

Germany: Ramstein Air Base's Role in Drone Attacks

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N.B. As per the disclaimer, neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents. Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

A. Berlin powerless to challenge US drone operations at Ramstein air base

[Source: "Berlin powerless to challenge US drone operations at Ramstein air base", *Deutsche Welle*, 5 April 2015. Available at: <http://www.dw.com/en/berlin-powerless-to-challenge-us-drone-operations-at-ramstein-air-base/a-17545327>]

[1] Statements made by Brandon Bryant, a former drone pilot for the US Air Force, reveal that Germany plays a greater role in the US drone war than previously thought.

[2] "The entire drone war of the US military wouldn't be possible without Germany," Bryant told German media. During his time in the US Air Force, Bryant flew more than 1,000 operations from the US.

[3] The current debate centers around the US Ramstein Air Base in the German state of Rhineland-Palatinate. The pilot controlling the drones is in the US, but with the long distance between the operational area and the US, the data from the remote controlled drones is transmitted via satellite to Germany and then sent via fiber optic cable back to America. What's more, live pictures taken from the drone operations are analyzed in Germany and compared with intelligence.

[4] For years the US has been using drones to fight terrorism in Africa, the Middle East and in the Pakistani-Afghan border region. Since 2004, the Investigative Bureau of Journalism estimates there have been 383 US drone strikes in the Pakistani-Afghan border region alone. At least 2,300 people have been killed, among them 416 civilians.

[...]

Legal grey area

[...]

[5] Human rights organizations like Amnesty International accuse the US of violating international law. However, Washington sees itself in a cross-border war against terror – a conflict with al Qaeda and its allies, not particular countries. In such conflicts, persons directly involved in fighting are deemed legitimate targets. Therefore, the US argues, killing such a person would not violate international law.

[...]

[6] The deployment of US troops in Germany has been regulated since the 1950s with the NATO Status of Forces Agreement. Therefore "military forces and civilian personnel are allowed to take required measures for the satisfactory fulfillment of its defense obligations on the provided premises." And this applies to drone attacks according to US legal interpretation.

[7] But even if Germany believed international law had been violated, it would be difficult for Berlin to take legal action. Jurisdiction lies with the US. The German government could terminate the Status of Forces agreement, said [Andreas] Zimmermann [a German international law professor], "but that would be a huge political decision that would question the entire alliance."

[...]

B. Court dismisses claim of German complicity in Yemeni drone killings

[Source: "Court dismisses claim of German complicity in Yemeni drone killings", *The Guardian*, 27 May 2015. Available at: <http://www.theguardian.com/world/2015/may/27/court-dismisses-yemeni-claim-german-complicity-drone-killings>]

[1] A court in Cologne has dismissed a claim brought by three Yemenis accusing the German government of complicity in the deaths of civilians for allowing the US to relay drone data via Ramstein airbase.

[2] In a groundbreaking case brought by Yemenis who lost relatives in a 2012 attack on their village, the claimants argued that it would not have been possible to fly drones over Yemen without the existence of Ramstein, a US military base in western Germany.

[3] It was the first time that a court in a country lending military or technical support for the US drone programme allowed such a case to be heard.

[4] But a judge at Cologne administrative court dismissed the case after listening to two hours of arguments from the claimants, their lawyer and lawyers for the German government.

[5] She acknowledged the “plausibility” that the base had been used to carry out drone strikes – despite the US and German governments’ repeated claims to the contrary – but said the German government had no legal grounds on which to forbid the US from using Ramstein to do so.

[6] “The German government is not obliged to prohibit the USA from using Ramstein airbase for the execution of drone attacks in Yemen,” said judge Hildeund Caspari-Wierzoch, adding that neither was it “politically realistic” to terminate the Ramstein contract with the US.

[...]

[7] Stefan Sohm, a lawyer for the German defence ministry, argued that Germany could not be expected to act as “a global public prosecutor towards other sovereign states” and the German government was satisfied with the assurances it had received from the US government as recently as January that “no drones are commanded or controlled from Germany”.

[...]

Discussion

1. (*Document A, paras [1] - [3]*)

a. How would you classify the situations in Afghanistan, Pakistan and Yemen where the US conducts drone attacks against non-state armed groups? Would your answer be the same if the US did not have the consent of the territorial states? (GC I-IV, Art. 2 and 3)

b. What criteria must be fulfilled in order for a situation to be qualified as a NIAC? Are cross-border NIACs covered by Art. 3 common to the Geneva Conventions? Additional Protocol II? Could sporadic drone strikes by the US fulfil the intensity threshold of violence required to classify a situation as a NIAC? (GC I-IV, Art. 3; P II, Art. 1)

c. Could a State become a party to a pre-existing NIAC without itself being involved in the actual hostilities? Could mere support to one of the fighting parties in terms of logistics, intelligence, planning or coordination of military operations suffice to make the supporting State a party to the conflict? What about the fact that in this case, it is alleged that “the entire drone war of the US military wouldn’t be possible without Germany”? Given

the information in this case, would you say that the presence of the Ramstein military base on German soil makes Germany a party to the conflict? Would your answer be different if drone strikes were actually controlled and carried out from Ramstein? (GC I-IV, Art. 2 and 3)

d. Would your answer to the previous question change if Germany were playing a more active role that involved more than just the provision of territory for locating a US military base? If the German government was aware of and acquiesced to the drone strikes? If the drone strikes were conducted against a State as opposed to armed non-state actors? (GC I-IV, Art. 2 and 3)

e. Does the analysis of satellite and operational imagery and its comparison with intelligence carried out in the Ramstein Airbase constitute a sufficient link with Germany in order for the latter to have jurisdiction over these acts? Even if carried out without any human involvement? Without any storage of data on servers located in Germany? Does the fact of physical transmission of data via fiber optic cables constitute a sufficient link? (GC I-IV, Art. 2 and 3)

f. Would IHL apply to hypothetical attacks by Al Qaeda directed at the Ramstein military base? If so, given the information in both documents, do you think that Ramstein military base is a military objective under IHL? Are the satellites transmitting data for drone attacks legitimate military targets?

2. (*Document B*) Under International Human Rights Law, does Germany have to respect the right to life of the Yemeni drone strike victims? Do they fall under German jurisdiction? Would your answer change if Germany was assuming a more active role than just providing territory for a military base, but still without sending its troops to Yemen?

3. In your opinion, is Germany responsible for any violations of international law committed with respect to victims of drone strikes? If so, what title(s) of responsibility would you invoke to support your answer?

4. (*Document B, paras 6 and 7*) When a State may be held responsible for a violation of IHRL by another State (such as with the principle of non-refoulement), are diplomatic assurances always sufficient to exonerate the former of such responsibility? Assuming that war crimes are indeed being carried out via the Ramstein airbase, would the agreement providing for exclusive jurisdiction of the US be consistent with international law?