

Welcome to the Future: Legal, Ethical, and Political Issues in the Use of Drones

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The recent increase in the use of Unmanned Aerial Vehicles (UAV), commonly known as drones, has been observed in conflict areas such as Yemen and in Pakistan and, more surprisingly, in civilian settings like the United States. Whereas its use as weapon for extrajudicial killings – i.e. the processes of sentencing people to death and implementing those decisions without any court decision – poses a myriad of ethical and legal issues, use of drones by the private sector, and police and border patrol agents, has ignited a discussion on the frontiers of legality, revealing a process where ethical, philosophical, legal and political debates have not accompanied the speed of technological progress.

This article focuses on recent developments in the use of drones, and exposes some of the contentious issues surrounding the debate. Departing from public available data, and placing itself within theoretical debates in the domain of International Relations theories, this article points to avenues for further enquiry on the use of drones.

Some Data

International news outlets, research departments within national ministries of defense, and security policy think-tanks in the US, Europe, and beyond have tracked the rising use of UAV in recent years. These remote con-

trolled flying devices have increasingly performed sensitive missions in areas that pose security threats. The US Air Force currently operates about 7500 drones, which means that more than one third of the US aircraft does not need a pilot.¹ They perform not only intelligence gathering, surveillance and reconnaissance missions, but also combat operations. In *Reforming the US Drone Strike Policy*,² published in January 2013 by the Council on Foreign Relations, Micah Zenko compiles the number of US strikes and related casualties resulting from drone attacks between 2004 and 2012. During this time there were 411 drone attacks across Pakistan, Yemen and Somalia, resulting in 3430 casualties; 401 were civilians.³ The extent of drone attacks, and drone strike casualties, is difficult to calculate because official information is incomplete and ground reports by victims are often mis-

1 Lev Grossman, "Drone home: what happens when drones return home" (*Time Magazine*, 11 February 2013).

2 Micah Zenko, *Reforming the U.S. Drone Strike Policy* (Center for Preventive Action, Council on Foreign Relations, Council Special Report No. 65, January 2013).

3 These numbers are based on the averages of the data compiled by the New America Foundation, The Long War Journal, and the Bureau of Investigative Journalism, three of the institutions that regularly monitor drone strikes and their consequences. See Zenko, p. 13.



leading and exaggerated.⁴ According to the British Ministry of Defense, the number of UK drone strikes was 349, as of 31 October 2012.⁵ Recent reports by Human Rights Watch revealed the use of Israeli drones during operation Pillar of Defense in Gaza in November 2012 causing civilian Palestinian casualties,⁶ whereas on 6 October 2012 a recognition drone operated by Hezbollah, in what the majority of analysts understood to be a joint Hezbollah-Iran mission,⁷ was intercepted by the Israeli army while in Israeli territory. Hezbollah had already used drones to attack Israeli targets during the second Israel-Lebanese war in the summer of 2006.⁸

As this overview reveals, military use of drones has increasingly become a global reality. But the use of these devices is currently expanding into the civil domain. Examples of this other facet are found in the collection of images for the study of volcanoes, tornados, and other scientific phenomena, and in the use of drone-collected images by police authorities in cases of border patrol or pursuit of suspects. Drone-collected images and data raise fundamental questions regarding privacy, data storage, and liberty, and have been expanding the limits of the debate around them.

The main focus of attention in this article, though, remains the military realm. Some of the fundamental questions arising from these new dynamics are the following: what does the increase in the use of drones tell us about shifts

in international security? Which theoretical foundations are challenged by this phenomenon? Do the classical ethical, legal and philosophical foundations of war stand when confronted with the massive usage of drones?

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Fundamental Issues in the Military Usage of Drones

The systematic use of drones for military purposes brings new elements for the study of international conflict. Not only it confirms fundamental changes occurred in recent years, but it also brings these changes into a new level.

Widening the Distance Between the Trigger, the Attacking Device, and the Target

In the history of military weaponry, fundamental changes in weaponry came via devices that increased distance between the fighter and the fight. From swords to gunpowder, from pistols to machine guns, from bomber aircraft to missiles, technology was used to increase the potential for causing damage on the target while decreasing risk to the soldier. Drones mark a new limit. By triggering strikes from thousands of kilometers away, they basically eliminate the risk of human losses on the side of the attacker, while maintaining – perhaps increasing – lethality on the combat zone. With higher performance in terms of energy

autonomy and state-of-the-art video cameras, drones can wait for hours for a window of opportunity to attack. Tiredness or stress, which limit human effectiveness, theoretically decrease.

Reducing the Importance of the State of War

Since the first Obama Administration took office in January 2009 the US has carried out more than 300 hundreds attacks in Pakistan, Yemen and Somalia. The US has not declared war on these countries; for these attacks to happen it was not necessary to observe the constitutional procedures that provide a system of checks and balances associated, in democracies at least, with the declaration of war. Against this background, drones facilitate attacks because they dramatically reduce the costs of war, in

4 For more on these issues see *Living Under Drones: Death, Injury, And Trauma To Civilians From Us Drone Practices In Pakistan* (International Human Rights and Conflict Resolution Clinic at Stanford Law School and Global Justice Clinic at NYU School of Law, 2012).

5 Figures presented at the website *Drone Wars UK* [<http://dronewarsuk.wordpress.com/>].

6 "Israel: Gaza Airstrikes Violated Laws of War" (*Human Rights Watch*, 12 February 2013).

7 Avigdor Haselkorn, "The real purpose of the Hezbollah drone" (*Haaretz*, 26 October 2012).

8 Hamza Hendawi, "Israel: Hezbollah Drone Attacks Warship" (*The Washington Post*, 14 July 2006).



both material and human terms, therefore challenging the established *jus ad bellum* doctrine.

Deepening the Irrelevance of the State as the Main Framework for Studying War and Conflict

It should also be said that drones confirm the shift from states to individuals as main subjects of security, a tendency observed from the 1990s onwards. Reflections of this tendency are the introduction of the concept of Human Security and the changes in the UN sanctions regime, that initially was implemented against states (therefore punishing the whole population) and then targeted only specific individuals – in a regime that became known as *smart sanctions*. By focusing on individuals rather than on foreign territory or armies, the use of drones enhances the individualization of security and underlines this fundamental paradigm shift in international security. The currently observed absence of declaration of war before these attacks on foreign territory, and the fact that they are carried both by states and non-state actors, are further examples of this trend.

Changing the Rules of the Game

On top of this, drone usage also changes the *rules of the game* in several ways. On the one hand, the distance between trigger, attack device, and target foster moral relativism, creating the illusion that war is now something more aseptic than before. If this holds for the attacker, it certainly does not for the victim. On the other hand, the chain of accountability becomes more difficult to trace due to the lack of transparency in this process. Finally, the difference between war and peace becomes blurred. By operating the trigger from a comfortable office, the “soldier” doesn’t face the typical vectors of *going to war*, namely deployment, group companionship, and closer contact with the conflict and with the victims. In the words of Tyler Wall and Torin Monahan, drones “abstract people from contexts, thereby reducing variation, difference, and noise that may impede action or introduce moral ambiguity”.⁹ War stops being war; it becomes something else.

Theoretical and Ethical Challenges

Efficiency, cost reduction, and autonomy are presented as positive features of drone usage. The combination of these characteristics allowed the US to decimate the al-Qaeda leadership in the Af-Pak region, for example. But it also led to a massive number of casualties that are not justifiable. It led to an exponential increase of extrajudicial killings, therefore having the executive branch overtaking functions of the judicial. In the words of Peter Singer, “America’s founding fathers may not have

been able to imagine robotic drones, but they did provide an answer. The Constitution did not leave war, no matter how it is waged, to the executive branch alone”.¹⁰ US drone activity has also expanded the notion of “legitimate target” to a point not supported by international law, especially with regards to the so-called “signature strikes”, by which unidentified militants are targeted on the basis of their network and behavior. At the same time, it has inverted the burden of proof in the definition of what constitutes a militant, presuming that someone of a given age and of a given sex in a particular context is a militant and therefore a legitimate target.

From a different perspective, it is interesting to note that the majority of the countries possessing drones¹¹ are well-established democracies. At first sight, this may not mean anything new. Democracies such as the US, Israel, France and the UK possess the most advanced weaponry available, including nuclear devices. Therefore, having the most sophisticated drone does not come as a surprise. From a theoretical point of view, though, there could be more sophisticated explanations for why the checks and balances, as well as the separation of powers typically observed in democratic states, do not preclude the existence of drones, whose usage seems to go against the rule of law in many cases.

Frank Sauer and Niklas Schörning argue in “Killer drones: The ‘silver bullet’ of democratic warfare?” that drones are particularly appealing to democratic states. Departing from the groundings of Democratic Peace Theory, these authors claim that “the specific interests and norms that are conventionally taken to be pivotal for democratic peacefulness – the need to reduce costs, the short-term satisfaction of particular ‘risk-transfer rules’ for avoiding casualties, and the unkeep of a specific set of normative values – constitute the special appeal of unmanned systems to democracies”.¹² Drones facilitate conflict for the same reasons that normally deter democracies from war. Indeed, the recent dramatic increase in the use of drones against individuals placed in non-democratic states reinforces the concept of “antinomies” of the democratic peace. As demonstrated by Harald Müller,¹³ while democracies don’t fight each other, they tend to be particularly bellicose towards non-democra-

9 Tyler Wall and Torin Monahan, “Surveillance and violence from afar: The politics of drones and liminal security-scapes” (*Theoretical Criminology*, Vol. 15, No. 3, August 2011), p. 239.

10 Peter W. Singer, “Do Drones Undermine Democracy?” (*The New York Times*, 21 January 2012).

11 Quoting the US General Accounting Office, Louisa Brooke-Holland refers that these countries are 76 (in 2012). See *Unmanned Aerial Vehicles (drones): an introduction* (Library of the House of Commons, International Affairs and Defense Section, 15 February 2013). The International Institute for Strategic Studies refers that 34 countries (in 2011) had medium- or heavy-sized UAVs. See “Unmanned aerial vehicles: Emerging lessons and technologies”, in *Military Balance 2011* (London, IISS), pp. 24-26.

12 Frank Sauer and Niklas Schörning, “Killer drones: The ‘silver bullet’ of democratic warfare?” (*Security Dialogue*, Vol. 43, No. 4, August 2012), p. 365.

13 Harald Müller, “The antinomy of democratic peace” (*International Politics*, Vol. 41, No. 4, December 2004), pp. 494-520.



cies, revealing a peculiar democratic aggressiveness. Some of the most challenging issues regarding the use of drones are ethical, and relate to identity and *otherness*. To return to Wall and Monahan, these devices “further normalize the ongoing subjugation of those marked as Other, those targeted for discriminatory observation and attack, those without comparable resources to contest the harmful categories within which they are placed”.¹⁴ By amplifying distances and deepening artificiality, drones contribute to the mechanization and de-humanization of war and conflict, widening the gap between the Self and the Other.

The Way Ahead

The debate surrounding the use of drones is important for several reasons. It focuses on one of the most relevant aspects of warfare today, and it brings elements that will shape the debate on further technological developments. UAVs can be seen as merely another step before the spread of fully autonomous machines. When that

moment comes, the terms of the debate will not be the distance between trigger, striking device, and target, but instead the issue of artificial intelligence and machine autonomy; more than enquiring the consequences of striking from afar, the debate will be on striking without human intervention. The mechanization and de-humanization of war and conflict will cross a threshold.

At the same time, the use of drones is relevant to debate the dynamics of global governance. It brings political, legal and ethical elements to the discussion on international security governance and on the difficulties of international law in following sensitive political and technological developments. While discussions on the international regulation of the use of drones are currently taking place, it is also pertinent to assess why the current principles of international law and just war theory are not being observed. Mid-range International Relations theory provides explanations for these dynamics and, along with international law, could constitute the departing point for further studies on this issue.

¹⁴ Wall and Monahan, *op. cit.*, p. 250.

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