

DRONE WARFARE

KILLING BY REMOTE CONTROL AND ITS MORALITY

Unmanned aerial vehicles also known as drones are being used with increasing frequency in military operations as well as law enforcement tasks for surveillance and offensive purposes. This paper reviews the doctrines invoked by the American government for its use of drones in foreign theatres, particularly in the context of the ongoing “war on terror”. It details the justifications provided by the US for using drones even in areas where it is not formally at war and where such attacks are carried out by the CIA, a civilian agency. The article avers that Washington is in breach of the laws of war, regardless of whether killing combatants by remote controlled weapons is morally acceptable and less likely to cause civilian casualties than conventional military action.

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INTRODUCTION

The unmanned aerial vehicle, also known as “the drone”, has increasingly become the weapon of choice in the military operations of the United States of America (US). Moral ambiguity about Washington’s drone policy arises from the gray area between law enforcement and warfare. The “law enforcement” approach seeks to foresee threats and retaliates with attacks. It polices and reacts within the traditional model of defence and war. On the other hand, a “war against terror” has no endpoint and its theatre of operation

is everywhere on Earth. Drone aircraft are the equivalent of robotic armies discussed in so many science fiction novels. While drones to some extent do justice by protecting the lives of countrymen and preventing the unnecessary loss of thousands of soldiers, the long-term impact of this approach is not yet known. Popular culture uses terms like “convenient killing”, “death by remote control”, “playstation mentality” and “death machine” to describe drone warfare. Such a fight requires flexibility and reach beyond the traditional parameters of war and so the strongest ethical argument in favour of drone strikes comes down to efficiency. The virtues of America’s drone policy include precision targeting, limited collateral damage and preventing troops from going into full combat mode and being killed but each of these has its limits. One hears of targeting errors, tragic accounts of the unintentional killing of innocent bystanders and the fear of drones turning foreign public opinion against the US. When the stakes are so high, is the efficiency argument enough? Of particular ethical concern are the questions of due process and accountability. Who makes the decisions about targets and whether to execute strikes? What are the procedures and the oversight for those calls? These are all blurred lines.

At the beginning of the JJ Abrams film *Star Trek into Darkness*, (Paramount, 2013) Captain Kirk is faced with a moral dilemma. Should he follow his orders and fire a missile into enemy territory from afar to kill a known terrorist or should he risk sending his men into foreign territory to try to capture him? The choice is no accident. It is an allegory about the morality of drone warfare and the dilemma it poses is faced in the world today. As in the movie, amazing technology can be apparently employed with little risk to forces, but its improper use is an enormous risk to our way of life. How can one be certain that the appropriate target has been identified? Is it enough to simply trust high government officials? What is the right way to use such weapons? The following sections consider how ethics and the just war tradition illuminate

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these questions in a way that clearly shows what is missing in the American administration's approach to the use of drones. The growing use of unmanned aerial systems, ("drones", as the armed forces prefer to call them) is a reality. Drones have become today's weapon of choice in counterterrorism and over the next 40 years or so are expected largely to replace piloted aircraft. In nine years, the Pentagon increased its drone fleet 13-fold and the generals spent roughly five billion dollars a year adding to it. The frequency of drone strikes on al-Qaeda and other terrorists lurking in Pakistan's Federally Administered Tribal Areas under President Barack Obama's administration rose to one every four days, compared with one every forty during George W Bush's presidency. In Libya, commanders of the North Atlantic Treaty Organisation turned to drones when their fast jets failed to find and hit Muammar Qaddafi's mobile rocket launchers.

THE ETHICAL ASPECTS

Not everyone is comfortable with the use of drones. The increased military employment of remotely operated aerial vehicles has raised a variety of important ethical questions, concerns and challenges. Critics say that the legal and ethical issues surrounding the use of drones have been neglected. Some of the concerns may be exaggerated but others need to be taken seriously, particularly as it seems certain that armies will increasingly fight with machines and not men. What are the moral implications of such asymmetry on a military that employs drones and the broader questions for war and a hope for peace in the world going forward? How does this technology impact the likely successes of counterinsurgency operations or humanitarian interventions? Does such weaponry run the risk of making war too easy to wage and tempt policymakers to kill when other more difficult but non-violent means should be used? Alternately, there are good reasons for using more drones. Cruise missiles and jet fighters work against fixed targets, concentrations of forces or heavy weapons on open ground. They are not as useful however in today's "wars among the people", fought against insurgents and terrorists. Drones such as the Predator and the Reaper can loiter, maintaining what one former CIA director described as an "unblinking stare" over a chosen area for up to 18 hours. ("Drones and the Man:

The Ethics of Warfare”, *The Economist*, 30 July 2011) With the drone’s ability to watch and wait, its “pilot”, often thousands of miles away, can patiently choose the best moment to fire its missiles, both increasing the chances of success and minimising the harm to civilians.

From the start, just war theorists have been occupied with two central questions—when is it appropriate to go to war (*jus ad bellum*) and how should the war be fought (*jus in bello*). Both these questions were emphasised by Marcus Tullius Cicero, (*Cicero’s Tusculan Disputations: Also Treatises on the Nature of the Gods and On the Commonwealth*, Project Gutenberg, 2005, online at <https://www.gutenberg.org> and *Cicero De Officiis*, translated by Walter Miller (Loeb Edition), Cambridge: Harvard University Press, 1913, pp33–6) and the theory of *jus ad bellum* developed early in the just war tradition. The four just war principles—necessity, distinction, proportionality and humanity—given by the Department of Justice (*White Paper: Lawfulness of a Lethal Operation Directed against a US Citizen who is a Senior Operational Leader of al-Qaeda or an Associated Force*, online at <http://msnbcmedia.msn.com>) are akin to those cited by Obama in his acceptance speech for the Nobel Peace Prize. (10 December 2009, online at <http://www.nobelprize.org>) “A war can only be considered just if it is waged as a last resort, in self defence, if the force used is proportional and pains are made to spare civilians from violence wherever possible”.

This makes drones the ideal weapon for tracking down and killing terrorists, particularly in places like Pakistan’s Federally Administered Tribal Areas where other options such as sending in special forces are not politically feasible. Claims in Pakistan that American drone attacks have killed thousands of civilians have been undermined by research of the New America Foundation. The think-tank states that in 2004–11, 80 per cent of the fatalities were militants and in 2012—thanks in part to intelligence provided by the Pakistanis themselves—the figure was 95 per cent. (*The Economist*, *ibid*) The increasing accuracy of attacks and the evidence that they have helped weaken al-Qaeda encourage some to believe (not least in the White House) that future counterterrorist campaigns could be waged

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without the sacrifice of blood and funds that go with putting thousands of boots on the ground.

However, considerable controversy has arisen, much of it ethical, about the use of drones for the “targeted killings” of individuals outside the context of conventional war, for example, as used in Pakistan. Conventional war here means an armed conflict that at least starts as a struggle between two states. The subject of drones is ethically interesting in part because their case is often made in moral terms. The development of military technology often poses new and difficult moral problems and drones are no exception. In investigating the ethics of new military technology, one may distinguish between two probable types of moral problems. The first or ordinary problems may be addressed or resolved by a modification in the way in which the technology is configured or the military activities involving it are conducted. The second or extraordinary problems are severe problems that may require as a response not for the technology or its use to be altered, but for the technology not to be used at all. This is just a rough distinction, if only for the fact that there is no sharp line between engaging in an activity in a modified way and not engaging in it at all. Thus, while some of the moral problems raised by the use of drones are ordinary, some are extraordinary.

THE USE OF DRONES IN THE WAR ON TERROR

The US in particular and the West in general are in a global struggle with Islamic insurgents, a struggle often referred to in the US as the “global war on terror”. While conventional wars such as those in Afghanistan and Iraq are part of this global war most of it, the more controversial part, takes place outside the zone of conventional war. This paper uses the term global war on terror idiosyncratically to refer to the parts outside of conventional war. A question that needs to be considered is whether the global war on terror understood in this way, is a war at all. It is an asymmetric conflict, which in general is defined as a conflict where one side has a relative advantage over the other (the other being at a corresponding disadvantage). While there are many forms of asymmetry, this paper is concerned with the one in which one side has a greater military advantage in terms of technology and/or the size

of the military force. The term asymmetric war is sometimes used in a more limited way, for example, to refer to the tactical asymmetry of insurgent groups fighting an established military power in the light of their ability to employ unconventional tactics such as guerrilla warfare or terrorism. (David Rodin, “The Ethics of Asymmetric War” in Richard Sorabji and David Rodin (Eds), *The Ethics of War*, Aldershot: Ashgate, 2006, pp153–168)

This form of asymmetry characterises most of the wars fought by the US and other Western powers in the past few decades. This is even more the case with the global war on terror, where the asymmetry is extreme. Drones are especially useful in fighting asymmetric wars because their surveillance capabilities make them good at tracking and attacking individuals. Other advanced technologies such as cruise missiles are good for attacking and hitting fixed targets, mainly infrastructure, but insurgent groups often have little by way of infrastructure. Their ability to inflict harm resides in their personnel, which is what drones are good at targeting. As the technology of drones has matured during the global war on terror, the US has come to rely increasingly on it to fight its asymmetric battles. A large portion of American military aviation is devoted to drones. The cruise missile was a paradigmatic weapon of the Cold War, while the drone is a paradigmatic weapon of the post-Cold War world.

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OBJECTIONS TO THE USE OF DRONES

Two of the most commonly heard objections to drones are strategic rather than moral. They are primarily prudential as they concern not what drones do to their victims, but what they do to the interests of the users. The first objection states that the use of drones by the US against Islamic insurgents is counterproductive as drones produce more terrorists than they kill, due to the

animosity they generate in local populations. There is empirical evidence that drone use does increase the number of insurgents. (Micah Zenko, *Reforming US Drone Strike Policies*, Council on Foreign Relations Special Report 65, January 2013, online at <http://www.cfr.org>) Concerning the civilians killed by drones, it has been stated, “Every one of the dead non-combatants represents an alienated family, a new desire for revenge and more recruits for a militant movement that has grown exponentially even as drone strikes have increased”. (David Kilcullen and Andrew McDonald Exum, “Death from Above, Outrage down Below”, *The New York Times*, 17 May 2009) If defeat of the insurgents in Pakistan and elsewhere requires that their numbers be reduced and the local populations turn against them, drone attacks will not succeed.

The second strategic objection is that the development and use of drones by the US is counterproductive as it encourages the development of military capabilities and attitudes among other states that in the long run may be inimical to US interests. It could lead to the development and deployment of drones by other states, some of whom may be opponents of the US. “With Russia and China watching, the United States has set an international precedent for sending drones over borders to kill enemies”. (Jo Becker and Scott Shane, “Secret ‘Kill List’ Proves a Test of Obama’s Principles and Will”, *The New York Times*, 29 May 2012) Moreover, the deployment of drones by other states whether friendly to US interests or not may lead to a harmful climate of military instability. In addition, the use of drones by the US for target killings is widely perceived in the rest of the world as flouting international law. (Steven Ratner, “Predator and Prey: Seizing and Killing Suspected Terrorists Abroad”, *Journal of Political Philosophy*, vol15, no3, November 2007, pp251–75) The role of international law in the criticism of drone use is discussed later, but the point is that respect for international law depends on a sense of reciprocity among states and the perception by the rest of the world that the greatest military power is ignoring international law could lead others to do so as well, resulting in a sort of international lawlessness that harms the interests of all. Such a dynamic has been seen before in the development of nuclear weapons technology during the Cold War. Thus, the use of drones creates “blowback” that does more harm than good to US security. These objections do have moral import because, if the use of drones is counterproductive, it is a waste of lives and resources. Were the global war on terror a war in the morally relevant sense, the moral objections to this waste would be represented by its failure to satisfy the *jus ad bellum* principle that a war is just only if it has a reasonable chance to succeed. (David

Luban, "What would Augustine Do", *Boston Review*, 6 June 2012, online at <http://www.bostonreview.net>)

Supporters claim that drones are a morally valuable military technology and often cite three advantages. First, drones have a greater capacity for precision, thus potentially reducing "collateral damage" and better adherence when used in war to the important *in bello* principle of discrimination and proportionality. Bradley Jay Strawser ("Moral Predators: The Duty to Employ Uninhabited Aerial Vehicles", *Journal of Military Ethics*, vol9, no4, 2010, pp351) claims, "Unmanned aerial vehicle technology actually increases a pilot's ability to discriminate". Drone operators can observe a potential target for hours before deciding whether to attack, making them better able to avoid civilian casualties. Kenneth Anderson (*Efficiency in Bello and ad Bellum: Targeted Killings through Drone Warfare*, Social Science Research Network, 23 September 2011, p13, online at <http://ssrn.com>) makes a similar point, claiming that by using drones the "proportionality trap" is avoided. That is the trade-off characteristic of military actions where attacks that provide greater military advantage also put civilians increasingly at risk and attacks providing more protection to civilians achieve less military advantage. Drones break this linkage, achieving increased military advantage while providing greater protection for civilians. They are therefore a "win-win".

Second, the use of drones poses no risk to the pilots, allowing military operations to better realise the principle of force protection. Force protection is not generally recognised as an *in bello* principle, but other things being equal, it is morally preferable to reduce one's own combatant casualties. Agreeing with this point, Strawser (*ibid*, p344) casts it in terms of what he calls the "principle of unnecessary risk", according to which military leaders have a moral obligation when pursuing a legitimate military goal to choose a means, if available and just, that does not pose a risk to combatants. Strawser's principle is a specification of the principle of force protection, which counsels reducing risk to one's combatants,

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though not necessarily eliminating it. This specification of the principle of force protection is the principle at its limits. Third, the use of drones may avoid the need to wage a full-scale war. (Daniel Brunstetter and Megan Braun, “The Implication of Drones on the Just War Tradition”, *Ethics and International Affairs*, vol25, no3, 2011, pp337–58) This is related to the first advantage where just as it would be preferable to use drones instead of troops for a particular mission in a conventional war, it would also be preferable to use drones instead of fighting a full-scale war involving boots on the ground, assuming these are exhaustive alternatives.

Some consider drone use for targeted killings as morally unacceptable as it occurs outside the context of conventional war. This is a claim about the paradigm under which the use of drones should be considered, that is, it should be considered as policing rather than warring and the global war on terror is not a war. The response to this is that the global war on terror is in fact a war, a “war on terror”, fought on a global battlefield, so that drone strikes against combatants in this war are permissible. (Anderson, *ibid*, p16) The US government asserts that the global war on terror is a war and “the United States is in an armed conflict with al-Qaeda and its associated forces”. (Department of Justice, *White Paper, ibid*)

Thus, the question that arises is whether the global war on terror is a war at all and the question of the justice of the war becomes a secondary question. Any appropriate answer must investigate whether it sufficiently resembles a standard case of war to which the rules of the warring paradigm can be applied. The assumption here is that, unless this is the case, it is not a war in the morally relevant sense, that is, a conflict to which *jus in bello* applies. The global war on terror departs from the standard case of war to such an extent that it is implausible to claim that it is anything other than war in an analogical sense (as in the “war on crime”). A number of points support this. First, it is a self-proclaimed fight not primarily against an organisation, as in the standard case of war, but against a tactic, that is, terror. (Alex Bellamy, “Is the War on Terror Just”, *International Relations*, vol19, no3, 2005, pp275–96) Perhaps in response to such a concern, the Obama administration replaced the terminology “global war on terror” with the phrase “armed conflict with al-Qaeda, the Taliban and associated forces”. (Mary Ellen O’Connell, “Lawful use of Combat Drones”, *Testimony before the House of Representatives Subcommittee on National Security and Foreign Affairs*, 28 April 2010, online at <http://www.fas.org>) However, the new phrase highlights that the US sees itself as battling not a single organisation or even a set of organisations but given the elasticity of the

term “associated”, an open-ended list of organisations, all effectively alleged practitioners of terror.

Drone strikes have occurred in conventional war zones from Afghanistan to Iraq and Libya. However, over 300 targeted strikes in the past ten years have occurred elsewhere, in Pakistan, Somalia and Yemen where the US is not a belligerent in a conventional war. Of the 300 strikes, 95 per cent have been in Pakistan. (Micah Zenko cited Mitch Potter, “Drone Warfare”, *Toronto Star*, 2 February 2013) Moreover, a marked difference is that while drone strikes in recognised war zones are conducted by the air force, strikes outside recognised war zones are conducted by the Central Intelligence Agency, a civilian organisation. (Jane Mayer, “The Predator War”, *The New Yorker*, 26 October 2009) As one commentator has noted, “Just how radical

is it (that) for the first time in history, a civilian intelligence agency is using robots to carry out a military mission, selecting people for killing in a country where the United States is not officially at war”. (“Times Topics: Predator Drones and Unmanned Aerial Vehicles”, *The New York Times*, online at <http://topics.nytimes.com>) Thus, it is odd that while the US government claims the global war on terror is a war, it assigns the operations of that war to a civilian organisation. As O’Connell (*ibid*) has asserted, “Only members of the United States armed forces have

the combatant’s privilege to use lethal force without facing prosecution. CIA operatives are not trained in the law of armed conflict”. In dissent however Philip Alston the United Nations Special Rapporteur concerned with targeted killings, has averred that international humanitarian law does not prohibit non-military personnel from engaging in conflict. (*Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions: Study on Targeted Killings*, United Nations Human Rights Council, paragraphs 70–1, online at <http://www2.ohchr.org>) Indeed, in this regard, US policy faces a dilemma—is a targeted killing by a drone in say Pakistan an act of war, as the US claims or it is not? If it is an act of war, it is morally unacceptable, as the rules of war require acts of war to be undertaken by military rather than civilian personnel. If it is not an act

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of war, then it is again morally unacceptable as it falls under policing rather the warring paradigms and does not show proper respect for human rights.

Defenders of drone strikes outside conventional war put forth another argument in justification. They claim that the strikes are an exercise of the right to national self-defence. The US has stated, “Targeting a member of an enemy force who poses an imminent threat of violent attack to the United States is not unlawful. It is a lawful act of self-defence”. (Department of Justice, *White Paper, ibid*) This claim in effect offers another way to deny that the paradigms of policing and warring are exhaustive. If targeted killings in places such as Pakistan cannot be justified under international humanitarian law (because there is no war there) nor under international human rights law (because they are extrajudicial executions), maybe there is a third possible mode of justification. In this spirit, defenders of drones appeal to the principle of national self-defence. This may be seen as a hybrid between the two paradigms. Like the warring paradigm, it permits the killing of individuals without judicial process and like the policing paradigm it is not inconsistent with human rights.

The national self-defence justification is based on the domestic analogy with individual self-defence, but the government’s understanding of it seems to be based on confusing between the just war categories of *jus ad bellum* and *jus in bello*. (Gregory McNeal, “Six Key Points Regarding the Department of Justice Targeted Killing White Paper”, *Forbes*, 5 February 2013, online at <http://www.forbes.com>) The initiation of war under *jus ad bellum* may be justified on the basis of national self-defence. However, once war is underway *jus in bello* becomes relevant and the killing of enemy combatants is justified not on the grounds of self-defence (which would be a matter of conduct), but simply because they are combatants (a matter of status). This confusion is apparent when the government justifies targeted killings as based on “the inherent right to national self-defence recognised in international law” of the United Nations Charter, Article 51. However, Article 51 in the matter of *jus ad bellum* concerns the justification of going to war, not an *in bello* justification of killing individuals. If the national self-defence justification is to succeed, it must be seen as independent of the *in bello* justification, since the military’s struggle with insurgents is not war. Were it not independent it would not be a third way but there is some indication

that the government perceives the two justifications as independent, as when it speaks of a drone strike as “a lethal operation against an enemy leader undertaken in national self-defence or during an armed conflict”—taking the “or” as exclusive. (Department of Justice, *White Paper*, *ibid* and Craig Martin, “Going Medieval: Targeted Killing, Self-Defence and the *Jus Ad Bellum* Regime” in Claire Finkelstein, Jens David Ohlin and Andrew Altman (Eds), *Targeted Killings: Law and Morality in an Asymmetrical World*, Oxford: Oxford University Press, April 2012, p225–6)

In any case, the applicability of the principle of self-defence requires proof of imminence and necessity. In domestic society, one may take the life of another in self-defence only if that person poses an immediate risk to one’s own life (imminence) and if it cannot be avoided in any other way (necessity). In such understanding, national self-defence fails as a justification for targeted killings.

The claim would have to be that the victims of targeted killings posed an imminent risk of attack against the US, which is implausible. While the government claims that it is justified in killing “an operational leader” who presents “an ‘imminent’ threat of violent attack against the United States”, how does it understand such an attack to be imminent? Defence against insurgents “demands a broader concept of imminence” as the targets “continually plan terror attacks” and there may be “only a limited window of opportunity” in which they could be attacked. (Department of Justice, *White Paper*,

ibid) This is however an unacceptable expansion of the notion of imminence and completely strips it of its role to provide the self-defence justification. It is akin to the purported justification for preventive war at the *ad bellum* level—because a state is expected to attack in the indefinite future, one is justified in striking it now. In any situation where the fundamental sovereign interests of a state are challenged or in which a defensive military response would be just, the resulting war would not be an example of a drone-only war. A state under such

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a challenge would likely fight with all available means including drones. This supports the view that drone-only wars tend to be unjust wars. That is, wars fought exclusively by drones are likely to be fought by great military powers against lesser powers and great powers tend to see their interest in promoting a hegemonic world order, often through unjust wars.

In addition, humanitarian interventions are more likely to be drone-only wars because the fundamental interests of the concerned states are less likely to be at stake. Christopher Kutz (“Drones, Democracy and the Future of War”, *On War and Democracy*, Princeton: Princeton University Press, 2016) in an apparent endorsement of the point made by Anderson, (*ibid*) argues that military action of “other-defence”, that is, humanitarian intervention, does not require combatants be exposed to risk. To this view, there are two responses. First, not all wars claimed to be humanitarian are just wars. Some wars fought by powerful states are given a humanitarian rationale disingenuously or are overall unjust despite having a humanitarian rationale (as with the 2003 Iraq War). Humanitarian intervention, like any war, is unjust if it fails to satisfy the criteria of *jus ad bellum*. Nor does a state’s belief that its war is humanitarian guarantee that it is so. Second, justified humanitarian interventions fought exclusively by drones are less likely to succeed in their humanitarian purpose—Kosovo is an example. It is generally acknowledged that more Kosovars would have been saved from Serb forces had the North Atlantic Treaty Organisation fought the war with troops on the ground. Overall, the value of restraining powerful states from fighting drone-only wars outweighs the risk of aborting just wars.

It may be argued that using drones in war is still morally preferable to using other weapons, if one removes the problems that stem from poor intelligence and dubious policies. The question of whether a war is just or a target legitimate is not a question about drone technology. It is a moral question that must be settled independently. However, if a war is just or a target legitimate, then using drones may be better, as there will be a lower number of unintended casualties. That is a very big “if” when the technology itself makes going to war politically easier and may lead to countries fighting all sorts of unjust wars. Of course, the reverse point could also be true—there may be wars that countries should be fighting but do not if the possibility of incurring casualties is high or there is a lack of political will to fight the war.

Note for example the absence of humanitarian intervention in Rwanda during the civil war and the massacres committed there.

The debate on drones may not be resolved, primarily because it is the wrong debate. Rather than focusing on the morality of a weapons system, the discussion should consider how and why it is being employed. As one analyst has observed, the problem is not the drones themselves but the faulty intelligence upon which some strikes have been based. There is also the undeniable fact that drones kill far fewer people than cruise missiles or manned bombers. This does not mean that they should be used indiscriminately, but it does commend them as a weapon of choice in some circumstances. History shows that new weapons do not go away because people do not like them. Therefore, efforts would be better spent in trying to prevent conflicts whenever possible or, if that fails to conclude them swiftly, rather than debate whether one killing machine is more ethical than another. 