actions of Turkey do not comply with the principle of necessity and proportionality because its continuous attacks are unnecessary and excessive, causing civilian casualties. Turkish officials claim their strikes target PKK militants, but numerous reports suggest that many civilians are killed during these operations against alleged militant targets, thereby infringing on the sovereignty of Iraq and the Kurdistan Region (Shafaq News, 2025; Reuters, 2024).

Therefore, it can be said that Turkey has committed violations against the Kurdistan Region as part of Iraq. On the other hand, Turkey must try to resolve its problems with its neighbors through peace and diplomacy and provide the rights of the Kurdish people in Turkey.

Moreover, Iran often targets Kurdish opposition groups in the Kurdistan Region of Iraq (KRI), including the Kurdistan Free Life Party (PJAK). In September 2023, Iranian missiles hit a civilian hospital in Hajji Omran, resulting in the deaths of three patients and injuries to the staff (Reuters, 2023; Al Jazeera, 2023).

On January 15, 2024, the Iranian Revolutionary Guard Corps conducted a missile strike on Erbil, the capital of the Iraqi Kurdistan Region, specifically targeting the home of Peshraw Dzayee, a well-known Kurdish businessman. The attack resulted in the deaths of Peshraw Dzayee, his young daughter, his housekeeper, and a visiting businessman named Karam Mikhail, with six others sustaining injuries. The Revolutionary Guards admitted to carrying out the attack, claiming it was aimed at Israeli intelligence activities in the area. However, both Iraqi and Kurdish authorities refuted this claim. The incident was met with widespread local and international condemnation (Human Rights Watch, 2024).

These cases are just a few examples of drone and missile attacks by Turkey and Iran on citizens in the Kurdistan Region, but dozens of other attacks have been carried out in Amedi, Bradost, Balakayety, Sulaimani, Ranya, Qaladze, Qandil Mountain and refugee camps in Koya and Makhmur. As a result of these attack hundreds of innocent people were killed and injured, and cause to great damage to the economy and livelihoods of citizens, increase unemployment and reduce investor confidence, especially in the tourism sector in the border areas of the Kurdistan Region. However, the Iraqi government has not explicitly protested against all these violations and has not filed any legal or formal complaint with the international courts and the United Nations. At the same time, the international community has remained silent about the violations of Turkey and Iran, whose aggressive actions threaten international peace and security.

4. The Role of the National and International Courts in Prosecuting Criminals

In general, those who use force are legally responsible, whether domestically or externally. National and International courts also have the power to prosecute those accused of committing crimes through armed drones or any other means of force. Therefore, the role of domestic and international courts is elaborated below.

4.1.The Role of the Iraqi Courts in Prosecuting Criminals

When a soldier in Iraq breaches the law, for example, by using force against civilians in public or diplomatic areas, they are primarily held accountable through the country's military judicial system. Military personnel in Iraq are governed by the Military Code and are tried in military courts established under the Iraqi Constitution (Ministry of Justice of Iraq, 2020). Military authorities first conduct an investigation, and if sufficient evidence is found, the case is prosecuted in a military court where the soldier may face penalties such as imprisonment, demotion, or dismissal.

In situations where violations have wider public or international ramifications, such as assaults on diplomatic sites or the killing of civilians, criminal or civilian courts may also assert jurisdiction. This ensures that the conduct is examined under military, criminal, and civilian legal frameworks (Jackson Magoge and M. Suresh Benjamin, 2024). The aim of this system is to offer thorough accountability, although there are still challenges in maintaining consistent transparency and due process in these prosecutions.

Some Shiite militia groups in Iraq, such as the Islamic Resistance Group, have repeatedly carried out drone attacks on public places, consulates and industrial sites in the Kurdistan Region, causing serious Physical and moral damage and threatening social, political and economic peace and security inside the region.

Although these armed groups operate in the form of armed militias, they belong to the Iraqi military and are organized within the framework of Iraqi military laws and regulations. Therefore, the soldiers and senior officers accused of committing these violations can be held accountable and judged before the Iraqi Military court and civil court.

The question is who will bring claims against criminals? Are the courts independent and can they be impartial in judging and punishing criminals?

The public prosecutor in the Kurdistan Region or any other person who has suffered loss of life or property can file a claim against the perpetrators before the criminal and civil courts in the Kurdistan Region or in Iraq. However, it is very difficult for the courts to make a fair and independent decision due to the political and economic problems that have existed for several years between the authorities in Federal Government and the KRG. At the same time, political parties have a strong influence on the judiciary in Iraq and the Kurdistan Region.

4.2 The Role of the International Courts in Prosecuting Criminals

There is a critical academic debate about the commission of international violations and crimes by local armed groups and neighboring states such as Turkey and Iran in the Kurdistan Region.

Domestically, Shiite militias and armed groups affiliated to the terrorist organization ISIL have committed several human rights violations through missiles and drones over the past 10 years and are accused of committing war crimes according to the Article (8) of the Rome Statute of the International Criminal Court against the people of KRI.

Internationally, Turkey and Iran are accused of committing crimes against International Law.

The sovereignty of the Kurdistan Region as a federal region of the Iraqi state has been consistently violated over the past 20 years since the fall of the former Iraqi regime by Turkish forces on the pretext of the presence of PKK forces in the region. Most of these attacks have been carried out by armed aircraft and drones, and hundreds of civilians have been victim (Aram Nabee Mohammed, Idrees Qadir Rasul, et al., 2023).

On August 21, 2011, Turkey targeted a civilian vehicle on Kurtak road in Sulaimaniah Province, killed seven people, including four children. On October 13, 2017, Turkish warplanes killed a man named Himdad Osman while he was returning to his home in Barniza village. In the afternoon of November 14, 2018, Turkish warplanes bombed the border of Amedi and as a result, 3 citizens of Aradna village were killed in Duhok province. Moreover, at the end of April 2021, the Turkish army used chemical weapons 3 times in Iraqi Kurdistan against the areas of Amedi, the mountainous areas of Duhok and the Mamresh and Avashin mountains. Also, on August 18, 2020, both Bradost and Balakayety areas were bombed by Turkish drones, burning and destroying many fields and gardens in the border areas (Aso Kakarash, 2023: 210-215).

These are just a few examples of killings and violations committed by Turkey against the population of KRI within the framework of war crimes, which are prohibited under the Rome Statute and the Geneva Conventions.

At the same time, the forces of the Islamic Republic of Iran have repeatedly launched missile and drone attacks on the KRI under various pretexts. For example, they attacked the refugee camp in Koya, the house of Sheikh Baz and the house of Peshraw Dzayee in Erbil, killing and wounding several civilians (Dilan Sirwan, 2022).

Turkey and Iran have crossed the border and used force in the Kurdistan Region and violated the sovereignty of Iraqi territory through drones, missiles and warplanes, and their attacks have become a threat to the international peace and security. Therefore, according to Article 8 of the Roma Statue³, both states have committed crime of aggression against Iraq.

Below, the researcher attempts to explain position of the International Criminal Court and the European Court for Human Rights in relation to all the violations and crimes mentioned above.

4.2.1. The Role of the International Criminal Court (ICC)

The ICC, which came into force in 2002, plays an important role in the trial and punishment of perpetrators. The court is an independent permanent international court with expertise in investigating and deciding cases related to crimes of genocide, war crimes, crimes against humanity and crime of aggression (Article 5, Rome Statue, 2002).

These international crimes are sometimes committed by drones, but it makes no difference when the crime is committed and the victims can bring the case before the ICC. For instance, in 2015, the ICC opened a preliminary investigation into Israel's use of drones in the Gaza Strip during military operation 2014. The investigation was prompted by a request from the Palestinian Authority, which accused Israel of committing war crimes by targeting civilians with bombers (Thomas Escritt, Anthony Deutsch, 2015).

³ Article 8 of the Roma Statue: Act of aggression” means the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations. Any of the following acts, regardless of a declaration of war, shall, in accordance with United Nations General Assembly resolution 3314 (XXIX) of 14 December 1974, qualify as an act of aggression:

- A. The invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof;
- B. Bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State;
- C. An attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State".

According to Article 17 of the 'ICC's status, the case of prosecuting criminals is being investigated or prosecuted by this State which has jurisdiction over it unless the State is unwilling or unable genuinely to carry out the investigation or prosecution.

Although the ICC has the authority to prosecute perpetrators of international crimes, it cannot play its role in the KRI because Iraq is not a member of the ICC, nor only Iraq but also Turkey and Iran. When Iraq becomes a member, the court can play its role.

Since Iraq is not a member of the Court, it agrees in accordance with Article 12(3) that the Court exercise its powers and the case be heard in the Court. In other words, the Iraqi government must recognize the powers of the court and agree to the court investigating the case in its territory. Even if Iraq is not a member, but when it accepts the powers of the Court under paragraph 3 of Article 12, the ICC may investigate cases committed in its territory (Article 12, Roma Statue, 2002).

In addition, these violations and crimes committed against the Kurdistan Region can also be submitted to the Public Prosecutor of the Court for investigation through a Security Council Resolution (UN Charter, Article: 13, paragraph: 2). For example, the Security Council referred the Darfur genocide case to the Public Prosecutor of the ICC to investigate the crime under Resolution (1593) of (March 31, 2005) because Sudan was not a member of the Court (UN Security Council, 2005, Resolution: 1593,).

In practice, it is very difficult for the ICC to play a role in investigating these crimes discussed earlier because the Kurdistan Region is not a state and Iraq is not ready to become a member of the court or accept its powers. There are also many political and economic problems between the Federal Government and the Kurdistan Region, which has led the Federal Government to refuse to support the Kurdistan Region in filing a complaint against Turkey and Iran at the International Criminal Court. At the same time, the Iraqi state is weak against Turkey and Iran and cannot stand against them.

4.2.2. The Role of the European Court of Human Rights (ECtHR)

The ECtHR, founded in 1959 and headquartered in Strasbourg, is an international court that reviews claims of human rights violations by contracting states, specifically concerning civil and political rights as stipulated in the European Convention on Human Rights (ECHR) and its protocols (The European Court of Human Rights, 1959).

The Court “adjudicates” complaints from individuals whose rights have been violated upon by States Parties to the Convention or from Member States. Comprising 47 member states, the Court's rules and regulations are binding on its members. It is important to note that the Court is not affiliated with the “EU” (The European Convention on Human Rights, 1953).

The ECtHR can play a role in prosecuting cases of murder, torture, slavery and inhuman treatment (European Convention on Human Rights, 1953, Articles: 1, 2).

Since its establishment, the court has seen thousands of cases to prosecute and punish the perpetrators and compensate the victims. Although Iraq is not a member of the ECtHR, Iraqi citizens have brought several cases related to the right to life, liberty, torture or inhuman or degrading treatment or punishment against member states that have committed crimes against Iraqi citizens. For example, in the case of *Al-Skeini* against the “UK” in 2011, the ECtHR in Strasbourg, France, ruled that Britain was responsible for the killing of an Iraqi civilian in 2003 by a missile fired from a drone. The court determined that the use of lethal force by drones violated the right to life as stipulated in Article 2 of the ECHR. It concluded that despite the events occurring outside the UK’s jurisdiction, the UK had effective control over the area, thereby extending its obligations under Article 2 beyond its borders. This historic ruling established a precedent that a state can be held accountable for human rights violations in territories it effectively controls, representing a major advancement in the extraterritorial application of the Convention (European Court of Human Rights 2011 and James Crawford 2013).

The important question is whether the Kurdistan Region’s citizens can file a complaint before the ECtHR against killings, injuries and arrests by Iraqi armed groups or forces of neighboring countries such as Turkey and Iran through bombing?

Domestically, citizens cannot file complaints against Iraqi armed groups for violations of the ECHR because Iraq is not a member of the court's statute and the perpetrators are Iraqis. Victims can therefore file complaints with national courts to prosecute the perpetrators.

Internationally, Kurdistan Region and Iraqi citizens cannot file complaints against Iranian forces because neither Iran nor Iraq is members of the ECtHR. Therefore, according to the provisions of the ECHR, the matter cannot be submitted to this Court for decision.

In addition, Turkey is a member of the European Court of Human Rights and must therefore comply with all articles of the European Convention on Human Rights. For example, Articles 2 and 3 of the Convention state that everyone has the right to life and shall not be subjected to torture or inhuman treatment, but we see Turkish forces killing and injuring innocent people in the Kurdistan Region through bombing by drones and warplanes.

It is clear that Turkey has violated human rights in the Kurdistan Region and killed hundreds of civilians, why have not the victims complained to the ECtHR?

It is obvious that the Iraqi state is not a member of this court, so its people cannot take their cases directly to this court even if they are harmed. According to Article 44 of the ECHR, only Member States of the Court and the European Commission on Human Rights can file complaints against perpetrators.

Understanding Article 1, the jurisdiction of the Court is territorial, meaning that the violations committed must take place within the jurisdiction of Turkey (Art. 1, ECHR). If Turkey has “effective control” over the areas or people harmed by Turkish forces in the Kurdistan Region, the ECtHR can play its role, as it did in the 2011 case of *Al-Skelni v. the United Kingdom* because the court has recognized extraterritorial jurisdiction in cases where a state conducts military operations abroad (Marko Milanovic, 2011).

However, Turkish air strikes or drone strikes on people in the Kurdistan Region alone do not mean that Turkish forces have effective control in the region, so if a complaint is filed with the ECtHR, the complaint will be rejected. In the case of *(Issa and Others v. Turkey (2004))*, for example, an Iraqi family claimed that Turkish troops killed several people in northern Iraq in 1995, but the European Court of Human Rights rejected their case because there was no strong evidence that Turkish troops were in the area or had effective control (*Issa and Others v. Turkey*, Application No:31821/96).

Even if Turkey has a “de facto” presence in the Kurdistan Region and control over a certain area, people cannot directly complain to Turkey before the ECtHR if they have suffered casualties, the affected citizens can then file cases with the ECtHR within six months of the final domestic decisions⁴, but the applicants must prove Turkey’s extraterritorial control or direct responsibility for damage (Art. 26 ECHR, Marko Milanovic, 2011).

When the ECtHR rejects cases in which a member state violates the human rights of citizens of a non-member state, but lacks “effective control” over the region, this behavior is criticized because victims have no legal ways to find justice in the ECtHR. This means that member states can violate the human rights of non-member citizens across borders without facing legal sanctions, simply because of the lack of effective controls, which is unfair and incompatible with human rights principles.

5. Conclusion

The article investigates the legality and impact of armed drone operations in the KRI. It is obvious that the Kurdistan Region is an autonomous region recognized by the constitution within the framework of the Federal Republic of Iraq, so it is not allowed to violate the rights of the people and the territory of the region. Additionally, many people are killed and injured in drone attacks in the Kurdistan Region. In Iraq, outlawed armed groups such as the Islamic Resistance Group commit these violations. On the foreign level, Turkey and Iran are attacking different areas of the Kurdistan Region through drones and missiles on the pretext of the presence of their opposing forces in the region. From the point of view of domestic and international law, such acts are crimes and entail legal responsibility. Moreover, the research

⁴ It means that the applicants must first complain to the Turkish courts about the violations committed against them by the Turkish forces.

clarifies the impact of armed drone operations on the Kurdistan Region, such as the impact on civilian lives, psychological, political, legal, and economic impact. Besides, the paper discusses the role of the Iraqi Courts, the ICC, and the role of the ECtHR in prosecuting criminals. The article employs an analytical and descriptive approach based on relevant cases, domestic and international laws, scholarly opinions, and international court judgments. Finally, the author has tried to answer the research questions critically

Key Findings:

After a critical analysis and discussion of the legality and effectiveness of the use of armed drones by local and international forces against the Iraqi Kurdistan Region in the framework of an academic research, the author reached the subsequent significant findings:

Firstly, Militia attacks on the Kurdistan Region, often supported by Iran, violate the permanent Iraqi constitution, because the region is part of the Federal Iraqi State, and these armed groups operate outside of official supervision and contrary to Iraqi military and security laws.

Secondly, although the use of force against citizens and territory of the Kurdistan Region through drones and missiles is illegal and violates the sovereignty of the state, international law and customs, but local groups and foreign forces such as Turkey and Iran continue to these violations.

Thirdly, several Iraqi militia groups have bombed people, civilian and diplomatic facilities in the Kurdistan Region through drones and missiles, but no official or unofficial party has filed a complaint against them in court for whatever reason. However, despite all the remarks, it would have been better if they had been confronted and limited through the law and the courts.

Fourthly, both Turkey and Iran are crossing the border of the Kurdistan Region in the name of self-defense without the permission of the Security Council, and violate the principles of sovereignty, discrimination and proportionality under international humanitarian law.

Fifthly, These domestic and foreign drone attacks, especially the drone and missile attacks of Turkey and Iran, have caused many differences and divisions among political parties and have not had a single discourse on these attacks on the Kurdistan Region.

Lastly, according to the Geneva Conventions, states must respect and protect civilians everywhere in the world, even if their actions are outside their own borders. However, the ICC and ECtHR are often unable to prosecute and punish perpetrators because their countries are not members of these two courts, which are contrary to international law and discriminate against people.

Key Recommendations:

Based on the research conclusion and findings, the researcher recommends following:

Firstly, it is important that Iraqi militia armed groups be reorganized in a new legal manner within a military force so that they no longer pose a threat to domestic and international peace and security.

Secondly, prosecute and punish all those who use force in Iraq outside the legal framework without the knowledge of the head of the armed forces, kill people and target civilian and diplomatic places.

Thirdly, due to the advancement of technology and the emergence of various types of drones and smart missiles, the equation and the field of domestic and international armed conflict has changed dramatically. Therefore, it is very important to establish a global legal system that can regulate new forms of warfare and reform international human rights law and the law of armed conflict in order to further protect human beings and the environment in general.

Fourthly, in order for international law to be universal and for all people regardless of nationality or country, the author propose that when a member of the ECtHR violates the Convention against the people of a non-member state outside its borders, the perpetrators should be prosecuted and the victims should be compensated, even if the member state does not have effective control over the territory and people of the non-member state.

Fifthly, efforts to bring about national reconciliation between the political forces in Iraq and the success and support of the peace process between Turkey and the PKK forces that will bring peace and stability to Iraq, Turkey and the region in general.

Finally, efforts should be made to internalize international laws related to the protection of human rights and international crimes in Iraq and make them national laws. For example, international crimes (genocide, war crimes, crimes against humanity and crimes of aggression) should be regulated within the framework of the Iraqi Penal Code so that perpetrators can be easily judged and victims compensated.

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