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OPERATION NEPTUNE SPEAR- THE LEGALITY OF THE ATTACK

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Introduction

Operation Neptune Spear was the code name for an operation that took place on 2nd May 2011 and was run by the United States of America to kill or capture the original leader of Islamist militant Al-Qaeda, Osama bin Laden. The legality of the said operation has been questioned by several people on various grounds. The operation was carried out by various U.S.A. militant forces: Central, Special Activities Division, U.S. Naval Special Warfare Development Group, 160th Special Operations Aviation Regiment (Airborne), and Marine Tactical Electronic Warfare Squadron 4³. The operation was authorized by the former president of the U.S. Mr. Obama. Many questions came to the surface after the following action was carried out however, the highlighted questions will be addressed in a further blog.

The questions that grabbed the most attention were –

- Did the U.S.A. have the authority to carry out the raid?
- Should Osama bin Laden have been captured alive?
- Pakistan; violation of state sovereignty

The attack took place in a compound in the Pakistani city of Abbottabad. The act served as retaliation for the 9/11 disaster, which was caused by a string of hijackings and suicide attacks on airplanes carried out in 2001 by 19 militants linked to the Islamic extremist organization Al-Qaeda. It has been in the history of mankind the most brutal terrorist attack. The retaliation by the U.S. caught the eye of everyone and the government was sure that there would be legal questions under international humanitarian law the thought that an entire legal force would be there drafting all sorts of scenarios the answer to that question would be surprising because only

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³ 'Killing of Osama bin Laden'(Wikipedia)< https://en.wikipedia.org/wiki/Killing_of_Osama_bin_Laden> accessed on 12 August 2023

four lawyers were aware of the raid and they paved the way for the attack the names of these lawyers are -, Stephen W. Preston, the C.I.A.'s general counsel; Mary DeRosa, the National Security Council's legal adviser; then-Rear Admiral James W. Crawford III, the Joint Chiefs of Staff legal adviser, and Jeh C. Johnson, the Pentagon general counsel.⁴

Did the USA have the authority to carry out the raid?

The government of the USA has listed on numerous occasions which laws were enacted or which international laws gave them the power to carry out the attack. The United States Congress passed a joint resolution on September 18, 2001. known as the Authorization for Use of Military Force⁵, authorizing the use of American forces working against those who are accountable for the September 11 attacks. The USA believes that it was in a position of armed conflict with al-Qaeda and thus by UN Charter Article 51⁶, the US used its right to self-defense in reaction to the 9/11 attacks by taking action.

The international humanitarian law or laws of war are made of 4 conventions and apply only when there is a state of armed conflict there are two types of that exist – international and non-international. Armed conflict is considered international when it exists between 2 states and al-Qaeda is not a state thus it ruled out that theory However when it comes to non-international armed conflict several arguments were made in favor of the USA and against it. the state of conflict that exists between al-Qaeda and the USA is an extraterritorial conflict and the only law that even comes close to supporting extraterritorial conflict under non-international armed conflict is *Common Article 3*⁷ which refers to disputes that occur in the territory of one of the high contracting parties. Although the article might not support the situation at first, there has been a fair share of arguments that suggest the opposite, The ICRC commentary contends that this article should be interpreted through a very wide approach thus putting the extraterritorial conflict well under its purview of the article.

⁴ Charlie Savage, 'How 4 Federal Paved the Way to Kill Osama bin Laden' (*The New York Times*, 28 October 2015) < <https://www.nytimes.com/2015/10/29/us/politics/obama-legal-authorization-osama-bin-laden-raid.html> > accessed 13 August 2023

⁵ The Authorization for Use of Military Force 2001

⁶ UN (26 June 1945)

⁷ Geneva Convention 1949, Article 3

Should Osama Bin Laden have been captured alive – Right to Fundamental Life

To attack an individual the first conclusion that needs to be drawn is whether the person is an original citizen or a fighter. The customary rule of distinction is applicable in non-international armed conflicts which states- Rule 1 of the Customary International Humanitarian Law⁸: Conflicting parties must always distinguish between civilians and combatants. Only attacks against combatants are permitted. Civilians must not be targeted in attacks. There are guidelines issued by the ICRC detailing who may fit the criteria of a combatant.

Assuming Osama bin Laden did fulfill the criteria he still had a right to live according to *Article 6(1) of the ICCPR states that: Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.*⁹

The Seal Team Six that was sent out for the mission claimed they had the orders to kill Osama bin Laden. The US government justified its firm assertion that US soldiers, even those using lethal force, are not subject to international human rights law wherever they are stationed outside of US jurisdiction against specific terrorism suspects abroad. This opinion is founded on a constrained interpretation of *Article 2(1)*¹⁰ of the ICCPR respecting the Covenant's territorial reach. Furthermore, the USA upholds a rigorous interpretation of the idea that international humanitarian law (IHL) takes precedence over other laws during armed conflict¹¹. The forces are not allowed to engage if the person is willing to surrender and does not pose an imminent threat to anyone or is not a flight risk. However, In the present case, Osama did resist being captured thus leaving the forces with the option of killing him.

It is believed Osama bin Laden was entitled to an intrinsic right to life and was protected by the ICCPR, hence the US had a moral obligation to refrain from murdering him. On the other hand, the US also had a duty under the ICCPR to take meaningful measures to stop persons from being killed while the operation was underway in their territory. Accordingly, it is possible that deciding

⁸ Customary International Humanitarian Law 2005, Rule 1

⁹ International Covenant on Civil and Political Rights (adopted 16 December 1966, came into force 23 March 1976) 999 UNTS 171 (ICCPR)

¹⁰ *Ibid*

¹¹ Christian Schaller, 'Using Force Against Terrorists 'Outside Areas of Active Hostilities' – The Obama Approach and the Bin Laden Raid Revisited ' (2015) 20 Journal of Conflict and Security Law 195,209.

not to kill Osama bin Laden might put other people's lives in peril and thus violate their inherent right to life. There has not been enough proof to support that he was a threat to others at the time thus killing him under IHL was unlawful.¹²

Pakistan's violation of state sovereignty

The attack took place in a city in Pakistan, It is believed by the leaders of the country that they should have been notified about the attack, and because no prior notice was given it amounts to a violation of state sovereignty under international law. The US justified its action by stating that Pakistan had not done anything to eliminate the threat in the past and was also unwilling to do so, the US government also had concerns since the terrorist group Taliban has relations with the Pakistan intelligence services there would have been mishandling of information and Osama could have escaped. The reasons though logical a country's sovereignty was put into question thus raising concerns worldwide.

Conclusion

The US did a great job in eliminating a threat to world peace but at the same, it did try to find loopholes within the law. Killing Osama might have been accepted with positive notions worldwide yet capturing him would have been well within the law. US government took their risk while conducting the raid because the majority of laws seem to establish there is no state of armed conflict rendering the entire attack lawful. It not only affected the sovereignty of Pakistan but raised many questions on international law. Many laws were manipulated in the process of the raid but on the bright side world was made a better place by eliminating the threat. All the people who died in the 9/11 tragedy were avenged and got the justice they truly deserved.

¹² Amanda Elfstrom, 'The killing of Osama bin Laden, Was it Lawful?' (Diva Portal, 2011)< <http://oru.diva-portal.org/smash/get/diva2:506500/FULLTEXT01.pdf> > accessed 16 August 2023