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## Armed Drones Becoming the Norm? At the Crossroads of Robotic Warfare

Margaret Flowers and Kevin Zeese  
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We are at a critical crossroads in this new era of robotic warfare. In the global war on terror, remote-controlled unmanned aerial vehicles, also called drones, make it possible to strike almost anywhere from the comfort of a base close to home. The use of drones has been escalating under the Obama Administration and now includes attacks in countries with which the United States is not officially at war. Drones are expected to be used widely in the United States beginning as early as 2015.

There is great secrecy surrounding the use of drones. The public has not had access to documents that provide legal justification for drone killings or outline the guidelines for decisions on who is targeted. Strikes are largely coordinated covertly by the CIA and Joint Special Operations Command, JSOC, an arm of the military that carries out high-security activities. Nor has the government provided information on the number of killings, how many are civilian deaths and where they occur. Instead, tracking groups try to fill that void with estimates - as The Bureau of Investigative Journalism does in their Naming the Dead project.

These unconfirmed estimates, which are subsequently taken as fact, downplay the number of civilian deaths. In a report by the Columbia Law School Human Rights Clinic, Counting Drone Strikes, Naureen Shah writes, "The estimates reflect an echo chamber of sorts: The tracking organizations collect news reports of particular strikes and make an estimate of who is killed based on them; these estimates are then regularly cited and repeated in subsequent news stories and media analysis pieces."

Without accurate information on the use of drones, the public is not able to have an informed debate on whether the use of drones is acceptable or not. Drone warfare has been promoted as a positive advance because it protects US soldiers from combat. The word "surgical" has been used to describe drone strikes as if the targets can be precisely-controlled. This gives the false impression that civilians are not harmed.

It is therefore not surprising that the US public supports the use of drones. A Pew Poll from this past July, which assessed public opinion in 31 countries, found that 61 percent of Americans support drone warfare. This was only topped by Israel, in which 64 percent support drones. In 15 countries, more than three-fourths of the population opposes the use of drones. In Pakistan, the only country surveyed that is a victim of drone warfare, a meager 5 percent supported the use of drones.

The use of drones is fueling animosity against the United States. Pakistani Malala Yousafzai tried to explain to President Obama how drone use was counterproductive, reporting, "Innocent victims are killed in these acts, and they lead to resentment among the Pakistani people. If we refocus efforts on education, it will make a big impact."

Former State Department official Nabeel Khoury says that every drone assassination of an Al-Qaeda member creates 40 to 60 more enemies. Gregory Johnsen, author of *The Last Refuge*, showed that drone attacks in Yemen tended to have the opposite of their intended effect, particularly when people other than extremists were killed or hurt. Drones hadn't whittled Al-Qaeda down, Johnsen argued; the organization had grown threefold there.

Medea Benjamin of CODE PINK and author of "Drone Warfare: Killing by Remote Control" describes how drones terrify communities, buzzing overhead for long periods of time and serving as a reminder that the wrong move can result in death. People are afraid to leave their homes, and children are afraid to go to school. Communities no longer gather in groups for events such as weddings and funerals. Rescuers hesitate to help those who have been hit because of the practice called "double tap," in which a second Hellfire missile is fired at those who arrive at the scene to provide aid.

Even the drone operators are adversely impacted, though they work on bases thousands of miles away from the site of the attack, and the attack looks much more like a video game than combat. A 2011 mental health survey found that 40 percent of drone operators experience moderate to high stress. Perhaps the most well-known drone operator with Post-Traumatic Stress Disorder is Brandon Bryant, who never pulled a trigger but contributed to the deaths of more than 1,600 people. He says being a drone operator made him feel like a "sociopath" who had "lost respect for life."

The use of drones is expanding, as Michael Kelly reports. There were only 52 strikes under President Bush. However we know that President Obama authorized 145 drone strikes in Libya in 2011, and "There have been 326 drone strikes in Pakistan, 93 in Yemen, and several in Somalia . . ." The redefinition of enemy combatants and the use of "signature strikes" also began under Obama. People are targeted and killed based on their age, location and behavior without confirming that they are indeed enemies.

### **The Crossroads: Which Path on Drones?**

Fueled by the Military Industrial Complex's drive for profit and the hegemony of US Empire, we can expect the use of drones to proliferate, and so it is urgent that the public becomes engaged in this issue. As more information comes out about the harm to civilians and to our national security from drone warfare, we must question whether that harm is outweighed by any benefits. We must also consider whether the use of drones falls within the rule of law, and if so, how the law is defined and enforced.

We are at a crossroads, and it is time for an informed public debate to choose the appropriate path. Three approaches are currently being proposed:

1. The current path, which allows the commander-in-chief to make decisions about when drones are used. This is being conducted without transparency or public accountability.
2. The path promoted by US-based human rights groups of holding drone strikes to the same standards as current air strikes and reviewing all drone strikes on a case-by-case basis to determine if they were legal. If laws were broken, those responsible should be held accountable.
3. The path supported by international human rights groups, groups within the affected countries and peace advocates of banning drones by defining them as a weapon of mass destruction akin to land mines and chemical weapons because they kill innocent civilians. Drones also make the conduct of war easier at a time when we should be working toward ending war.

It is tempting, when provided with this range of options, to choose the middle path. We argue that the path which falls within the rule of law and the human rights framework is to ban drone warfare.

### **Executive Power to Regulate Drone Attacks in Secrecy**

The first approach allows the president to make decisions on the use of drones without disclosing the legal framework or being held accountable to the public. President Obama has personally approved many drone attacks, reportedly reviewing the kill list each Tuesday. His administration claims that the Department of Justice issued a memorandum explaining the legal basis for drone use, but this has not been shared publicly.

This concentration of power raises the question of how easily it can be abused. It appears that President Obama has become desensitized to the use of drones. A recent book by two Washington Post reporters indicates that in discussing drones, Obama said he is "really good at killing people," a report not disputed by the White House. In 2010 at the White House Correspondents Dinner, the President quipped about using Predator Drones to kill the Jonas Brothers if they came near his daughters.

The Obama administration has treated the Authorization for the Use of Military Force approved after 9/11 as a license to make the world a battle zone to attack members of Al-Qaeda and their associates wherever they are. Obama admitted to killing four Americans with drones, but has not explained the justifications and claimed three were not targeted. And Obama has gone so far as to authorize the murder of people with drones who were unidentified, just based on their actions, i.e. "pattern of life" data, in so-called "signature strikes."

In May, President Obama announced there would be new guidelines for the use of drones. While the guidelines themselves were not made public, a limited version was. As reported by the Associated Press: "Among the newly public rules is a preference for capturing suspects instead of killing them, which gives the US an opportunity to gather intelligence and disrupt terrorist plots. The guidelines also state that a target must pose a continuing and imminent threat to the US." In addition there must be "a near certainty" that no civilians will be killed in a strike."

These guidelines raise more questions, e.g. what does "imminent threat" mean; in what situations will suspects be captured rather than killed; what is a "continuing" threat; and how is "near certainty" defined. Shahzad Akbar, a Pakistani lawyer who has filed many court cases on behalf of drone victims' families, told AP, "The problem remains the same because there is no transparency and accountability for the CIA because it will remain inside the system and not be visible to outsiders."

On September 13, 2013, the UN General Assembly Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions reviewed the use of drones under current law. The report described several areas where the United States is violating current law - including lack of transparency about the development and use of armed drones; failure to provide legal basis for use of drones; failure to provide information about investigations and prosecutions; failure to apply rules of engagement; violating humanitarian law, especially that a person must be

considered a civilian if there is any doubt; lack of oversight of drone use; lack of reparations for their misuse; lack of consideration of human rights laws protecting the right to life; requiring drone operators to report in a chain of command that keeps operations secret; failure to submit a report claiming self-defense to the Security Council; and the failure to capture, rather than kill, during an armed conflict, where feasible.

President Obama has repeatedly claimed that the United States is a nation of laws that lives under the rule of law. If so, his approach to the use of weaponized drones must be rejected, as it is illegal.

### **Making Drone Strikes Conform to Current Law**

The second approach is represented in two recent reports by Human Rights Watch, "Between a Drone and Al-Qaeda: The Civilian Cost of US Targeted Killings in Yemen"; and Amnesty International, "Will I Be Next: Drone Strikes in Pakistan." These reports do an excellent job of exposing the reality of drone use in Pakistan and Yemen, showing the human impact of drones and discussing drones in the context of current humanitarian law. Both reports found that the United States is violating international law in some cases, but neither report called for a ban on armed drones.

Human Rights Watch examined six attacks in Yemen. The author of the report, Letta Tayler, writes, "The US says it is taking all possible precautions during targeted killings, but it has unlawfully killed civilians and struck questionable military targets in Yemen. Yemenis told us that these strikes make them fear the US as much as they fear Al-Qaeda in the Arabian Peninsula."

Amnesty International (AI) describes the use of armed drones as "one of the most controversial human rights issues in the world." Amnesty, which did detailed reviews of nine drone attacks in Pakistan, is also critical of the United States and says it may be committing war crimes, writing:

"Because the US government refuses to provide even basic information on particular strikes, including the reasons for carrying them out, Amnesty International is unable to reach firm conclusions about the context in which the US drone attacks on Mamana Bibi and on the 18 laborers took place, and therefore their status under international law. However, based on its review of incidents over the last two years, Amnesty International is seriously concerned that these and other strikes have resulted in unlawful killings that may constitute extrajudicial executions or war crimes."

AI indicates that under international law the US is obligated to conduct "thorough, impartial and independent investigations" of all reports of civilian casualties. If there are violations of law, the people involved should be prosecuted, and victims or their families must be provided compensation and full reparations. Medea Benjamin discovered that US reparations are not going to their victims, but to US nonprofits, which are misusing them. AI also warns that countries like Australia, Germany and the UK, which are providing intelligence for drone killings, are also violating international law.

Many of the US attacks occur in nations where the United States is not in armed conflict. These human rights groups emphasize that under international law there is a difference between the use of armed drones in armed conflict and their use outside of war. Even so, AI concludes that the use of drones in war, as the US is using them, may be illegal, writing: "To be a lawful target, an individual must be directly participating in hostilities; so-called membership in an armed group is not in itself sufficient." There are also issues of proportionality, the killing of civilians and the timing of attacks.

AI points out that the United States' practice of conducting a second strike on first responders who come to the aid of the injured, called a "Double Tap," is illegal under international law. They conclude that these killings may violate "the prohibition of the arbitrary deprivation of life and may constitute war crimes or extrajudicial executions."

These human rights groups do not find all drone killings to violate current law and express the difficulty in evaluating the cases they reviewed because of the secrecy surrounding the US drone program. While some of the cases seemed to be clear violations, others were not clear. Under international law, arbitrary deprivation of life is illegal, whether in armed conflict or not, but the facts and circumstances which can be difficult to ascertain are especially important in an armed conflict to determine whether the killing is arbitrary.

When there is no armed conflict, drone killings could be considered extrajudicial executions. In those circumstances, "US authorities must demonstrate, in each strike, that intentional lethal force was only used when strictly unavoidable to protect life, no less harmful means such as capture or non-lethal incapacitation was possible, and the use of force was proportionate in the prevailing circumstances."

Naureen Shah told us that AI has never looked at whether a war in question was legal or not. Their rationale is that they want to be able to report on the actions of both sides in an armed conflict without appearing biased in their analysis. This complicates the analysis of the use of drones, and we question this approach. If a war is illegal, i.e. does not meet the standards of international law, that it was either authorized by the UN or the nation was under threat of immediate attack, then how can the laws of war apply? If a war is illegal, every killing is a war crime, whether by drones or any other means.

The complexity of applying laws for armed conflict and laws when there is no armed conflict leads AI to be unable to say that all the killings they reviewed in Pakistan were illegal. This was made even more difficult by the secrecy of the Obama administration in not sharing its rationale for the use of drones. AI would review each situation on a case-by-case basis after the fact. With the Obama administration authorizing hundreds of drone strikes, this becomes an impractical approach very quickly. In the future, multiple nations may be using drones, so there are likely to be even more cases needing an impractical case-by-case review.

Shah emphasizes that existing law regarding aerial strikes should be applied to the use of drones rather than creating new law because new laws may have lower standards than current law. While we agree that applying the law and holding those responsible for breaking it accountable

are important, we are not confident that the US government can investigate and judge itself adequately.

## **The Argument for Banning Drones**

Author David Swanson is an advocate for banning the use of drones. While he sees the Amnesty International and Human Rights reports as providing a lot of good information and better than the Obama administration policy, he sees the first two approaches as authorizing a new kind of war. He points out that finding some drone killings legal authorizes a new form of robotic killing.

Swanson reveals the flaw in their approach because even these top researchers and legal analysts have a very hard time applying the law to a handful of cases. He describes the approach: "The general lawyerly consensus is that killing people with drones is fine if it's not a case where they could have been captured, it's not 'disproportionate,' it's not too 'collateral,' it's not too 'indiscriminate,' etc., - the calculation being so vague that nobody can measure it."

He makes a broader case in a series of rhetorical questions:

"What is it that makes weaponized drones more humane than land mines, poison gas, cluster bombs, biological weapons, nuclear weapons and other weapons worth banning? Are drone missiles more discriminate than cluster bombs (I mean in documented practice, not in theory)? Are they discriminate enough, even if more discriminate than something else? Does the ease of using them against anyone anywhere make it possible for them to be 'proportionate' and 'necessary'? If some drone killing is legal and other not, and if the best researchers can't always tell which is which, won't drone killing continue? The UN Special Rapporteur says drones threaten to make war the norm. Why risk that? Why not ban weaponized drones?"

In a follow-up article, Swanson points to a Swiss human rights group, Alkarama, which issued a stronger condemnation of drones than the two US human rights reports. Their report is titled: "License to Kill: Why the American Drone War on Yemen Violates International Law." In the report, Alkarama recognizes that even the ongoing buzzing of drones overhead is a form of terrorism.

Alkarama looked at 10 cases in Yemen in the context of the overall US drone program. They looked at the same intricacies of international law as the two US reports, but found that no matter what, the drone killings are illegal because none of them occurred within a judicial process. In none of the cases were the targets notified of their crime, tried in a court and sentenced to death. Alkarama advises that the United States should stop all extrajudicial killings by armed drones.

Swanson points out that this conclusion "agrees with Pakistan's courts, Yemen's National Dialogue, Yemen's Human Rights Ministry, statements by large numbers of well-known figures in Yemen, and the popular movement in Yemen protesting the slaughter." Alkarama sees the United States as not only violating the law, but trying to alter international law.

For these reasons, Swanson concludes that the world needs to ban the use of drones, rather than make them a norm that expands the use of war by making it easier for nations to wage.

### **The Confusion of American Exceptionalism and Humanitarian War**

Swanson views the confusion of the US groups as part the overall confusion in the United States regarding American "exceptionalism" and the nation's perceived right to wage war and kill wherever the country's leaders deem necessary. It is a confusion borne out of allegiance to the United States as the superior force in the world with a responsibility to use its military to correct perceived wrongs (whenever in the national interest of the United States).

Swanson sees, as many others have claimed, that some organizations have supported war for "humanitarian reasons," also known as "killing to save lives." This became especially clear a year ago for AI, when they hired Suzanne Nossel as their executive director. Nossel is herself credited as having coined the term "Smart Power," which embraces both the United States ' use of military power as well as other forms of "soft power" to gain influence. Secretary of State Hillary Clinton announced her support for this approach at her confirmation as the new basis of State Department policy. Nossel has since left AI for another controversial human rights appointment at PEN American Center.

Perhaps at this critical juncture in US and world history, when the United States has shown itself to be very good at destroying countries, e.g. Afghanistan, Iraq and Libya, but not very good at creating stable countries (or even winning wars), the drone issue is an opportunity for a broader change in direction toward a policy that ends the dominance of militarism in US foreign policy.

The doctrines put forward by people like Nossel that favor humanitarian wars result in the deaths of thousands of innocents. And the so-called targeted killings of people with drones inevitably results in the mass deaths of civilians as well. From these conflicts the United States needs to learn lessons - one very old lesson - violence begets violence. US violence around the world is undermining the nation's national security and making the United States a nation hated by many.

The movement pushing for a ban on armed drones should use the opportunity to push for much more - an end to war as an instrument of foreign policy. This is not a new idea, in 1928, an international pact, the Kellogg–Briand Pact also known as the Pact of Paris - and officially as the General Treaty for Renunciation of War as an Instrument of National Policy - was signed by the major powers and sought to put an end to war. The creation of the United Nations in 1945 sought to facilitate cooperation between nations and achieve lasting peace.

The persistent work of many who are opposed to drones has elevated the discussion of robotic warfare. Many first events regarding drones have taken place recently: The first reports on and discussion of drone use on the floor of the United Nation; the first Congressional briefing that included testimony from drone victims; and the first discussion of drone use at the Organization of American States. Robert Greenwald just released a new film, Unmanned: America's Drone Wars. The opportunity is here to continue to build this momentum. Perhaps now that the bloody 20th Century is behind us, it is time for humanity to make the end of war a reality before robotic killings become entrenched and war is made the norm.