
Civil Responsibility Arising From Of Drones and the Position of the Iraqi Constitution on It

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Abstract

This research deals with the provisions of civil liability for the use of drones in the Iraqi Civil Law No. (40) of 1951, by stating the position of the Iraqi legislator on the liability arising from the illegal use of these aircraft and the statement of its legal nature, the elements of this responsibility and its effects, the most important of which is obtaining On fair compensation, in addition, this study addresses the position of the Iraqi constitution of 2005 regarding drones, whether they are used for civil or military purposes.

Keywords: drone, civil responsibility, constitution, law, Iraq.

Introduction

The issue of drones or unmanned aerial vehicles is one of the renewed issues in Iraq, as it raises many delicate legal issues that must be examined and analyzed, especially in light of the diversity of purposes used by these aircraft, whether for peaceful civilian purposes or for military purposes.

At the same time, the study of tort for the damages of drones is of great importance, especially in light of the increasing cases of targeted killing using these drones, in addition to the multiplicity of physical, material and moral damages arising from them, whether at the international or national level.

Despite the importance of this civil liability and the diversity of its forms, and its difference from criminal liability in many forms, it is noted that the behavior of states differs regarding the organization of provisions for responsibility for objects (drones) between (three) directions, as the first direction goes to individuals and the allocation of a separate chapter Or legal articles within the texts of the civil law that deal with civil liability for things, as is the case with regard to the Iraqi civil law, while the second trend of states goes to enact Private laws that deal with responsibility for things and drones separately, while the third trend goes to embrace a middle path between the two directions. It combines both at the same time.. Based on the foregoing, there are various aspects of the importance of studying the issue of civil legal liability resulting from the use of drones. From a theoretical point of view, it is noted that the Iraqi legislator, represented by the House of Representatives, did not legislate a law regulating the use of these aircraft, just as this issue did not receive sufficient attention from the Iraqi jurisprudence. Whether in terms of stating the legal nature of the drone or the provisions applicable in the case of illegal use resulting from it, which requires reference to the general rules in civil liability.

While the practical importance is represented in the prevalence of the illegal use of drones in Iraq by many foreign countries without the civil legal liability for them being triggered, and thus not bringing this issue to the attention of the judiciary has led to the lack of judicial applications related to it.

Based on the foregoing, the problem of the study is to determine the extent to which the tort civil liability can be triggered in the case of the illegal use of unmanned aircraft in targeted killing operations. and the extent to which the general rules of civil liability stipulated in the Iraqi Civil Law No. (40) of 1951 can be applied, without losing sight of the statement of the position of the Constitution of the Republic of Iraq for the year 2005 regarding the possibility of adopting general rules, or is it necessary to legislate Private laws that regulate the illegal use of drones?

The scope of our study will be limited to identifying aspects of tort liability arising from targeted killings, which threaten the lives and lives of citizens, whether in Iraq or other countries.

In order to reach the research goals and objectives that it seeks, we decided to use the analytical approach, and to achieve this, the study will be divided into the following investigations:

The First Topic: The Provisions of Civil Liability for the Illegal Use of Drones

The Second Topic: The Extent to Which the Use of Drones Is Compatible With the Iraqi Constitution: The First Topic

Provisions of Civil Liability for the Illegal Use of Drones

Drones are considered one of the most important combat technologies adopted by some countries to confront threats and asymmetric wars, and for this reason they have been described as the best means

for a comprehensive war against tFaultism, as they perform many combat missions outside geographical borders in order to strike vital sites or assassinate those they describe as tFaultists , as defined by “targeted killing” whether through the use of Killing Autonomous Robot Systems (IARWS), Autonomous Weapon Systems (AWS) or other semi-autonomous weapons.

These planes are also among the means in which the perpetrator’s personality is described as dangerous and surprising, as it does not give the victim any opportunity to get rid of the deadly attack, in addition to the tFault caused by the use of this plane in the hearts of victims and civilians alike, which makes it difficult to establish proportionality. And balance in the operations carried out by these aircraft.

In order to clarify the position of the Iraqi legislator on the use of unmanned aircraft for the purposes of systematic killing, we must address the definition of drones and their legal nature, which we will address in the following demands:

The first requirement: the definition of drones and their legal nature

We will deal with the definition of drones and determine their nature in Iraqi law by dividing this requirement into the following branches:

The First Section: Introduction to Drones

First: Definition of Drones:

The names given to the drone vary, as it is called a drone, remote combat aircraft, drones, unmanned aerial vehicle (UAV), or remotely piloted aircraft.

In this regard, it is noted the absence of a legislative definition of drones in Iraq, due to the absence of a law or regulation regulating their use, which requires reference to the opinions of jurisprudence, as the first opinion goes to define them as "programmed and remotely piloted aircraft, controlled by specialized experts on the ground, and it is equipped with tools that allow it to perform the required tasks. It may be equipped with devices, cameras, missiles, and missiles to be used against specific targets."

It is also defined as “an aircraft that is operated and controlled by a person on the ground” or that it is “an aircraft that can be programmed in advance or directed wirelessly while in flight (i.e. controlled or controlled remotely)” It is also defined as “an aircraft that has been designed or modified not to carry a person, and is operated through electronic input initiated by the flight control unit, by the autonomous flight management control system on board” While others defined it as “machines and vehicles that are controlled remotely” it was also defined as “an aircraft that directs remotely or is pre-programmed for a route to take” The US Department of Defense also defined it as “a powered aerial vehicle that does not carry a human operator, and uses aerodynamic force to provide sufficient force to lift the vehicle, which enables it to fly independently, or to walk remotely, and that it can carry a lethal or non-lethal payload.”

We conclude from the foregoing that the drone is a type of aircraft that is operated remotely or with an autonomous or semi-autonomous operating system, and its uses vary for civil or military purposes, such as carrying out military operations, or carrying equipment and cameras for the purpose of conducting field surveillance and reconnaissance, and others.

Second: Types of Drones

The types of drones differed, according to the classification criterion. In terms of use, they are divided into civil aircraft and military aircraft and in terms of their driving method, they are divided into direct and continuous drones from the ground (PVR), and independent drones with pre-prepared and specific programs (PRV), In addition to dividing them in terms of size into small drones, Drones are very small, and in terms of height they are divided into medium-altitude and high-altitude aircraft, and in terms of missions they are divided into surveillance and reconnaissance aircraft, warplanes (equipped with missiles), and dual-use aircraft . In addition, there are some drones that are directed from within the theater of conflict while others are operated by almost instantaneous satellite communication, as a team close to the conflict zone directs the drone during takeoff and landing, and sensor operators located far away Thousands of miles with the functions of controlling the drone while it is flying, as well as activating the strikes and missiles directed from it.

Based on the foregoing, the concept of an aircraft (RPA) denotes that aircraft with remote control, which is carried out by a pilot, while (UAV) is defined as unmanned aerial vehicles that are controlled remotely by a person through a device, and the take-off method is And retrieval through a wireless automatic system.

The Second Section: The Legal Nature of the Drone in Iraq

The legal nature of the drone varies according to the purpose for which it is used, and despite the foregoing, the majority of jurists hold that the drone is nothing more than a means of transportation

subject to the provisions of movable money, due to the possibility of moving it from one place to another without damage, and it is also considered one of the things. In addition to treating it as real estate with regard to the disposals received from it, such as buying, selling and mortgaging, due to its great financial and economic value.

Thus, it is noted that the legal nature of the drone is different in Iraqi law than in international law, as it is one of the means of war, which some countries may resort to wage war against another country (the enemy state) without endangering the soldiers' lives, and then the use of the drone's weapon involves This dangerous means replaces the soldiers, and therefore international jurisprudence has been divided regarding determining the legal status of the aircraft operator (who controls it) and the persons attached to the service of the drone (such as (supply, radio, and maintenance personnel), and the same applies to the aircraft programmers or information analysts. As for the position of the Iraqi legislators on the nature of the drone, we find that no separate provisions are allocated from the general rules stipulated in Civil Law No. (40) of 1951 as amended with regard to determining the nature of the drone as movable money, as Article (62) of it defines the movable by the text 2- The movable is everything that can be moved and transferred without damage, including money, offerings, animals, measures, weights, and other movable things.

In this direction, the prevailing trend of Iraqi jurisprudence goes to considering the drone as a movable property, and non-living things at the same time, and if it is used, it must be guarded, and then in the event of harm to others due to the drone, it follows that it must be applied Rules of responsibility for guarding things. The same provision applies to Iranian law, as civil liability for damages caused by the drone can be triggered according to the general rules in tort for things.

We conclude from the foregoing that despite the applicability of the general rules in tort for things to the tort liability resulting from drones, we believe that the Iraqi legislator must intervene for the purpose of legislating a law or issuing a system for drones, and similar to many countries that have undertaken the legal treatment These aircraft and their uses and liability.

The Second Requirement: The Position of the Iraqi Legislator on the Negligence of Civil Elements Regarding Drones and Compensation for Them

After we concluded that the drone is considered movable money, it is necessary to clarify the elements of tort liability resulting from its misuse, in addition to addressing the provisions of compensation, which we will show in the following sections:

Section One: Elements of Tort Liability for Unmanned Aircraft in Iraqi Law

We have previously stated that the drone is considered a movable property, in addition to being considered a material, non-living object, so in the event of its use, the rules applicable to it are the responsibility for doing things in accordance with Article (231) of the Iraqi Civil Code, as they include Things that require special care to prevent damage.

For the establishment of tort liability in general and liability for things (drones) the availability of the three pillars that form the backbone of liability, and in the absence of which liability is negated, and these pillars are represented by Fault, damage and the causal relationship between them.

First: Fault

The general rule is represented by the possibility of raising responsibility for things if the source of the obligation in which the breach occurred is a legal text, as the Fault is considered the essential and basic pillar of this responsibility, and therefore it cannot be taken into account unless there is a legal text that permits it.

The Fault is that the drone is in the hands of the guard and it is assumed that the owner is the guard, and he is the one who bears responsibility for the plane until evidence proves otherwise, as the mere presence of the object when it caused damage in the custody of the person to be held accountable is sufficient to trigger his responsibility on the basis of responsibility Presumed, which is the supposed Fault of who has the authority to direct this plane.

Based on the foregoing, the responsibility for the aircraft is achieved by mere use, without requiring that this be done by the guard himself, and it is possible to imagine the harmful act of other people who have physical control over it, and then the exploiter is considered the owner of the drone in this hypothesis because he has the actual control, although physical control remained with the vassals. The guardian status of the owner is not negated, especially if we know that the follower works for the owner's account and carries out the orders issued by him and then the responsibility of the owner of the drone, the guard and the actual exploiter of it (management staff) is realized in accordance with the general rules in responsibility for things, and the responsibility of the follower for subordinate business. It should be noted that the Iraqi legislator did not know the Fault, leaving that to jurisprudence and

judicial jurisprudence, for the purpose of accommodating all forms of deviation in behavior that may cause harm to others because of things, by providing a flexible definition that responds to all cases and facts and for this reason some defined it as a deviation in Behavior, as it is a transgression that occurs from the person in his behavior, and exceeds the limits that he must abide by in his behavior ⁽¹⁾.

It is clear from the foregoing that the Fault consists of two elements: the material element (breach or infringement): and the moral element (perception and discrimination) and a specific behavior cannot be described as a mistake, unless it represents a departure from one of the legal obligations or the established agreement, whether the Fault is tort By doing a positive or negative action.

As for verifying and proving the Fault, the objective measure must be taken, by comparing the behavior of the person at fault with the behavior of a regular person, and under the same external circumstances that surrounded the perpetrator of the Fault. (204) of the Iraqi Civil Code, and the general rules require the aggrieved party to prove the transgressor's deviation from the usual behavior of the usual person who caused the damage, but this cannot be applied to drones for many reasons, the most important of which are: the uniqueness of proving responsibility for things with many of their distinguishing characteristics For other forms of responsibility for personal action and the act of others, and it was replaced by the imposition of strict rules with regard to the defendant, with the aim of alleviating the burden of proof placed on the shoulders of the injured person, by assuming Fault, in order to ensure obtaining the right to fair compensation.

The law does not require mechanical machines to be guarded requiring special care, assuming that these machines are equipped with a self-propelled engine that moves them, and they have the ability to self-move, and then the rule of assuming fault on the part of the owner of the thing that caused the damage is limited to things that move by themselves. Only and not others, since any damage arising from the mechanical device arranges the assumed responsibility by the force of law, and the injured party does not have to establish evidence that its guarding requires special care And that the general rule in the liability resulting from the damage caused by the drone is based on the assumed Fault of those who have the authority to direct this plane, and this responsible person cannot get rid of this responsibility except by proving the foreign cause or the fault of others .

It should be noted that the Court of Cassation has no oversight of what the trial court decides that the object is the one that caused the damage or not, as it is a matter of fact, contrary to the description and conditioning of the object that caused the damage as being from the machines or from the things that require special care to prevent its damage, as it must be shown The court does so when issuing its decision, as it is considered a legal issue subject to the supervision of the Court of Cassation, due to the matter relating to the conditions of responsibility for things .

Modern jurisprudence abandoned the theory of gradation of Fault, and adopted the unit of Fault which is what the Iraqi civil law went to and then the description of the aircraft guard applies to those who use, direct and control the aircraft, i.e. this description applies to the exploiter, operator or user , since the operator of the drone is the beneficiary of it, and he is responsible at the moment the damage occurs, and this provision can be applied by analogy with what was stipulated in Paragraph (2) of Article (2) of the Rome Convention of 1952 regarding establishing the responsibility of the operator of the aircraft for the damage that befalls him. other than these aircraft.

It is noted in this regard that at a time when some comparative laws defined the air exploiter and determined his responsibility for the damages of the aircraft as the owner of the aircraft, or the aircraft registered in his name, or the lessor, or the lessee, or the one charged with navigational control over it we find, on the other hand, that the Iraqi legislator did not address that.

Second: Damage

The tort civil liability for things in general and for drones in particular does not arise and does not entail its effect, which is compensation, unless there is damage to the plaintiff, as the idea of liability is based on the idea of repairing the unlawful damage, so the penalty in it is compensation for this damage, or the removal of Its effects are as possible, and by its absence, liability is negated, and there is no subject for compensation, no matter how serious the Fault, so the claimant of responsibility does not have an interest in filing a lawsuit, as the damage is the essence of the responsibility that revolves with it, whether or not .

By harm, it is meant that it is the harm that befalls a person as a result of a violation of one of his rights or a legitimate interest for him whether it is related to the safety of his body or his money, and therefore it is not required that the right be a financial right, but rather it is sufficient to prejudice any right protected by law such as the right to life.

The damage is considered the basic pillar in the responsibility for things, it is not enough to achieve it that a mistake occurs, but rather that the Fault must cause damage, and then it is necessary to start proving the damage before proving the two pillars of the Fault and the causal link between them .

It should be noted that the Iraqi civil law did not adopt the idea of liability on the basis of damage, as Article (231) of it established this liability on the basis of the supposed Fault that can be proven otherwise, by assuming the fault on the part of the responsible and giving the right to prove the opposite, contrary to the responsibility for damages that are based on the element of damage only, without regard to the element of Fault, whether it is presumed or not.

Damage is of particular importance in liability for damages arising from drones, as it is a double-edged sword, as verification of the damage from the action of the object (the aircraft) proves at the same time the supposed Fault on the part of the person responsible, even if it is considered a presumption that can prove the opposite .

Iraqi law has stipulated damage in illegal actions that fall on money (according to the provisions of Article 186 and beyond), or in illegal actions that fall on oneself (according to the provisions of Article 202 and beyond) or in the common provisions for illegal actions (according to the provisions of Article 204 of the Code).

Opinions differed on the basis of civil liability, which does not affect the necessity of stipulating damage for the establishment of this responsibility, as the conditions for entitlement to compensation are not sufficient to be met by the mere breach of the person's obligations, but rather the achievement of the damage must be proven, as the damage cannot be assumed simply because of the breach of the obligation, and for this the injured person is charged By proving the damage he suffered by all methods of proof, in application of the rule that requires that the evidence be on the plaintiff .

Often, the damage caused by the drone occurs through the positive intervention of the object, by requiring that this drone be in a position that allows harm to others, equal to that material or moral damage.

Material damage refers to the harm that a person inflicts on his money or body as a result of a breach of his obligation and thus the damage is a breach of the right of the victim, and then the infringement on life is considered the most severe harm, since every person has the right to the safety of his body from any harm, but it requires the availability of There are many conditions for material damage for the possibility of compensation for it, that the damage be a direct result of the Fault and the injured person cannot envisage it by making a reasonable effort and that the damage is realized whether it is immediate, that is: actually occurred, or was in the future if its existence is certain, and if its occurrence is slow to a later time as well as that the damage affects a right or a legitimate interest of the injured person, and that the damage was not previously compensated .

As for moral harm, it means harm that does not affect money (non-financial harm), but rather affects a person in non-financial aspects it is what is inflicted on a person in his affection, feeling, dignity, honor or consideration, such as the pain arising from the loss of a dear person.

The rule adopted by the Iraqi legislator is represented by the possibility of compensation for moral harm in accordance with the provisions of Article (205) of the Iraqi Civil Code, which allows compensation for moral harm and material harm. Social or financial considerations, makes the aggressor liable for compensation.

Third: The Causal Relationship between the Action of the Drone and the Damage

For the establishment of civil liability, there must be a causal relationship between the Fault and the damage, so that the damage is the direct natural result of the Fault as the causal relationship is the essential pillar of responsibility, assumed by the a priori logic and the requirements of justice and its absence results in the absence of responsibility itself.

It is required that the object (the drone) have interfered in causing the damage, and that the intervention be effective by having a causal role in causing it. It is not enough for the thing to be the subject of the harmful accident or an opportunity for its occurrence, but rather it must be proven that it had a positive role in the occurrence of the damage, by the thing being the source of the harm.

Referring to Article (204) of the Iraqi Civil Code, we find that it necessitated the availability of the element of causation when it stipulated the establishment of responsibility and the obligation to compensate, and that there should be a mistake that caused the damage.

It should be noted that the causal relationship linking the damage to the object must be proven, based on the fact that the nature of the causal relationship in liability for things is described as a single relationship linking the damage to the object, and then it is necessary to search for proof of the object's connection with its custodian, which is expressed by the presumption of responsibility (presumption of attribution), i.e. : It is necessary to prove the harm caused by the interference of the object under the defendant's custody in causing the damage, and otherwise his case is dismissed .

The burden of proving the causal relationship between the action of the drone and the damage falls on the plaintiff, and in certain cases the law exempts him from proof by establishing a legal presumption capable of proving the opposite, as it is possible in this hypothesis to transfer the burden of proof to the defendant in proving the foreign cause and denying responsibility for it as well. In Article (1) of the Rome Convention.

Some jurisprudence went on to say that it arises from mechanical machines such as airplanes that the assumed responsibility must be established by the force of law without the need to establish evidence that this machine requires special care, as having the ability to self-movement must direct it in a way that prevents harm from arising from it to others. Hence, it is not permissible to consider that the damage has been caused by the object except in the case that the object is a mechanical device that positively interfered in causing the damage, and also the object is not a mechanical device, but its protection requires special care, and thus the judge may not refuse to apply the assumed responsibility for these damages under the pretext That her guard does not require special care, and otherwise his ruling will be subject to veto and appeal.

And the causation is considered established when it is shown that the damage would not have occurred if this mistake had not been committed, and the plaintiff may not find it difficult to prove causation, because both the Fault and the damage are assumed to be realized, and therefore the realization of the causal relationship is assumed as long as the wrong act leads to damage to others That is, the Fault is the direct cause of the occurrence of the damage, and in contrast to it, liability is excluded, due to the absence of one of its pillars .

Among the evidence that can be used to prove the causal relationship is the validity of the criminal judgment before the civil courts as the Fault may result in a criminal offense and therefore the judgment issued in the criminal case will be influential in the civil case, since in this case the case will be subject to the special restriction represented by the criminal being suspended civil.

And that proving the causal link between the Fault and the damage suffered by the claimant for compensation does not prevent the defendant from paying his responsibility by proving the foreign cause, and thus the causal relationship is negated, and the foreign reason that the aggressor must prove is every accident or specific act that cannot be attributed to him and leads to Making the prevention of the harmful act impossible since the causal relationship is extracted by the trial judge from the material facts, and is independent in its assessment, and is not subject to the supervision of the Court of Cassation, contrary to what is the case with the legal adaptation of the material facts in terms of their sufficiency to establish the causal relationship between the thing and the damage that is considered A legal matter subject to the control of the court.

Section Two: Provisions for Compensation for Damage to Drones

Compensation is defined as “the right claimed by the injured person or who has the right to claim it from the one who caused the damage before the judiciary based on the act that violates the law that was issued by him for the purpose of reparating the harm caused to him” and that its purpose is to guarantee the right of the injured person to obtain compensation for the full The damage that befell them, and the right of those who caused the damage or those responsible for it not to impose on them more than full compensation for the damage .

Compensation elements include material and moral damages that affect the injured, as the damage includes the loss suffered by the victim and their relatives in the event of death, and then the scope of moral damage expands to include what is related to passion, feeling pain and sadness and the legislation settled on compensation for material and moral damage, as the Iraqi legislator included the article on compensation for moral damage in the chapter (Illegal Acts), which is understood from it to include compensation for moral damage as well.

And Article (204) of the Iraqi Civil Code specified the general rule in compensation, as every infringement that affects others with any damage requires compensation, in addition to Article (209/1) of the law has left the field open for the judge to choose the appropriate compensation method according to the circumstances⁽²⁾, so if the damage was moral, the prevailing situation in compensating it is represented by compensation in exchange, whether it is monetary or non-monetary, especially that in-kind compensation may not be a successful method in all cases .

The issue of estimating compensation is a matter of facts that the trial judge is to estimate independently , as he has the right to estimate the amount of damage and determine the method of compensation, and then the court estimates the amount of damage that it proves to be in the evaluation it conducts, without having to specify its various elements, and it is included in the judge’s absolute

estimate the absence of The existence of the damage, with the need for the judge to rely on the important and fundamental principle, which is the principle of full compensation for the damage.

Compensation is divided into two types: fair compensation and equivalent (full) compensation and full compensation for damage is based on the necessity that compensation cover the damage that befell the injured person completely without the slightest consideration, and nothing but the damage that befell him ⁽³⁾, and this is what is stipulated in Article (207) of the Iraqi Civil Code as it is necessary to return the injured person to the previous situation, and this is not achieved unless the injured person gets what is equal to the harm he suffered, and is consistent with it without excess or negligence.

The civil law was devoid of the effect of circumstantial circumstances in estimating compensation contrary to the Iraqi jurisprudence, which is based on many references in the provisions of the law that indicate the necessity of reliance on the financial, social and professional status of the victim, as it is one of the circumstances surrounding the damage in the tort liability (litigants status) and concluded that the lesson should always be in the spirit of the law on what leads to innovation and development in the interpretation of legal texts, as well as reliance on circumstance as one of the rules of justice, and does not conflict with the general rules in compensation

In order for the compensation to be equal to the damage, it must be complete and cover all the damage, to include all its elements such as a loss that is resolved or a gain that is lost, in addition to the necessity of full compensation for each of these elements, in addition to that, the issue of taking into account the elements of compensation in the ruling issued The assessment of compensation is one of the issues subject to the supervision of the Court of Cassation.

As for the time of estimating compensation, the right of the injured person to compensation must be from the date of its occurrence, as the aim of compensation is to redress the damage only if it is estimated at the time of the judge's issuance of his ruling, and not at the time of the occurrence of the damage and for this, Article (208) of the Civil Code stipulates that " If it is not possible for the court to determine the amount of compensation with sufficient specificity, it may reserve the right for the aggrieved party to demand, within a reasonable period, a reconsideration of the estimate." In light of the aggravation and exacerbation of the damage, and there is no room for adhering to the provisional compensation awarded,

Not by the principle of the strength of the thing that is decided and so if the injured person may claim compensation for the increasing damage until the time of pronouncing the ruling, but in return he does not have the right to claim it if it arose from his intention and negligence .

The Second Topic

The Compatibility of the Use of Drones with the Iraqi Constitution

The use of drones is one of the important uses in Iraq, and despite that, it is noticed that there is no special legislation regulating the drone and its uses, whether it is in relation to the Constitution of the Republic of Iraq for the year 2005 or the laws that regulated aviation such as the Iraqi Civil Aviation Law No. (148) for the year 1974 amended.

In order to determine the legality of using drones, we will address this in the following demands:

The First Requirement: The Position of the Iraqi Constitution on the Use of Drones.

The Second Requirement: The Position of Iraqi Aviation Laws on the Use of Drones.

The First Requirement: The Position of the Iraqi Constitution on the Use of Drones

The constitution is the supreme law that must be referred to in order to know the constitutionality of using drones or not.

The first thing to notice in this regard is that the Constitution of the Republic of Iraq for the year 2005 has adopted the position of absolute silence regarding drones or the use of modern technology, contrary to what some countries have followed that recognized the right of citizens to enjoy the achievements of technological development.

Despite this, however, it is noted that a distinction must be made between two cases of using drones. With regard to their use for civilian purposes such as transportation, media, photography for the purpose of publication, and all other means of expressing opinion, the general principle is that the Iraqi constitution requires the state to guarantee freedom of expression and freedoms Press, media, and publishing, provided that they do not violate public order and morals, and as long as the origin of things is permissible as long as there is no text prohibiting it, so the use of drones for civil purposes is legitimate and does not contradict the Iraqi constitution.

As for the military use of drones, we believe that the principles stipulated in the constitution must be adhered to, which are represented in the obligation of the state to combat tFaultism in all its forms and to protect its territory from becoming a headquarters, corridor or arena for its activity, in addition to respecting the international obligations of the Republic of Iraq, including the obligations to prevent The use of chemical and biological weapons and related equipment, materials, technology and communication systems. Thus, it can be said that the aforementioned prohibitions did not include any reference to the use of drones unless it was for improper purposes, such as using them to transport biological or chemical weapons, and others.

Otherwise, the Iraqi armed forces can use drone technology within the Iraqi borders, whether for purposes of protecting Iraqi territory by bombing tFaultists' headquarters with drones, or for military monitoring and reconnaissance. Despite the foregoing, however, many restrictions imposed by the constitutional legislator must be taken into account, which can be summarized as follows:

- 1- Respecting the international obligations imposed on Iraq in accordance with the four Geneva Conventions and the protocols appended to them, as it is with acknowledgment of the possibility of using drones for military purposes in Iraq, as there is no constitutional or legal impediment to that, however, the rules of international humanitarian law enshrined in the conventions must be adhered to. Geneva, which Iraq ratified, and is an integral part of Iraqi legislation in accordance with the provisions of Article (8) of the Constitution and the meaning of Article (130) thereof.
- 2- Respecting the rights and freedoms stipulated in Chapter Two of the Constitution, as they come in harmony with the international standards of international human rights law, which Iraq has ratified, including the right to life, physical integrity, and the prevention of extrajudicial executions, as well as the prevention of the confiscation of the right or freedom except By law and therefore it is not permissible to use drones in systematic killing operations in accordance with international standards.

Based on the foregoing, it can be said that in the event of an armed conflict, the use of drones must be subject to the rules of international humanitarian law and compliance with them, and otherwise - that is: in the case of an unarmed conflict - the use of these aircraft must be subject to international human rights law, whose rules are strict and rigorous in Protecting the right to life and then the use of the drone is an intentional killing that requires accountability.

This is with regard to the use of drones in a state of war, but in the case of the use of armed aircraft in situations of peace, some jurisprudence goes that there are many considerations that must be considered when considering the extent of its legitimacy in light of the anti-tFaultism strategy or not, as follows:

1. Is the target included in the tFaultist list or not?
2. Does the target constitute a continuous threat to the safety of others or the internal security of the country that is practicing the counter-tFaultism operation, or not?
3. Was the target present at the time of the strike among civilians or in a remote village, or not?
4. Whether or not a judicial decision or ruling was issued convicting the targeted person in accordance with the applicable fair trial standards?

We summarize from the foregoing that the Iraqi constitution permits the use of drones for military and non-military purposes, provided that they do not violate public order and morals, and that the right or freedoms are not confiscated, including the right to life, in addition to the need for this use to be consistent with the rules of international humanitarian law and international human rights law.

The Second Requirement: The Position of Iraqi Aviation Laws on the Use of Drones

We have previously stated that Iraq did not enact a law for drones, similar to what other countries, such as Egypt, the Emirates, and others, followed.

Based on the foregoing, by referring to the amended Iraqi Civil Aviation Law No. (148) of 1974, we find that it did not include any provisions related to the use of unmanned aerial vehicles (UAVs), which requires the House of Representatives to intervene legislatively and amend this law for the purpose of accommodating developments in the field. The use of drones and their provisions are regulated.

In this regard, it is noted that despite the efforts made by the Media and Communications Commission to prepare a regulation for licensing the use of drones in Iraq since 2021, the legislation of this regulation has not been completed to this day.

In conclusion, it should be noted that the general rules regarding tort civil liability for drones in Iraq can be applied, whether stipulated in the Iraqi Civil Law or the Civil Aviation Law, based on Article (130) of the Iraqi Constitution, which states (the legislation in force remains in force unless it is repealed. or amended in accordance with the provisions of this Constitution).

Conclusion

After completing our study, we have reached many of the following results:

- 1- A drone is defined as a type of aircraft that is operated remotely or with an autonomous or semi-autonomous operating system, and it has multiple types and classifications.
- 2- Although the Iraqi legislator did not address the use of drones in the constitution and the Civil Aviation Law, we see that the general principle is the legality of civilian use of them, in contrast to military purposes, as it must be said that the use of drones in intentional killing is illegal, both in relation to the law International human rights as an attack on the right to life, or with regard to international humanitarian law as a violation of the principle of humanity and military necessity, and (Martins Clause) which prohibits weapons that are contrary to the dictates of public conscience.
- 3- Civil liability for drones is achieved in accordance with the general rules of the Iraqi Civil Law No. (40) of 1951 as movable property, and then the provisions of liability for things are applied to it.
- 4- The pillars of triggering civil liability for the use of drones in Iraq are represented by the necessity of the availability of the three pillars of responsibility combined, which are Fault, damage, and the causal relationship between them.
- 5- The illegal use of unmanned aircraft has many implications, including the right to obtain compensation, whether material or moral, in line with the idea of fair compensation.

Second: Proposals

- 1- We call on the Iraqi Council of Representatives to legislate a new civil aviation law that replaces Law No. (148) of 1974 and includes in it a chapter on unmanned aircraft, or to legislate a new law on unmanned aircraft in the manner of developed countries as well as Arab countries such as Egypt, the Emirates, Oman and others.
- 2- We call on the Media and Communications Commission, in coordination with the security services in Iraq, to expedite the legislation of the regulation for licensing drones for civil purposes in order to regulate the optimal use of Iraqi airspace, whether for civil or military purposes.

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