



# The Humanitarian Impact of Drones



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# Preface

Christof Heyns

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**Christof Heyns** is Professor of Law at the University of Pretoria. He is a member of the UN Human Rights Committee and is a former UN Special Rapporteur on extrajudicial, summary, or arbitrary executions.

It is not difficult to understand the appeal of armed drones to those engaged in war and other violent conflicts. Those using force on behalf of states have long had the aim of subduing their opponents with as little harm to their own forces as possible. In addition, increasingly there are international and other norms that require more precise targeting, sparing those not directly engaged in the conflict.

Getting close to the target has traditionally placed one's own forces in harm's way. Drones provide an opportunity to bring an "unmanned" weapons platform close to the target, from which force can be launched via remote control. If the platform is destroyed by enemy fire, the cost is measured in money, not in the number of lives of one's own forces lost.

Drones also provide those who use it with the argument that the maneuverability of the platform, in close vicinity to the target, may allow more precise targeting. Even if the jury is still out on the veracity of the second claim, the argument persists that this may be the case in the future. The appeal of the first claim, on the other hand, is evident. In an age of technology, drones were bound to happen.

If a drone were to be used only in isolated cases, there would probably have been few questions asked. It is after all not easy to point out a principled difference between a single missile fired from a F16 flying at the speed of sound, when an on-board pilot presses the button, and the same missile being fired from a loitering drone, with the button being pressed by an operator in another country. However, what is

at stake is not the isolated use of a few drones, by a few countries, but rather a new way altogether of releasing force; one that will play a dominant role in the conflicts of the future, with more and more states—and non-state actors—using this technology. It is this evolving use of drones as the weapon platform of the future that raises profound questions about the peace and security as well as some of the core values of the world we live in.

I, and others, have argued that drones should follow the law, and not the other way around. Drone-using states have argued for a relaxed application of norms covering the use of force that have developed over centuries—for example, what is to be considered an “imminent” attack against which self-defence by a state is allowed; when do the more permissive rules of international humanitarian law (IHL) apply to the use of force; to what extent does human rights law regulate the use of force outside the scope of an ongoing armed conflict; and what sort of transparency is required?

These are important questions, and warrant the full attention of the international community. But more than policing the legal boundaries of the use of force is required to ensure a responsible response to the challenges presented by drones. In fact, the debate may to some extent have become too legalistic, as if solving the legal aspects is all there is to meeting the challenges presented by drones as a whole. At least of equal importance is the extent to which we fully understand and think through the broader implications of this technological development.

Applying legal frameworks to concrete cases very easily leads to an exclusive focus on the individual case. Using a legalistic lens only to look at armed drones may thus mean one could miss the wider and cumulative implications of the

fact that the world is turning to remote controlled use of force. Considerations of the broader humanitarian implications of the remote controlled use of force are thus most apt and welcome.

The chapters in this in this book do exactly that. They look at the implications of a world where drones are becoming the new normal from the perspective of the various societies involved—including the gender implications, and also the psychological implications, from the perspective of those who operate drones and their societies, and those who are on the receiving side. What are the implications for societies on both sides of the digital divide? Peace and security as well as the humanitarian framework in which we operate may be compromised not only because drones make it so much easier for those with this technology to use force, and thus lower the threshold for a resort to force, but also when the less obvious fissures in societies are opened up.

This debate thus seems centrally important from the perspective of asking the age-old question: how do we solve problems? How and when can we resort to the use of force? What is effective, also in the long run? Clearly, a world in which those who are far out of harm's way have a button with which they can eliminate someone whom they see as posing a threat half-way around the world, is very different from one where such instant "solutions" are not available, and different if less dramatic means to achieve the same objective have to be found.

A thorough discussion of the broader implications of the use of armed drones is also important for other reasons. This includes the fact that armed drones are increasingly being used not only in armed conflict and counterterrorism operations abroad, but in domestic law enforcement contexts as well. Moreover, remote controlled release of force is being replaced by autonomous use of force, where computers will take the critical decisions. Force release, that is, is becoming more and more impersonal. We need a much better understanding of the early manifestation of this trend—armed drones in armed conflict—than we currently have to serve as a basis to respond to this broader phenomenon. For all these reasons, this book is a most welcome contribution to a vital debate.

# Introduction

## Ray Acheson, Matthew Bolton, and Elizabeth Minor

**Ray Acheson** is the Director of Reaching Critical Will, the disarmament programme of the Women's International League for Peace and Freedom (WILPF). She leads WILPF's advocacy and research on weapons and militarism, which always includes a gender perspective. Her work also includes monitoring and analysing international processes and forums related to disarmament.

**Matthew Bolton** directs the International Disarmament Institute at Pace University in New York City, where he is also associate professor of political science. He has served as an advisor to advocacy campaigns conducting advocacy in the UN General Assembly First Committee, Convention on Certain Conventional Weapons, Arms Trade Treaty, Nuclear Non-Proliferation Treaty and Nuclear Weapons Ban Treaty.

**Elizabeth Minor** is an Advisor at Article 36, a UK-based organisation that works for the development of new policy and legal standards to prevent the unintended, unnecessary or unacceptable harm caused by certain weapons. She was previously a researcher at Every Casualty and Oxford Research Group, where she investigated the methodologies and practices used by states, international organisations and civil society to document and record the casualties of armed conflict and violence.

Humanitarian and human rights norms have long sought to restrict the exercise of remote violence. In the last two hundred years, the rapid development of weapons technology has enabled people to kill and maim others at increasing distance, both physical and psychological. Rifles, artillery, landmines, aerial bombing, and missiles all function to reduce the potential for human encounter between an assailant and a target or victim.

Thoughtful military personnel, diplomats, lawyers, relief workers, philosophers, theologians, and activists worried that this ability to project harm far beyond our own bodies increases the risks that violence could be less discriminate, less proportionate, less attuned to the suffering of others. These concerns—motivated by norms of humanity and the voices of public conscience—have been progressively encoded into international law through treaties such as the Hague Conventions, Geneva Conventions, International Covenant on Civil and Political Rights, Convention on Certain Conventional Weapons, Antipersonnel Landmine Ban Treaty, and Convention on Cluster Munitions. They have also undergirded activism, academic writing, and various forms of legal and political action to curtail, prevent, or stop the spread of tools of violence, as well as violence itself.

The emergence of drones—or “unmanned” aerial vehicles (UAVs)—and other remotely-controlled military equipment poses new challenges to these humanitarian and human rights norms. Advocates for their use argue that airstrikes undertaken by armed drones cause less harm to

those people that are not the target than other forms of aerial bombing.<sup>1</sup> They point to the lowered risk of casualties on the attacking side and claim that the ability of drones to loiter over an area for extended periods of time enables a more judicious use of force.<sup>2</sup> The discourse that suggests that “drone strikes” are somehow a more humanitarian form of violence than traditional warfare has dominated political and popular discussion, particularly in those countries that make extensive use of UAVs. This discourse is grounded in elite, militarised power structures, where capacities for violence are bolstered by access to high technology and the ability (and willingness) to project violence far beyond one’s own borders. This discourse also makes certain assumptions about the inviolability of military necessity and inevitability of “collateral damage,” which draws the conversation away from the impact of drones on people’s lives. This study makes clear, however, that reality is less simple than this convenient narrative.

The technology of the drone is embedded in conceptual and legal frameworks that work together to stretch in new ways normative constraints on the use of force. This enables user states to use the “drone apparatus”—consisting of the weapons system, legitimating discourse, and associated legal, policy, and administrative foundations—to kill people presumed to be a threat far from either the

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**1** With then President Obama claiming in 2016, for example, that, “I can say with great certainty is that the rate of civilian casualties in any drone operation are far lower than the rate of civilian casualties that occur in conventional war.” See “Remarks by the President in a Conversation on the Supreme Court Nomination,” University of Chicago Law School, 8 April 2016, <https://obamawhitehouse.archives.gov/the-press-office/2016/04/08/remarks-president-conversation-supreme-court-nomination>.

**2** For example, former Secretary of Defense Robert Gates declared in an interview with CNN in 2013 that this capability meant that “you can far more easily limit collateral damage with a drone than you can with a bomb, even a precision-guided munition, off an airplane.” See “Interview with Robert Gates,” State of the Union with Candy Crowley, 10 February 2013, <http://edition.cnn.com/TRANSCRIPTS/1302/10/sotu.01.html>.

states’ actual jurisdiction or officially designated zones of armed conflict. The authors of the chapters in this study raise questions about whether this tempts policymakers to use violence in less restrained ways and displaces harm away from the attacking state onto the local population in the “target area”.

This approach to violence is arguably one of the main drivers of the development of weapons technology. As the most militarised country in the world, with over 800 foreign military bases and the largest expenditure on weapons and war, the United States has engaged in numerous post-Cold War conflicts or other acts of violence that have predominantly required relatively quick domination of targets through aerial bombardment, long wars of occupation, and “covert” special forces “counterterrorism” or “counterinsurgency” operations. Because of this, the US military is a “trend-setter in military technologies, to which all others react.”<sup>3</sup> Drones—for surveillance and war fighting—are currently at the front edge of the development of technologies for violence. These weapons are marked abroad by harm to civilians, further increasing fear of and anger towards the US government; within the United States, the use of drones is marked by lack of transparency and accountability, and a growing concern that these weapons may one day be used at home, in particular to suppress internal dissent or protest.

While there has been scattered academic, activist, legal, policy, and media contestation of the conventional wisdom on drones, this has been fragmented and has not resulted in substantive international policy change. Indeed, those seeking to limit the impact of armed

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**3** Andrew Lichterman, “Automated warfare, weapons modernization, and nuclear war risk,” Presentation to the 2015 NPT Review Conference, New York, 28 April 2015, <http://www.wslfweb.org/docs/Automated-warfare-and-nuclear-weapons-4-28-15.pdf>.

drones often end up caught in two discursive traps. The explicitly anti-war rhetoric adopted by some campaigners is often dismissed out of hand by government officials, who often refuse to hear denunciations of militarism. But if a narrower critique is made, for example on the basis of international humanitarian law, obfuscation by states leads to technical debates that marginalises all but those trained in the esoterica of weapons law. This remains far from the realities of those who are most affected by the use of drones. While there have been many important reports focusing on the impact of drones on people,<sup>4</sup> they tend to be in small circulation academic journals or single case studies.

This study aims to reframe this conversation by collecting in one place a comprehensive, multi-country and multidisciplinary summary of the evidence of harm that drones cause. As an artifact, it draws on the tradition of many humanitarian and human rights campaigns, going back to the anti-slavery societies of the 19th Century. It aims to undermine denial—e.g. the claim that “we couldn’t have known” the many ways that drones pose a threat to rights and humanity of affected people. As such, it is focussed less on policy recommendations per se, but rather is intended to ground any policy debate in a human-centered evidence base.

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<sup>4</sup> These include, for example, James Cavallaro, Stephan Sonnenberg, and Sarah Knuckey *Living Under Drones: Death, Injury and Trauma to Civilians from US Drone Practices in Pakistan*, International Human Rights and Conflict Resolution Clinic, Stanford Law School and NYU School of Law, Global Justice Clinic, <https://law.stanford.edu/publications/living-under-drones-death-injury-and-trauma-to-civilians-from-us-drone-practices-in-pakistan>; *The civilian impact of drones: unexamined costs, unanswered questions*, Center for Civilians in Conflict, 2012, [http://civiliansinconflict.org/uploads/files/publications/The\\_Civilian\\_Impact\\_of\\_Drones\\_w\\_cover.pdf](http://civiliansinconflict.org/uploads/files/publications/The_Civilian_Impact_of_Drones_w_cover.pdf); and case study documentation by organisations such as Human Rights Watch and Amnesty International. These and other such reports and references have been cited where relevant throughout this study.

Given that the overwhelming majority of air strikes from drones have been conducted by one country—the United States—much of the policy conversation so far has been focused on its specific national context. However, the United States is not the only government using or seeking to acquire drones, and evidence presented in these pages suggests that without a collective understanding of the limits that must be put on these technologies, unacceptable activities can be less easily challenged and will be replicated. As a result, this study aims to provide a more global perspective on drones, suggesting the crucial need for the continued development of national conversations in countries other than the United States and the countries in which it has used drones, as well as international policy discussion in multilateral settings.

Open source data gathered by the New America Foundation think tank to track the use, possession, development, and import/export of drones around the world<sup>5</sup> records that eleven countries have used armed drones, and twenty-eight states currently have armed drone systems. Eight of these countries first used them in the past two years.

Examining the pattern of reported use so far, some armed drone deployment has occurred where the user is intervening in support of another government or party to an armed conflict (such as the United Kingdom in Afghanistan, the United States in Iraq, Saudi Arabia in Yemen, the United Arab Emirates in Libya, or Iran in Syria). As mentioned above, the United States has been the major user of drones in other countries to kill people suspected of affiliation with certain groups, for the stated purpose of achieving domestic security objectives—challenging the

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<sup>5</sup> See New America, ‘World of Drones’, accessed 11 May 2017 <https://www.newamerica.org/in-depth/world-of-drones/>.

boundaries of where the use of certain forms of violence are generally accepted. This practice has also been identified with the United Kingdom, and with Israel in territories it occupies. Other users have conducted airstrikes within their own countries or contested regions, including Azerbaijan, Iraq, Nigeria, Pakistan, and Turkey—either in military operations, or in domestic security activities. The use of drones by countries to target their own citizens has thrown this into particularly stark relief for some commentators.<sup>6</sup>

In this context, the acquisition of drones for civilian domestic policing also bears consideration within the global landscape of how drone technology is implicated in harm and problematic trajectories in the use of force. Though there has been no reported use of weapons launched from an aerial drone by police services, in the United States for example the use of drones armed with less lethal weapons by police has been authorised in one state (North Dakota) and is being considered by others. Police in Dallas used a remote-controlled ground robot to kill a suspected sniper with plastic explosives in 2016.<sup>7</sup> Companies are also marketing drones equipped with less lethal weapons for riot control, which have been purchased in South Africa, for example.<sup>8</sup> More broadly, drone technology is increasingly used for extensive surveillance both in policing and other contexts, which is closely tied to the use of force—with many cases of unarmed drones contributing to airstrikes from other platforms, for example.

<sup>6</sup> See for example New America's World of Drones report: <https://www.newamerica.org/in-depth/world-of-drones/>.

<sup>7</sup> Simone McCarthy, 'What does Dallas's 'bomb robot' mean for the future of policing?', Christian Science Monitor, <https://www.csmonitor.com/USA/USA-Update/2016/0709/What-does-Dallas-s-bomb-robot-mean-for-the-future-of-policing>.

<sup>8</sup> 'Tear Gassing by Remote Control', <http://remotecontrolproject.org/wp-content/uploads/2015/12/Tear-Gassing-By-Remote-Control-Report.pdf>.

Currently, the majority of countries developing armed drones are high income countries, who also form the largest group of drone possessors and users.<sup>9</sup> Within the limited numbers, the lower a country's income group, the less likely they are to be using, possessing, or developing armed drones. Looking at the picture by region,<sup>10</sup> western countries similarly make up the largest group of armed drone developers. Countries in the Asia-Pacific region are at similar levels of possession to western countries, followed by Eastern European and African countries. Latin American countries are currently absent from the picture of armed drone use, possession, and development, though are importing drone systems more broadly.

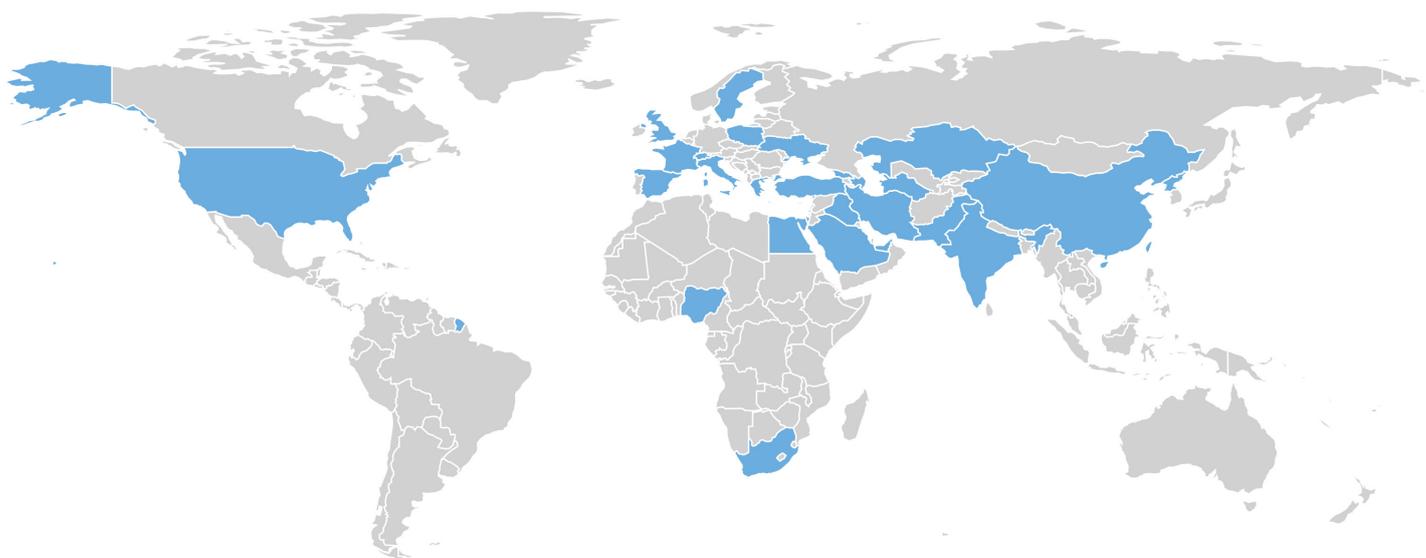
In recent years, in the context of a low level of international debate on armed drones, more states have begun expressing concern about the proliferation of drones, and armed drones in particular. There has, at times, been discussion about if and how drones may be accounted for under arms control standards articulated by the Arms Trade Treaty (ATT). In 2013, a group of governmental experts reviewing the potential expansion of the UN Register of Conventional Arms, clarified the category of aircraft to include UAVs. In 2016, the United States issued a political declaration supported by 51 states, on the "responsible export and subsequent use" of "armed or strike-enabled" drones.<sup>11</sup>

<sup>9</sup> According to New America data, using OECD-DAC country income groups.

<sup>10</sup> Using UNGA regional groups for simplicity of grouping countries.

<sup>11</sup> The text of the declaration is available in the US State Department archives at: <https://2009-2017.state.gov/r/pa/prs/ps/2016/10/262811.htm>.

Countries currently in possession of armed drones (New America)



A process is currently underway to develop more elaborated standards. This initiative can be considered problematic in several ways: the standards contained in the declaration are low; it is led by the current dominant user of drones, whose activities have raised most concerns; and primarily tackling proliferation, rather than addressing the broader concerns with these technologies, is not the optimal approach. However, the initiative shows recognition by states that armed drones pose particular issues, and of the specific link between drone technology and risks of problematic outcomes (which, though this is not acknowledged in the declaration, have been clearly evident in the actions of current possessors and users). Such recognition may be helpful to the national and international conversations that are needed on this issue.

However, the harms to people, places, and communities at the local, national, and international level should be the focus of any international or national conversations about armed drones. These harms are enumerated and analysed in this study. They include deaths and injuries—and an unacceptable lack of public

knowledge about who these were inflicted on, notwithstanding the efforts of civil society organisations in this regard. This has been accompanied by a lack of avenues for assistance and redress for victims, linked to secrecy and questionable practices in the use of drones. As well as physical injuries, deaths, and the destruction of civilian infrastructure, psychological impacts have also been a key and perhaps unique harm experienced by people living in areas where drones are operating and represent a near constant, threatening presence. There also seem to be unique psychological harms to drone operators. Furthermore, the use of armed drones has particular impacts on international and regional peace and security that may differ from challenges raised by other, more established weapon systems or modes of warfare.

The very nature of remote controlled warfare is impacting user and affected communities in a variety of ways, and this study looks at these impacts from a number of critical perspectives such as human rights, international law, gender, and ethics and morality. Given the range of harms, as well as the variety of perspectives from which to analyse these harms, this study aims to:

1. Refocus the debate about armed drones on the harm caused to people, disrupting narratives that emphasise the “low human costs” of deploying explosive force from drones;
2. Shift the burden of proof onto users of armed drones, putting pressure on them to justify their policies and practices;
3. Highlight specificities of armed drones as weapons systems—and the conceptual and legal formations that surround them—that pose particular threats to peace and security, rule of law and human rights, humanitarian protections, gender equality, and the environment; and
4. Demonstrate the need for global advocacy and policymaking on drones, beyond the specific national contexts of user and “target” countries.

As you read the evidence presented in this study, we ask you, the reader, to keep in mind possible policy questions relevant to addressing the harm caused by armed drones. The limits of what is acceptable and unacceptable in relation to the development and use of these technologies should be considered, from the perspective of the harm caused in all the dimensions in which it is examined—from immediate physical impacts to challenges to global governance. The challenges that are

specific to armed drones, and the policies as well as risks inherent in the technology that these might result from, should be drawn out in this context. How international standards could be developed or clarified on this basis can then be considered. In order to compel an effective international process, how greater engagement amongst a wide range of stakeholders could be developed is also a key consideration.

## Methodology and overview

The editors of this study have sought contributions from a diverse group of known and emerging experts from across academia, research and policy groups, and specialists from the field.

In his preface, Christof Heyns emphasises that the evolving and future use of drones raises profound questions about peace, security, our values, and the legal pathways available to us.

The chapters that follow are divided into two primary sections. The first section focuses on the harms caused by the use of armed drones. Jack Serle and Jessica Purkiss of The Bureau of Investigative Journalism review the humanitarian harm of drone strikes by considering the varying estimates of casualties—particularly of civilians—and the current systems of redress. Following this account of physical human harm, Radidja Nemar of the Alkarama Foundation presents troubling evidence that people in communities affected by drone surveillance and violence also suffer adverse psychological consequences. Doug Weir of the Toxic Remnants of War Project and Elizabeth Minor of Article 36 then look beyond immediate human harm to examine how harm to the environment should be considered in assessing the implications of drones. This angle has rarely been considered in much depth in the media, policy, or academic discussion of drones.

Drones also cause political harm to local, national, and global governance. This is considered in a chapter by Chris Cole of Drone Wars UK, in which he examines the impact of proliferating drone use on international peace and security. Anna Diakun of the American Civil Liberties Union then argues that the secrecy of the drones program is having deleterious impacts on systems of transparency and accountability, and on the rule of law.

The second section of the study analyses these harms from a variety of critical perspectives, including law. Shahzad Akbar of the Foundation for Fundamental Rights Pakistan and Reprieve argues that drone strikes are threatening crucial human rights protections. Adriana Edmedes of Rights Watch UK considers the various types of liability in international law that could relate different types of assistance states provide to their allies with armed drone programmes.

This is followed by Ray Acheson's consideration of the gendered impact of the policies and practices of drone programmes. She argues that drones should be viewed through a gender perspective to help situate in them in the broader context of militarism and the culture of violence, and highlights ways in which the use of drones can constitute gender-based violence and undermine gender equality. Peter Asaro considers the moral and ethical aspects of drone use, as well as the psychological impact on operators. Emily Welty of Pace University and the World Council of Churches Commission on International Affairs elaborates religious perspectives of faith communities regarding armed drones.

Interspersed throughout the study's chapters are a series of case studies that focus on specific national and regional contexts, including Yemen, Nigeria, Djibouti, the Philippines, Latin America, Europe, and the United States.

Substantive chapters were anonymously reviewed by experts on facets of the legal, political, policy, and technical dimensions of drones. The editors ensured that there was broadly gender equity in the the choice of peer reviewers. Authors were required to address the critiques of the reviewers in the drafting and revision process. The editors of this study have also endeavored to engage in a thorough and rigorous fact-checking and editorial review.

# Impacts

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# 1. Humanitarian Harm

## Jessica Purkiss and Jack Serle

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**Jessica Purkiss** is a reporter on the Bureau's Covert Drone War team. Before joining the Bureau she was a staff writer and editor for Middle East Monitor. She has also reported from Palestine. Jessica has an MA from Kingston University in human rights and genocide.

**Jack Serle** has been a specialist reporter on the Bureau's covert drone war team since he joined the Bureau in 2012. He was part of the team that won the Martha Gellhorn Prize for Journalism in 2013 for its work on drones and the US covert war on terror. He graduated from the University of Edinburgh with a BSc (Hons) in Biological Sciences in 2010 and was awarded an MA in science journalism by City University London the following year.

On 29 June 2011, US President Obama's chief counter terrorism advisor John Brennan stood in front of a packed room in an academic division of John Hopkins University in Washington, D.C. and made a bold assertion. No civilians had been killed in US counter terrorism operations in nearly a year, he said.<sup>1</sup>

Brennan was answering a question about "targeted killings", a euphemism for Central Intelligence Agency (CIA) drone strikes. The strikes were raining down on Pakistan at the time, though officially the administration refused to acknowledge the drone campaign even existed, sticking resolutely to the vague "counter terrorism operations" term.

Such operations had not claimed a single innocent life in months due to the "exceptional proficiency and precision"<sup>2</sup> of the capabilities America had been able to develop, Brennan claimed.

For reporters at the Bureau of Investigative Journalism, Brennan's contention did not ring true. For months, reports that civilians were dying in US drone strikes had been appearing in Pakistani and international media.

We felt we needed to create a comprehensive database, to collate details of who had been killed in what location, and how many drone strikes had taken place, in order to open the US counter terrorism programme to proper scrutiny.

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<sup>1</sup> C-SPAN, *Obama Administration Counterterrorism Strategy*, C-SPAN, 2011. Online video, 49:35. <https://www.c-span.org/video/?300266-1/obama-administration-counterterrorism-strategy>.

<sup>2</sup> Ibid.

This has developed into a major effort to monitor the drone war through investigative journalism, now in operation for over five years.

In this chapter, we will provide an overview of the project, its key findings, and the lessons learned. We will finish with a summary of efforts to seek justice and redress for innocent victims of drone strikes - an area with which civilian casualty recording is closely linked.

## Tackling the wall of secrecy

In our efforts to create a database of strikes, we started by gathering information from as many sources as possible – news stories, social media posts, leaked documents, and reports from non-government organisations (NGOs). Every time we found a credible report of a drone attack in Pakistan, we logged it, alongside whatever details we could uncover about who it had killed. We developed a robust methodology in order for our data to be reliable.

By August 2011, we had recorded 116 CIA covert drone strikes in Pakistan between August 2010 and June 2011.<sup>3</sup> We deepened our reporting by carrying out field investigations, with Bureau researchers visiting the tribal areas of Pakistan to investigate the strikes. We found that at least ten of them had resulted in civilian casualties, killing 45 or more civilians, including six children.<sup>4</sup> This number later increased as more information came to light.

Our findings directly challenged Brennan's claims. Yet despite the Bureau's evidence, US intelligence sources continued to insist there had been no civilian casualties, with one senior official describing the Bureau's findings as "wildly inaccurate."<sup>5</sup>

The CIA drone program was at its peak during this period, reaching an all-time high in September 2010.<sup>6</sup> American troop numbers had surged in neighbouring Afghanistan, with a sustained aerial campaign aimed at Afghan insurgents who were using Pakistan's tribal areas as a base to launch operations against US and Afghan troops across the border.<sup>7</sup> Reports of drone strikes were frequently appearing in major US news outlets, and government and intelligence officials were briefing journalists about the strikes. Yet on the record, they would say nothing.

In President Obama's first public comments on the drone campaign in January 2012, he addressed the mounting allegations of civilian casualties. He stated, "I want people to understand actually drones have not caused a huge number of civilian casualties, for the most part they have been very precise precision strikes against al Qaeda and their affiliates."<sup>8</sup>

<sup>3</sup> Chris Woods, "US Claims Of No Civilian Deaths Are Untrue," *The Bureau of Investigative Journalism*, July 18, 2011, <https://www.thebureauinvestigates.com/stories/2011-07-18/us-claims-of-no-civilian-deaths-are-untrue>.

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

<sup>6</sup> The Bureau of Investigative Journalism, *CIA and US military drone strikes in Pakistan, 2004 to present*, <https://docs.google.com/spreadsheets/d/1NAfjFonM-Tn7fziqiv33HIGt09wgLZDSCP-BQaux51w/edit#gid=694046452>.

<sup>7</sup> Kate Clark, "Drone Warfare 2: Targeted Killings – a future model for Afghanistan?" *Afghanistan Analysts Network*, March 1, 2017, <https://www.afghanistan-analysts.org/drone-warfare-2-targeted-killings-a-future-model-for-afghanistan/>.

<sup>8</sup> White House YouTube channel, "Your Interview with the President—2012", 30 January 2012 <https://www.youtube.com/watch?v=eeTj5qMGTAI>

Hussain Jamil al-Qawli (left) holds a photo of his son Salim al-Qawli, 20; and Muhammad al-Qawli holds a photo of his brother Ali al-Qawli, 34. Salim and Ali al-Qawli were killed in a drone strike in al-Masnaah on January 23, 2013



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By this point in 2012, we had already started recording data on US counter terrorism operations in Yemen and Somalia, in addition to the earlier information about Pakistan. In 2015 we added Afghanistan to our coverage, after the US ended its combat operations against the Taliban but continued air strikes and raids against al-Qaeda, by special operations forces.

As the number of countries that we were investigating grew, we tailored our methodology for each one. For example, in order to confirm a US strike in Afghanistan, we require a named Afghan official to have acknowledged it. In Yemen, the climate is different and officials

rarely go on record when speaking to media about drone strikes. In this case, we require three different types of named or unnamed Yemeni sources – such as government officials, tribal sources, or eyewitnesses – to report a strike before it is considered by us as confirmed. When we cannot achieve this level of certainty, it is recorded as a possible strike. We also use a range for reporting our casualty estimates, as even within a single report it is not uncommon for there to be contradictory information on how many people were killed or injured.

Using this methodology, the Bureau has recorded at least 723 air and drone strikes as of 15 August 2017 across Yemen, Somalia, and

Pakistan since the US began conducting strikes in those countries (2002, 2007, and 2004, respectively). We have also recorded at least 3,275 strikes in Afghanistan since 2015, when the US became the only country known to be flying fast jets and armed drones. As a result of all these strikes, we have counted the deaths of between 744 and 1,434 civilians. Due to the difficulty in gaining access to the precise location of drone strikes, along with the lack of official accounts of individual strikes, it is hard to determine whether we are capturing the full extent of the civilian death toll. Regardless, the strikes we do capture and the details we are able to record are important pieces of a puzzle, even if not a complete picture.

## The transparency environment today

Positively, American counter terrorism operations have become somewhat less secretive over time, although that trend may be changing.

In Yemen and Somalia, the US Central Command and US Africa Command are the bodies responsible for military operations in the two countries. Both began to regularly release information on drone strikes, sometimes with estimates of how many people were killed. At the end of 2016, US Central Command said it was implementing a monthly roll-up of strikes in Yemen, releasing figures normally on the first Friday after the 15th of each month.<sup>9</sup>

<sup>9</sup> Major Josh Jacques, Personal communication with Jessica Purkiss, 4 April 2017.

In Pakistan, the drone programme slowed almost to a halt with three strikes conducted in 2016.<sup>10</sup> One of these, the strike that killed the leader of the Afghan Taliban, was conducted by the US military, which is not subject to the same shroud of secrecy as the CIA. This strike, in May 2016, was the last for nine months and we felt optimistic that greater transparency could follow.

However, these small steps towards greater transparency may be short-lived, which continues to make our work necessary as well as challenging. For example, it became clear by February 2017 that US Central Command's release of monthly Yemen figures described above had been reversed, with a spokesperson telling the Bureau that, "there is no current requirement for US Central Command to announce strikes monthly."<sup>11</sup> The US has since released bulk information on its strikes in Yemen on an ad-hoc basis, following an upsurge in strikes in recent months, but there is little information provided about individual strikes, making the information difficult to interrogate. The Wall Street Journal reported in March the Trump administration has given senior officials in the CIA the authority to order drone strikes with autonomy from the White House and National Security Council.<sup>12</sup>

To some extent, the above reverses the sort of freedom enjoyed by the CIA to conduct drone operations under President George Bush. President Obama had gradually eroded this freedom, seeking to improve transparency and accountability. His ambition was to remove the CIA from drone operations, and place responsibility with the US Air Force.

<sup>10</sup> The Bureau of Investigative Journalism.

<sup>11</sup> Ibid.

<sup>12</sup> Gordon Lubold and Shane Harris, "Trump Broadens CIA Powers, Allows Deadly Drone Strikes," *The Wall Street Journal*, March 13, 2017, <https://www.wsj.com/articles/trump-gave-cia-power-to-launch-drone-strikes-1489444374>.

This was realised in May 2016 when the CIA provided intelligence, including imaging intelligence collected by drones, to the US military who were the agency that moved forward with the strike in Pakistan that killed Mullah Mansour, the leader of the Afghan Taliban.

Paradoxically, while the CIA was responsible for the strikes in Pakistan as well as some of those in Yemen, the drones were flown and missiles fired by US Air Force service men and women. US drones recently returned to Pakistan, with four strikes reported since Trump came into office in January, all of which have been attributed to the CIA.<sup>13</sup> It is not known if the same arrangement still applies.

In Afghanistan, the US has provided the Bureau with monthly strike totals since the end of 2016, following months of pressure. But these figures may not be as reliable as they once would have been. The American fight against various insurgent groups in Afghanistan is now conducted almost entirely by air, with US forces taking an advisory role on the ground. This has made civilian casualty tracking and recording much more difficult.

As of July 2016, the US began publishing information on strikes outside of areas of active hostilities. However, the figures amalgamated data from across four countries and over nearly seven years.<sup>14</sup> The lack of a year-by-year or country breakdown, and a total absence of any detail, makes the figures difficult to interrogate or draw any conclusions from. Some aspects also differed significantly from the Bureau's

findings – for instance our figure for civilian deaths was six times higher than theirs.

The director of national intelligence (DNI), who released the figures, has put forward an explanation for these discrepancies.<sup>15</sup> It said that the higher numbers recorded by NGOs could be attributed to combatants being counted as non-combatants. As it explained, the government's access to multiple sources of intelligence and its refined post-strike methodology enable it to more adequately evaluate the status of a casualty. The DNI pointed out that the reliance of NGOs on local media reports may also skew figures, as they are vulnerable to reporting misinformation spread by certain actors.

However, the DNI did not mention that NGOs and other monitoring bodies have conducted extensive ground investigations, interviewing survivors and relatives of victims. The US military recently admitted that its investigations into strikes in Iraq and Syria do not include similar interviews because the locations, and people, are inaccessible.<sup>16</sup> It is hard to see how CIA officers would have better access to the tribal agencies in Pakistan, for example.<sup>17</sup>

Despite the limitations of the data provided in 2016, the White House's publication of figures represented a welcome step towards greater transparency. It is not clear what the fate of this policy will be under President Trump but current trends are not encouraging for transparency proponents.

<sup>13</sup> The Bureau of Investigative Journalism.

<sup>14</sup> US Director of National Intelligence, *Summary of Information Regarding U.S. Counterterrorism Strikes Outside Areas of Active Hostilities*, July 1, 2016.

<sup>15</sup> Ibid.

<sup>16</sup> Micah Zenko, "Why is the US Killing so many civilians in Syria and Iraq?" *New York Times*, 19 June 2017.

<sup>17</sup> Airwars, *Transcript of Pentagon's Al Jinah Investigation Media Briefing*, June 27, 2017. <https://airwars.org/news/transcript-of-al-jinah-investigation-briefing/>.

## Changing patterns of civilian casualties

Though our data is not a complete record, by tracking civilian casualties over time the Bureau has been able to identify and compare different phases of the drone war. Overall civilian casualty figures in Yemen, Pakistan and Somalia have decreased. This is in part because of the significant decline in civilian deaths in Pakistan. Operations have slowed in the country, but the rate of civilian casualties has also declined.

American efforts to prevent civilian casualties were codified and signed in Obama's Presidential Policy Guidance (PPG) in May 2013 (though details were not released until July 2016).<sup>18</sup> Known as the drone "playbook", the PPG put certain restrictions on strikes conducted outside "areas of active hostilities", such as Yemen, Somalia and Pakistan. Under these, for example, the US military would need "near certainty" that a strike would result in no civilian deaths in order to conduct it – a standard more stringent than the international laws of war applicable during conflicts.<sup>19</sup>

The publication of the PPG was a response to pressure from the Bureau, and other monitoring groups, as well as the media and NGOs, but would not have been possible if the White House administration had not been receptive to the idea of engaging with outside parties and being more transparent.

<sup>18</sup> See: The White House, *Procedures for Approving Direct Action Against Terrorist Targets Located Outside the United States and Areas of Active Hostilities*, May 22, 2013, <https://www.aclu.org/foia-document/presidential-policy-guidance?redirect=node/58033> and Fact Sheet:

The White House, *The President's May 23 Speech on Counterterrorism*, May 23, 2013, <https://obamawhitehouse.archives.gov/the-press-office/2013/05/23/fact-sheet-president-s-may-23-speech-counterterrorism>.

<sup>19</sup> International Committee of the Red Cross, *Customary IHL: Rule 14. Proportionality in Attack*, [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_cha\\_chapter4\\_rule14](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_cha_chapter4_rule14).

However, the PPG is policy and not law, and this has made it vulnerable to shifts in US domestic politics. It is already under review by the Trump administration, which is likely to overhaul the rules, or, as it has been doing already, finding ways to circumvent them.

In Yemen for example, the Trump administration declared three provinces to be areas of active hostilities.<sup>20</sup> This is a technical term used to define areas where the PPG rules do not apply.<sup>21</sup> An unprecedented number of strikes have occurred there.<sup>22</sup>

An inquiry about whether the near certainty principle was still in place in Yemen yielded an ambiguous response.<sup>23</sup>

Parts of Somalia have also been declared as areas of active hostilities.<sup>24</sup> There, however, US Africa Command has told the Bureau that even though they have greater flexibility to conduct strikes more quickly, they will still maintain the same level of certainty to minimise civilian casualties.<sup>25</sup>

<sup>20</sup> Charlie Savage and Eric Schmitt, "Trump Administration Is Said to Be Working to Loosen Counterterrorism Rules," *New York Times*, 12 March 2017, <https://www.nytimes.com/2017/03/12/us/politics/trump-loosen-counterterrorism-rules.html>.

<sup>21</sup> Major Audricia Harris, Office of the Secretary of Defence Public Affairs department, Personal communication with Jack Serle, 31 March 2017.

<sup>22</sup> Jessica Purkiss and Jack Serle, "Unprecedented number of US air and drone strikes hit Yemen," *The Bureau of Investigative Journalism*, 2 March, 2017. <https://www.thebureauinvestigates.com/stories/2017-03-02/unprecedented-number-of-us-drone-and-air-strikes-hit-yemen>.

<sup>23</sup> Christopher Sherwood, Department of Defense spokesman, Personal communication with Jack Serle, April 2017.

<sup>24</sup> Charlie Savage and Eric Schmitt, "Trump Eases Combat Rules in Somalia Intended to Protect Civilians," *New York Times*, 30 March 2017. <https://www.nytimes.com/2017/03/30/world/africa/trump-is-said-to-ease-combat-rules-in-somalia-designed-to-protect-civilians.html>.

<sup>25</sup> Colonel Mark R. Cheadle, Director, Public Affairs and Communications Synchronization and Sr. Leader Engagement, US Africa Command, Discussion with author, 30 March 2017.

## Justice, compensation and the humanitarian toll on families

The families of those killed by drones may spend years searching for justice. For example, Bibi Mamana, a grandmother of nine, was picking vegetables when a drone strike killed her. Atiq, Mamana's son, said he rushed to the scene. "We found her mutilated body a short time afterwards. It had been thrown quite a long distance away by the blast and it was in pieces. We collected many different parts from the field and put a turban over her body," he told the Times.<sup>26</sup>

The family went to Washington, D.C. in 2013 to provide evidence at a congressional briefing. "Nobody has ever told me why my mother was targeted that day," Rafiq ur Rehman, another of Mamana's sons, testified.<sup>27</sup> While only a handful of congress members attended the session, possibly due to other pressing hearings taking place that same day, all reportedly apologised and expressed their condolences.<sup>28</sup> The briefing was the first time the US Congress had come face to face with drone strike victims.

While this response seems positive, the family's lawyer, Reprieve's Jen Gibson, stressed that the apology should have come from the administration.<sup>29</sup> The Obama administration however remained silent.

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<sup>26</sup> Robin Pagnamenta, "My Dead Mother Wasn't an Enemy of America. She Was Just an Old Lady," *The Times*, 10 November 2012. <https://www.thetimes.co.uk/article/my-dead-mother-wasnt-an-enemy-of-america-she-was-just-an-old-lady-2n8k3djvr9c>.

<sup>27</sup> Natasha Lennard, "Nobody Has Ever Told Me Why My Mother Was Targeted That Day," *Salon*, 29 October 2013, [http://www.salon.com/2013/10/29/nobody\\_has\\_ever\\_told\\_me\\_why\\_my\\_mother\\_was\\_targeted\\_that\\_day/](http://www.salon.com/2013/10/29/nobody_has_ever_told_me_why_my_mother_was_targeted_that_day/).

<sup>28</sup> Shaya Tayefe Mohajer, "Congressmen Apologize for Drones That Killed Pakistani Grandma," *Takepart*, 30 October 2013, <http://www.takepart.com/article/2013/10/30/congress-apologetic-for-drone-strike-killing>.

<sup>29</sup> Ibid.

There are a few known instances of financial compensation being paid to victim's families. US drones launched missiles at an al-Qaeda compound in Pakistan's tribal areas in January 2015. Unknown to those who ordered the strike, two foreign hostages were also on site.

The strike killed Giovanni Lo Porto, an Italian aid worker, and fellow aid worker Warren Weinstein, an American citizen.

The deaths of Lo Porto and Weinstein first emerged in April 2015 when President Obama publically acknowledged they had been killed in a US counter terrorism operation. "As President and as Commander-in-Chief, I take full responsibility for all our counter terrorism operations, including the one that inadvertently took the lives of Warren and Giovanni," he stated.<sup>30</sup>

President Obama explained that the existence of the operation was declassified and disclosed to the public because "the Weinstein and Lo Porto families deserve to know the truth".<sup>31</sup> As the operation had been carried out under the authority of the highly secretive CIA, such an admission marked a rare moment of transparency.

The US response to the deaths was unprecedented in several ways. Lo Porto's family received over €1 million, the first confirmed example of the US paying relatives of a drone strike victim.<sup>32</sup> Approximately eighteen months

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<sup>30</sup> Statement by the President on the Deaths of Warren Weinstein and Giovanni Lo Porto, The White House, 23 April 2015, <https://obamawhitehouse.archives.gov/the-press-office/2015/04/23/statement-president-deaths-warren-weinstein-and-giovanni-lo-porto>

<sup>31</sup> Ibid.

<sup>32</sup> Jack Serle, "US Pays 1M to Italian Couple After Killing Their Son In A Drone Strike," *The Bureau of Investigative Journalism*, 16 September 2016 <https://www.thebureauinvestigates.com/stories/2016-09-16/us-pays-1m-to-italian-couple-after-killing-their-son-in-a-drone-strike>

after the strike, the family was permitted a private meeting with US officials to discuss what happened, which thought to be the first time such a meeting has taken place.<sup>33</sup>

However the legal agreement between the US government and Lo Porto's parents specified that the money was an "ex-gratia payment".<sup>34</sup> This means the US government made the payment voluntarily and accepted no legal liability or obligation as a result.

Other than the "ex-gratia" payment made to Lo Porto's family over the strike in Pakistan, there have been reports of the US making payments to drone victim's families in Yemen, via the Yemeni government, although they remain unconfirmed by the US government.

One example comes from a strike on a wedding convoy near the town of Radda' in Yemen's Bayda province on 12 December 2013. A convoy of eleven vehicles were travelling to the groom's village with the bride when they were attacked. In a demonstration of their rage, protesters blocked a main road to the provincial capital with the victims' bodies.<sup>35</sup>

The Yemeni governor in the region agreed to provide compensation in the form of money and guns. Following two reviews, the US reportedly claimed all American investigations subsequently found that all the dead were fighters, rather than

civilians.<sup>36</sup> These findings were disputed by numerous media and human rights organisations that had compiled extensive records of the incident and about the identities of the victims.<sup>37</sup>

Despite US doubts over the victim's identities, compensation funding for the families was received in the Central Bank in Sana'a. Journalist Gregory D. Johnsen said in his investigation into the strike that, "Payment by proxy would allow the US the wiggle room to have it both ways, counting the dead as militants while paying for them like civilians."<sup>38</sup>

Both of the US investigations relied on pre-strike footage recorded by drones, according to Johnsen.<sup>39</sup> Relying on this, as he and senior military officials have put it, is like looking at it through a "soda-straw", as it often leaves out more than it provides.<sup>40</sup> The reliance on pre-strike and post-strike footage for civilian casualty (CIVCAS) investigations is standard practice in America's remote control wars, where the US does not have boots on the ground to investigate an allegation effectively.

In Afghanistan, the majority of US troops have now withdrawn. Air operations still continue, but without a strong military presence investigations into possible civilian casualties

<sup>33</sup> Jack Serle, "Sorry for Killing Your Son, CIA Tells Drone Strike Victim's Family," *The Bureau of Investigative Journalism*, 28 October 2016, <https://www.thebureauinvestigates.com/stories/2016-10-28/sorry-for-killing-your-son-cia-tells-drone-strike-victims-family-during-unprecedented-meeting>.

<sup>34</sup> Ibid.

<sup>35</sup> Human Rights Watch, "The Wedding That Became a Funeral," *Human Rights Watch*, February 2014, [https://www.hrw.org/sites/default/files/reports/yemen0214\\_ForUpload.pdf](https://www.hrw.org/sites/default/files/reports/yemen0214_ForUpload.pdf)

<sup>36</sup> Gregory D. Johnsen, "Nothing Says 'Sorry Our Drones Hit Your Wedding Party' Like \$800,000 And Some Guns", *BuzzFeed*, 8 August 2014, [https://www.buzzfeed.com/gregoryjohnsen/wedding-party-drone-strike?utm\\_term=.emWBB1nvq#.qdzmmRodL](https://www.buzzfeed.com/gregoryjohnsen/wedding-party-drone-strike?utm_term=.emWBB1nvq#.qdzmmRodL).

<sup>37</sup> Reprieve, Human Rights Watch and Al Jazeera America compiled extensive records of what happened during and after the strike from interviews with witnesses, survivors, relatives of victims and government officials. See below:

Human Rights Watch, "The Wedding That Became a Funeral," *Human Rights Watch*, February 2014, [https://www.hrw.org/sites/default/files/reports/yemen0214\\_ForUpload.pdf](https://www.hrw.org/sites/default/files/reports/yemen0214_ForUpload.pdf).

Iona Craig, "What Really Happened When a US Drone Strike Hit a Yemeni Wedding Convoy," *Al Jazeera America*, 20 January 2014. <http://america.aljazeera.com/watch/shows/america-tonight/america-tonight-blog/2014/1/17/what-really-happenedwhenausdronehitayemeniweddingconvoy.html>.

<sup>38</sup> Johnsen.

<sup>39</sup> Ibid.

<sup>40</sup> Ibid. Also taken from interview with Senior Military Official by Jack Serle, US Central Command, Tampa, March 2016.

have become more challenging and less likely. Senior military officials told the Bureau that it was much easier to investigate when they had a large number of troops on the ground.

One example comes from Iraq. Retired US General Arnold Gordon-Bray, who led the 2nd Brigade of the Army's 82nd Airborne Division in the first months of the invasion of Iraq, recalled to ProPublica how his team would sometimes seek out a victim's family, or leave cards behind after ground operations explaining how people could make a claim.<sup>41</sup> Senior military officials told the Bureau that in the event of an allegation, they could easily dispatch a patrol to talk to those affected, something they can no longer do. Although this was a far from perfect system, it did facilitate a way for those affected to receive an acknowledgement of what had happened and space to discuss.

The US military is always at pains to point out that the payments are not compensation but form a part of their efforts to express their condolences to the wounded and victims' families. The payments are voluntary and are part of a military strategy, rather than viewed as a form of redress imposed on the military by a court.

"When you have CIVCAS you undercut your legitimacy, you lose the support of the very people you are trying to support and trying to protect," a senior military official told the Bureau.<sup>42</sup> "If you are viewing the population as the centre of gravity, you are now losing that centre of gravity. There is no one target out there that will 'win the war' but there's a target

out there that will make you 'lose the war' just from public perception undercutting your legitimacy, losing the support of a population, losing the support of a nation that you are trying to support..."<sup>43</sup>

## Conclusions

Since the Bureau of Investigative Journalism began recording data, the environment we work in has altered considerably. American counter terrorism operations, including drone strikes, are less likely to be officially denied. Civilian casualty rates have been falling. This is, in part, because of the pressure for greater accountability and transparency. However, none of the measures that led to improvements in accountability have been entrenched in law, and as such they are all susceptible to change.

Disputes over casualty figures continue to be a problem. In January 2017, the Bureau found itself once again in a dispute with the US over casualty figures. In this case, it was a commando raid in Yemen, hailed by the Trump administration as "successful". An investigation that we published however showed it killed nine children under the age of thirteen.

As the new administration's counter terrorism policy evolves, robust civilian casualty recording practices will need to be in place to make targeting policy accountable. This is extremely important to demonstrate the humanitarian impact caused by these weapons. With much attention being given to Iraq and Syria, it is more important than ever to ensure that operations in more underreported places like Yemen, Somalia and Pakistan are not forgotten and are subject to proper scrutiny.

<sup>41</sup> Cora Currier, "Hearts, Minds and Dollars: Condolence Payments in the Drone Strike Age," ProPublica, 5 April 2013, <https://www.propublica.org/article/hearts-minds-and-dollars-condolence-payments-in-the-drone-strike-age>.

<sup>42</sup> Senior Military Official, Interview by Jack Serle, US Central Command, Tampa, March 2016.

<sup>43</sup> Ibid.

## Country case study:

# Yemen

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It has been sixteen years since a US drone hovered for the first time in the Yemeni skies and fired a Hellfire missile at a car carrying a suspected al-Qaeda leader on 3 November 2002 in eastern Yemen.<sup>1</sup> Since then, Yemen has become a battlefield for expanded US drone operations labelled as “a War on Terror.” Since late 2014, Yemen has been parallelly going through a violent war between forces and armed groups loyal to the internationally-recognized government of President Abdrabbuh Mansour Hadi, backed by a Saudi Arabia-led military coalition on one hand, and Houthi armed group and forces loyal to former president Ali Abdullah Saleh on the other. This violence has created one of the worst humanitarian crises in the country with millions of people facing famine, displacement and diseases.

Since 2002, hundreds of US drone strikes have been carried out in different parts of Yemen. Approximately 249 confirmed US strikes have been carried out and killed at least 160 civilians in different parts of Yemen.<sup>2</sup> The majority of these have been in the east and the south. They have killed significant numbers of al-Qaeda in the Arabian Peninsula (AQAP) senior commanders and operatives. In addition, they have been very successful in keeping the US army away from the dangers of direct engagement on the ground. However, dozens of such strikes have been imprecise enough to cause high scores of innocent civilian deaths and injuries.

<sup>1</sup> “Data of drones war in Yemen,” The Bureau of Investigative Journalism, <https://www.thebureauinvestigates.com/drone-war/data/yemen-reported-us-covert-actions-2001-2011>, 3 November 2002.

<sup>2</sup> Ibid.

The US drone programme has not so far eliminated terrorism agencies, nor succeeded even in curbing the territorial sharp expansion and flourishing of radical militancy in the country. Moreover, these operations have had an adverse impact on civilians, their families and communities, whose injuries have been left without remedy; their questions about the injustice of being victimized remain unanswered.

In a joint report by Yemeni Mwatana for Human Rights and Open Society Foundation, nine case studies were documented that included 26 civilian deaths and injuries to an additional 13 civilians during the period May 2013 until April 2014.<sup>3</sup> We present some of these findings below to illustrate the humanitarian impact of armed drones in Yemen.

A statement made by the Mwatana Organization for Human Rights in 2017 provided the findings of field research that included evident civilian harm by US drone strikes.<sup>4</sup> These findings contradict the claims from the American government that its drones programme has “high precision” and a “low human cost”. Several documented case studies provide a considerable evidence of how US drone operations in Yemen have led to not only to high scores of civilian deaths and injuries but also constant pains, suffering, and health associated dilemmas.

<sup>3</sup> *Waiting for Justice on civilian victims of US drones in Yemen*, Mwatana for Human Rights, 19 January 2017, <http://mwatana.org/en/1912017603>.

<sup>4</sup> Ibid.

For example, these strikes occurred while civilians were practicing normal daily life activities in their own homes, streets; or working, playing, shepherding, or driving to or from their houses.

On the evening of 26 September 2014, three children, including two girls, were playing by their own house at 18:00, when a US drone, without warning, fired a missile on a passing car on the main road, which is parallel to the house where the children were playing in al-Khosaf village, al-Hazm District of al-Jawf governorate, northeast Yemen.

The strike killed two AQAP suspects instantly, but shrapnel injured the civilian homeowner Orfouj Qaid al-Marwani, and injured his three children.

Zeina al-Marwani, seven years old and injured with shrapnel in the lower part of the spine, pelvis, and right thigh, caused her complete paralysis. Due to the absence of decent health care, Zeina passed away on 10 January 2016. The second child, Moe'ed al-Marwani, was 12 years old and was injured with shrapnel in his right thigh and testicles. He is still suffering from a fragment left in his right thigh. The third child is Sa'adah al-Marwani, was five years old. She was injured with shrapnel in her legs.

In her testimony, the mother of the three children explained that she was pregnant at the time of the strike that caused her intense stress and fear that put her through severe complications throughout the rest of her pregnancy.

She spoke about the conditions of poverty they have been living under particularly since the children's father, the only provider for the family, passed away three months after the strike. Moe'ed pointed to the absence of basic services in their area and he added that he and other children have been deprived from being able to go to school, as a result of the current ongoing war in Yemen.<sup>5</sup>

Based on the testimonies of the families' victims, US drones, just like AQAP forces, have created a constant state of fear that accompanies residents of those areas where these strikes took place or drones hover repeatedly.

In an interview with the child Moe'ed al-Marwani, he spoke about the physical pain he still feels due to his injury, in addition to the continuous anxiety he and other children in their village experience every time a drone is heard hovering overhead.

Based on our findings, no official investigation has been carried out by any party into this incident nor any redress or remedy has been yet provided for the poor family.

A documentary film that Mwatana has produced features a story of a US drone strike that killed four civilians and injured five others while they were driving near another car that was carrying suspected AQAP members in al-Baidha Governorate, central Yemen. Families of the victims spoke with bitterness in the movie about the suffering of their inconsolable losses and questioned the reason behind targeting them, as they had nothing to do with militants of any kind. The targeted vehicle was driving behind a Toyota Hilux vehicle that was transporting around 14 civilians who were mostly construction workers in addition to the driver. The distance between the two vehicles was approximately 20 to 30 meters. The workers were driving on al-Hazemya road from their villages in al-Sawma'ah district, al-Baidha governorate and were heading to work in al-Baidha city.

The incident occurred on 19 April 2014, at about 6:00. The shrapnel of the missiles hit the civilians' car and killed four of them: Sanad Hussein Nasser al-Khushum (30 years), Yasser Abed Rabbo al-Azzani (18 years), Ahmed Saleh Abu Bakr (65 years) and Abdullah Nasser Abu Bakr al-Khushu.

It also injured another five civilian passengers: the driver, Nasser Mohammed Nasser (35 years), Abdulrahman Hussein al-Khushum (22 years whose brother Sanad al-Khushum was killed by the same strike, in addition to Najib Hassan Nayef (35 years), Salem Nasser al-Khushum (40 years), and Bassam Ahmed Salem Breim (20 years).

<sup>5</sup> *Death by Drone: Civilian Harm Caused by U.S. Targeted Killings in Yemen*, Open Society Foundation, April 2015, <https://www.opensocietyfoundations.org/reports/death-drone>, pp. 44-47.

According to a testimony by a victim's family member, the Yemeni state paid a total of 15 million Yemeni riyals (an equivalent of \$69,809 USD at that time) in addition to 30 Kalashnikov guns to be all divided among the families of the four killed victims. This was following a tribal arbitration. The entire amount was spent on covering some of the medical expenses needed for treatment of the surviving injured victims.

In the documentary, Ali Abed Rabbo al-Azzani, who lost his son Yasser in this strike, expressed the bitterness of loss and the misery his son's death has brought. "What is left of my son is a few photographs and a pile of humble clothes," he said. "My son's death has left the family in need as Yasser was the family's breadwinner and was killed on his way to work."

Hussein al-Khushum also speaks about the burden his son's death has left for him to shoulder as he is now responsible for taking care of his three grandsons without any additional income: "The news of his death broke our hearts and doubled our sorrows. He was killed. Why? Why did they kill my son Sanad and my cousin Ahmed Saleh Abu Bakr? My son and my cousin did not belong to any organization. My son Sanad was married and had three children. His main concern was to secure their future and earn their upkeep," Hussein explained.

These incidents offer a realistic and local perspective on the tangible, adverse impact of US drones that have not been precise and fail to prevent civilian deaths and injuries. They were further unable to avoid causing harm to property and to the health and living conditions of those in the affected communities.

According to a statement made by former US President Obama on 23 May 2013<sup>6</sup> and the aftermath White House Fact Sheet<sup>7</sup> targeted strikes are only made when there is "...near-certainty that no civilians will be killed or injured." In an apparent reference to so-called signature strikes, based on individuals' patterns of behavior, the Fact Sheet asserted that, "it is not the case that all military-aged males in the vicinity of a target are deemed to be combatants." Our research however, has found no US adherence to this policy and instead, we have found civilians killed and injured.

<sup>6</sup> Remarks by US President Obama at the National Defense University, 23 May 2013, <http://www.whitehouse.gov/the-press-office/2013/05/23/remarks-president-national-defense-university>.

<sup>7</sup> "Fact Sheet: U.S. Policy Standards and Procedures for the Use of Force in

Counterterrorism Operations Outside the United States and Areas of Active Hostilities," The White House, 23 May 2013, <http://www.whitehouse.gov/the-press-office/2013/05/23/fact-sheet-us-policy-standards-and-procedures-use-force-counterterrorism>.

In addition to not having been adequately compensated for the harm caused by American airstrikes, survivors and victims' relatives confirmed that no investigations have been conducted into the killings and damages. The US has not so far disclosed any information regarding these incidents nor the full legal basis for undertaking them. It is still unclear for many, including the victims, whether drone operations in Yemen comply with international law or not due to a lack of transparency.

Neglected communities that are affected by drones are rapidly becoming a conducive environment for the flourishing of al-Qaeda militants as well as a recruiting source, because militants pander to this desire for revenge against Americans. Finally, and most importantly, the extent of inefficacy of US drone program in Yemen has been very clearly seen through not only its failure to curb and dismantle of terrorism movements, but also the unprecedented thriving and territorial expansion and establishing of its radical rule in different parts of the country. Al-Qaeda's affiliates are stronger than ever in Yemen, according to a recent report by International Crisis Group.<sup>8</sup>

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<sup>8</sup> *Yemen's al-Qaeda: Expanding the Base*, International Crisis Group, 2 February 2017, <https://www.crisisgroup.org/middle-east-north-africa/gulf-and-arabian-peninsula/yemen/174-yemen-s-al-qaeda-expanding-base>.

## 2. Environmental Harm

Doug Weir and Elizabeth Minor

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**Elizabeth Minor** is an Advisor at Article 36, a UK-based organisation that works for the development of new policy and legal standards to prevent the unintended, unnecessary or unacceptable harm caused by certain weapons. She was previously a researcher at Every Casualty and Oxford Research Group, where she investigated the methodologies and practices used by states, international organisations and civil society to document and record the casualties of armed conflict and violence.

In armed conflict, and its aftermath, legal protection for the environment is weak, and systems for accountability and environmental remediation are largely absent. Those protections that do exist have been most clearly articulated in relation to massive levels of environmental harm. They primarily focus on the “natural environment”—without articulating the linkages between environmental quality and the enjoyment of fundamental human rights.

However, the risks of the generation of toxic remnants of war—conflict pollution that threatens human and ecosystem health—should be an important consideration in taking steps and measures to progressively limit harm in the use of force.

During the last decade, there has been a renewed effort to clarify and codify the relationship between environmental obligations stemming from international humanitarian law (IHL), international environmental law, and international human rights law, before, during, and after armed conflicts. The topic is currently under consideration by the International Law Commission, and states have expressed their growing concern over the environmental and derived humanitarian consequences of armed conflict at the UN Environment Assembly.<sup>1</sup>

<sup>1</sup> “Analytical Guide to the Work of the International Law Commission, Protection of the environment in relation to armed conflicts,” International Law Commission, 2017, [http://legal.un.org/ilc/guide/8\\_7.shtml](http://legal.un.org/ilc/guide/8_7.shtml); “UNEP/EA.2/Res.15, Protection of the environment in areas affected by armed conflict,” United Nations Environment Assembly, 2016, [https://wedocs.unep.org/bitstream/handle/20.500.11822/11189/K1607252\\_UNEPEA2\\_RES15E.pdf?sequence=1&isAllowed=y](https://wedocs.unep.org/bitstream/handle/20.500.11822/11189/K1607252_UNEPEA2_RES15E.pdf?sequence=1&isAllowed=y).

Obligations to address the environmental legacy of pollution from armed conflicts and military activities have been proposed by the International Law Commission,<sup>2</sup> and have recently been articulated in the Treaty on the Prohibition of Nuclear Weapons, adopted in July 2017.<sup>3</sup> These and other initiatives could support the advancement of both law and practice with respect to addressing toxic remnants of war.

The expansion of the use of armed drones by states to conduct airstrikes both within and outside of armed conflict has coincided with this increased interest in enhancing the protection of the environment in relation to armed conflicts. However, very little research has been undertaken into any possible relationship between the use of armed drones and environmental harm.

Whilst not arguing that the environmental impact of armed drones is a central component of the harms that they cause, this short perspective proposes that air strikes conducted from drones could have environmental implications for communities, and that these should be considered in any discussions about the further regulation of drones. In addressing the problematic aspects or potentials of armed drones as a set of technologies, and current trajectories in their use, states should at least consider that:

- The use of explosive weapons has the capacity to generate toxic remnants. One key concern surrounding armed drones is that these technologies have facilitated the expansion of the types of contexts in which states have been willing to use explosive force deployed from aircraft. If such trajectories are permitted to continue, potential environmental harms risk being seen in a greater variety of contexts;
- The legal standards of armed conflict have been applied in these particular uses of force, though these standards have been widely argued to be the inappropriate framework. With the low standards of environmental protection associated with armed conflict, this could also present risks in terms of greater environmental harm from the use of force; and
- Given the low standards of environmental protection in armed conflict, it should be investigated whether drone technology through its unique characteristics could help facilitate the striking of environmentally risky targets during armed conflicts, and contribute to harmful practices in this way.

Given the lack of research in this area, this chapter does not propose definitive conclusions on these points. Rather, it proposes that these are areas where there may be questions and concerns that states and others should be encouraged to consider, as part of any discussion on the broader picture of harm caused by armed drones.

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<sup>2</sup> See draft principle 16 in "Protection of the environment in relation to armed conflicts: Statement of the Chairman of the Drafting Committee," International Law Commission, 9 August 2016, [http://legal.un.org/docs/?path=../ilc/documentation/english/statements/2016\\_dc\\_chairman\\_statement\\_peac\\_9august.pdf&lang=E](http://legal.un.org/docs/?path=../ilc/documentation/english/statements/2016_dc_chairman_statement_peac_9august.pdf&lang=E).

<sup>3</sup> See Article 6 in "Treaty on the Prohibition of Nuclear Weapons," UN General Assembly, 7 July 2017, <http://undocs.org/A/CONF.229/2017/8>.

## Environmental impacts from the use of explosive weapons

Airstrikes from armed drones typically use explosive weapons.<sup>4</sup> The use of explosive weapons can produce pollutants that pose risks to human health following their initial impacts, particularly when these weapons are used in populated areas.<sup>5</sup>

These toxic remnants—the effects of which are not well documented—may derive from the constituents of munitions<sup>6</sup> or from the destruction of buildings and damage to infrastructure, such as power, water, and sanitation facilities. Whilst potential toxic impacts will be greatest where the use of explosive weapons in populated areas has been widespread and sustained,<sup>7</sup> even limited use (such as individual air strikes) can bring risks to health in communities. As such, the environmental impacts of explosive force are a

<sup>4</sup> The humanitarian harm caused by the use of explosive weapons in populated areas—from deaths and injuries to infrastructure damage and displacement—has been recognised by a number of states, civil society, the International Committee of the Red Cross, and the UN Secretary-General among others. States are currently developing an international response to address this issue through a political declaration. See records of international debate collected by the International Network on Explosive Weapons at [www.inew.org/acknowledgements](http://www.inew.org/acknowledgements).

<sup>5</sup> See for example Andrew Garrity, "Conflict rubble: a ubiquitous and under-studied toxic remnant of war," Toxic Remnants of War Project, 10 July 2014, <http://www.toxicremnantsofwar.info/conflict-rubble-a-ubiquitous-toxic-remnant-of-war>.

<sup>6</sup> So far most research into the health risks and environmental fate of the residues from explosive weapons has been restricted to domestic training ranges, and may not be representative of their use in populated areas in conflict and other settings. See for example: Koponen, K, "Development of Guidance Values for Explosive Residues;" and Walsh, et al. "Energetics Residues Deposition from Training with Large Caliber Weapon Systems," in *European Conference on Defence and the Environment, Proceedings 2015*, [http://www.defmin.fi/files/3353/ECDE\\_Proceedings\\_2015.pdf](http://www.defmin.fi/files/3353/ECDE_Proceedings_2015.pdf).

<sup>7</sup> See for example the UN Environment Programme's assessment in 2009 of the impact of the Cast Lead offensive in Gaza, which documented dioxins and asbestos in the conflict rubble: "Environmental Assessment of the Areas Disengaged by Israel in the Gaza Strip," United Nations Environment Programme, 2009, [http://postconflict.unep.ch/publications/UNEP\\_Gaza\\_web.pdf](http://postconflict.unep.ch/publications/UNEP_Gaza_web.pdf).

relevant concern in the context of airstrikes conducted using drones.

Several widely used munitions that states have fired from drones present toxicity concerns, such as Hellfire missiles and GBU-12 and GBU-38 bombs. These contain conventional explosive fills that utilise TNT and RDX. Both explosives are mobile in the environment, meaning that, for example, they can spread from soils into groundwater, and are toxic. The metals dispersed from these munitions are environmentally persistent. Where use is intense or sustained, evidence suggests that these can reach sufficient levels to pose a threat to civilian health.<sup>8</sup>

There may also be specific concerns from novel materials that are being used in munitions deployed from drone platforms. For example, Dense Inert Metal Explosive (DIME) munitions, the long-term health impacts of which are unconfirmed, have reportedly been deployed from drones.<sup>9</sup> A lack of transparency over the deployment of advanced weapons by drones limits efforts to study and assess their potential health and environmental risks from a perspective of limiting harm.

In populated areas, together with pulverised building materials, particulate matter, combustion products, household chemicals, and electrical components, munitions constituents can also contribute to the creation of complex polluted environments.<sup>10</sup> The longer-term impact of these mixed exposures on human health

<sup>8</sup> See for example "Lebanon Post-Conflict Environmental Assessment," United Nations Environment Programme, 2007, [http://postconflict.unep.ch/publications/UNEP\\_Lebanon.pdf](http://postconflict.unep.ch/publications/UNEP_Lebanon.pdf).

<sup>9</sup> Raymond Whitaker, "'Tungsten bombs' leave Israel's victims with mystery wounds,' *Independent*, 18 January 2009, <http://www.independent.co.uk/news/world/middle-east/tungsten-bombs-leave-israels-victims-with-mystery-wounds-1418910.html>.

<sup>10</sup> Garrity, above note 5.

remains understudied.<sup>11</sup> This is due to the fact that public health responses prioritise acute threats where such use of weapons creates humanitarian emergencies, and lack of access, inadequate environmental data collection, and insecurity hamper studies.

Environmental impacts are important to consider in evaluating what the response should be to the harms caused by the use of explosive weapons, including in considering what the acceptable limits are for the contexts in which drones can be used to conduct airstrikes.

### Challenging boundaries in the use of force

The specific capabilities offered by certain drones have been used by some states to facilitate an expansion in the range of contexts in which they use explosive force. These states have used drones in a way that pushes at the legal and conceptual boundaries where certain types of violence generally associated with armed conflict are used.

The technological features relevant here include the range, persistence, and surveillance capabilities offered by drones, and the ability to use force without physical risk to the attacker. The interplay between the potentials provided by these characteristics, and problematic patterns in use—particularly the killing of those associated with particular groups across borders—provides a basis for international discussion on preventing harm from drones as a specific set of technologies.

As a result of this particular pattern of airstrikes launched from drones, harms to people known to result from the use of explosive force in conflict—including deaths, injuries, psychological impacts, and the destruction of homes—have been documented in novel contexts. This transposition of known impacts in to different situations could also therefore apply to environmental harms. In turn, if some current use of armed drones by states has sought to redefine where particular sets of laws governing the use of force apply, such as the law of armed conflict, this also has clear implications for the protection of the environment.

Along with other impacts, potentials for environmental damage in communities that can affect human health therefore bear consideration in evaluating what the acceptable limits on the use of armed drones by states should be, and for setting standards against the facilitation of expansions in the contexts where certain types of force are used.

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<sup>11</sup> See for example Manduca P, Naim A, and Signoriello S, “Specific Association of Teratogen and Toxicant Metals in Hair of Newborns with Congenital Birth Defects of Developmentally Premature Birth in a Cohort of Couples with Documented Parental Exposure to Military Attacks: Observational Study at Al Shifa Hospital, Gaza, Palestine,” *Journal of Environmental Research and Public Health*, 2014 11:5208-5223.

## Environmentally risky targets

In addressing drones as a development in weapons technology, states should consider which features of systems could facilitate problematic practices or expansions in the use of force, and how the implications of these could be contained. If one aspect of this is to consider how certain capabilities have enabled expansions in the contexts in which certain forms of force have been used, another may be to consider the potential implications of the enhanced surveillance capabilities offered by drones for facilitating attacks on targets whose destruction carries particularly severe risks of generating conflict pollution.

Numerous target types have the potential to harm the environment and human health when damaged or destroyed. These include industrial, petrochemical, or pharmaceutical sites; electricity production or distribution networks; water treatment and distribution facilities; and military bases and ammunition storage areas.

The existing thresholds for what constitutes unacceptable environmental harm under IHL are widely acknowledged as being both too high, and poorly defined <sup>12</sup>—though the relevant general principles of distinction and proportionality nevertheless apply in the selection of targets and of weapons, as does the principle of precaution. Reliably predicting the outcome of strikes on environmentally risky targets requires advanced knowledge of the design, state, and contents of the facility, and the ability to reliably predict the health and environmental consequences of the damage caused; factors that will be balanced against the military advantage gained from disrupting or destroying it.

While aerial surveillance data may increase the confidence of mission planners, it is unlikely that it would contribute substantially to prior knowledge of the intrinsic risks within a facility or the often unpredictable environmental outcome of its destruction. Nevertheless, it is conceivable that access to enhanced surveillance data could encourage the expansion of strikes against such targets, particularly when combined with precision weapons. This potential risk merits further investigation. In the majority of cases, the weak legal provisions protecting the environment in conflict make it unlikely that the consequences of such actions would breach existing thresholds—even where contamination creates persistent localised risks to communities and their environment.

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<sup>12</sup> "Protecting the Environment During Armed Conflict - An Inventory and Analysis of International Law", United Nations Environment Programme, 2009, [http://postconflict.unep.ch/publications/int\\_law.pdf](http://postconflict.unep.ch/publications/int_law.pdf).

The lack of transparency over the use of armed drones in recent conflicts makes it difficult to determine whether access to enhanced surveillance data has facilitated the targeting of environmentally risky civilian and military infrastructure. It has been reported that drones are being used to some extent in strikes on ISIS oil operations in Syria and Iraq by the international coalition for example,<sup>13</sup> but the role and impact of the use of drones in terms of potentially raising—or reducing—environmental risks to local populations in these operations is not clear. Recent reports of the use of a small drone to destroy an ammunition dump in Ukraine with grenades, which has likely caused extensive environmental contamination, are also relevant to assessing the picture of use against sensitive industrial targets.<sup>14</sup>

In identifying risks and issues, and considering potential restrictions on armed drones, states should also consider therefore whether the technology could help facilitate practices that pose particularly high environmental risks in communities, and seek data on how this and other risks may have played out in practice.

## Conclusion

The environmental impacts of the use of force in general, and the use of armed drones in particular, remain under-documented as a form of harm that is relevant to assessing the limits that might be placed on different weapons technologies.

In considering how state violence should be constrained, and the contexts in which certain impacts of violence may be considered permissible or not, environmental effects with implications for human health must however be factored in—including with respect to armed drones. The lasting environmental impacts and long-term risks to human health from the use of force must, in turn, be curbed through more robust international rules.

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<sup>13</sup> See for example, “RAF Tornados launch first strikes against Isis in Syria”, *The Times*, 3 December 2015, <https://www.thetimes.co.uk/article/raf-tornados-launch-first-strikes-against-isis-in-syria-rqpqq2qd88m>. Attacks have frequently been carried out by the coalition on facilities for extraction, processing, and transportation—see coalition daily reports archived by Airwars at <https://airwars.org/daily-reports>.

<sup>14</sup> David Hambling, “Small Russian Drones Do Massive Damage With Grenade Weapons,” *Warrior*, 18 July 2017.

## Country case study: Nigeria

**Joy Onyesoh** is President of the Nigerian Section of the Women's International League for Peace and Freedom (WILPF Nigeria), and Vice-President of WILPF International's Executive Committee. In 2015, Joy was awarded the Nigerian Citizen Responsibility Award for coordinating the Women's Situation Room in Nigeria. The Women's Situation Room empowers women to take an active role in promoting peace and stability in their communities, and was convened by the Nigerian Women's Platform for Peaceful Elections, which was chaired by WILPF Nigeria.

Recently, Nigeria became the eighth country to have used armed drones in combat, having announced a successful drone strike in its on-going war against the militant group Boko Haram. On 25 January 2015, a photo appeared online at Beegeagle's Blog<sup>1</sup> appearing to show a CH-3 UCAV ("unmanned" combat aerial vehicle) that crashed upside down near Dunge village in the Mafa District of Borno Province. Despite damage to the tricycle landing gear and upper forward fuselage, the CH-3 appears to have crash-landed due to mechanical or control difficulties, as reported on the news. In the video released of the attack, there was a large blast, and the Nigerian Air Force claims it hit a logistics base belonging to Boko Haram, possibly an ammunition storehouse.<sup>2</sup>

<sup>1</sup> See Beegeagle's Blog, <https://beegeagle.wordpress.com>.

<sup>2</sup> See "Nigeria becomes eighth country to use armed drones in combat," *Vanguard*, 3 November 2016, <http://www.vanguardngr.com/2016/11/nigeria-becomes-eighth-country-use-armed-drones-combat/>; Kelsey D. Atherton, "Watch Nigeria's First Confirmed Drone Strike - Against Boko Haram," *Popular Science*, 3 February 2016, <http://www.popsoci.com/watch-nigerias-first-confirmed-drone-strike>; and Jeffrey Lin and P.W. Singer, "Did An Armed Chinese-Made Drone Just Crash in Nigeria?" *Popular Science*, 28 January 2015 <http://www.popsoci.com/did-armed-chinese-made-drone-just-crash-nigeria>.

The Nigerian military has asserted a pressing need for counter-insurgency (COIN) equipment, and has argued that drones are "necessary" in fighting the insurgency. But a key issue is how appropriate it is to launch such attacks within an area where there is insurgency but also civilians. There is also the danger that the targeted population might not be "terrorists" or "insurgents", but might instead be an individual or a group that fits into a specific "terrorist" profile.

As a Nigerian, I have a number of additional concerns about potential effects of the use of drones. These include the potential harms on the environment, human health, and agriculture. The geographical zones of Nigeria (northeast and northwest) where most counter-insurgency operations are taking place are known for their rich supply of farm crops such as grains and vegetables, and for animal rearing such as of cattle, sheep, and goats. Drone activities, in particular their munitions and the munitions used against them, may pose a threat to public health within these regions and their sources of livelihood: the cultivation of crops and rearing of animals.

Overall, the use of armed drones in Nigeria for domestic "counter-insurgency" operations is troubling in the global context. Questions about the validity of armed drone use in such contexts have yet to be answered. In addition, the potential effects of such use on civilians and communities poses dangers that have not yet been addressed.

# 3. Psychological Harm

Radidja Nemar

**Radidja Nemar** leads Alkarama's work and strategy on the Maghreb and Nile regions. She is currently finishing her PhD on the interplay between Human Rights Law and Humanitarian Law during post-conflict transitional periods, for which she undertook visiting research stints at Oxford and Yale Law School as a Fulbright Scholar.

Editors' note: This is a shortened version of the report published by Alkarama in February 2015. It omits the section on legal implications as well as tables, charts, and annexes. The full-length version is available online at <http://www.alkarama.org/en/documents/yemen-alkaramas-report-2015-traumatizing-skies-us-drone-operations-and-post-traumatic>.

A civilian in Pakistan described drone operations as amounting to a “slap in the dark”.<sup>1</sup> This image is emblematic of a feeling of betrayal and treachery that is perceived by the civilians living in areas where drone operations are carried out.

For a large swath of population in Yemen, living under a sky that has become a constant source of trauma is an everyday reality. The sky in the Yemeni countryside, or the United States (US) drones' playground, regularly inflicts violence without any warning or reason on people that are already vulnerable to both poverty and conflict. US drone attacks have thus emerged to shape the perceptions, fears, and life choices of a large proportion of the Yemeni population. In turn, this “drone generation”—which is inevitably viewing the skies as a medium of death—is suffering tremendously from mental stresses that also culminate into physical distress.

The repercussions of drone operations on civilians living in areas where the skies are a source of trauma, especially those who have not directly lost a relative or loved one to a drone strike, has not been given due consideration within policy or academic debates.

<sup>1</sup> Robert Greenwald, *UNMANNED: America's Drone Wars*, Documentary film, Culver City: Brave New Films, 2013.



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Nevertheless, the concern over the potential psychological impact of drones has been shared by human rights and humanitarian organisations such as the Office of the United Nations High Commissioner for Human Rights (OHCHR)<sup>2</sup> and the International Committee of the Red Cross (ICRC),<sup>3</sup> which have expressed concern about the lack of measurement of the consequences of the constant presence of drones on mental health.

<sup>2</sup> On 22 September 2014, Flavia Pansieri, Deputy High Commissioner for Human Rights raised the issue of the effects of drone operations on civilian populations, including the psychological effects. See: "Human Rights Council Holds Panel On Remotely Piloted Aircraft Or Armed Drones In Counterterrorism And Military Operations," United Nations Press Release, 22 September 2014, [http://www.unog.ch/unog/website/news\\_media.nsf/%28httpNewsByYear\\_en%29/BCE56ED914A46D40C1257D5B0038393F?OpenDocument](http://www.unog.ch/unog/website/news_media.nsf/%28httpNewsByYear_en%29/BCE56ED914A46D40C1257D5B0038393F?OpenDocument).

<sup>3</sup> Peter Mauer, "The use of armed drones must comply with laws," International Committee of the Red Cross, 10 May 2013, <https://www.icrc.org/eng/resources/documents/interview/2013/05-10-drone-weapons-ihl.htm>.

The combination of unclear legal and policy mechanisms around drone operations and technology closely intersects with the perpetuation of post-traumatic stress disorder (PTSD) among Yemeni civilians living under drones. A complete dearth of institutional mechanisms with regard to regulation, accountability, and retribution has served to perpetuate loss of civilian lives, trauma, and disruption of everyday activities. Strongly addressing these shortcomings will be instrumental, not only for delivering justice to already vulnerable people, but also for ameliorating their lives in a country experiencing instances of violence on numerous fronts.

This chapter, and the full version of this study, takes on the difficult task of shedding some light on the mental state of civilians who attempt to lead their lives under the murmurs of drones. In doing so, this study presents the findings from a survey conducted by Alkarama in the Yemeni countryside that assesses the prevalence of PTSD among civilian populations. What makes this study particularly unique is that it takes into account people who have lost their loved ones to drone attacks as well as those who are simply living under the traumatic skies.

## Political background

In 1990, the People's Democratic Republic of Yemen (South Yemen) and the Arab Republic of Yemen (North Yemen) were formally unified as the Republic of Yemen, despite the fact that hostilities between the North and South had existed for nearly two decades amidst Cold War politics and ideological oppositions. Soon after the formal unification, a Southern secessionist movement was born, leading to a brief civil war in 1994. The South was quickly subdued and the Northern government based in Sana'a exerted its control over the whole country.

Yemen is located amidst two regional heavyweights, Saudi Arabia and Iran, which have been pushing to further their influence over Sana'a. In 2004, fighting began in the northwest of the country between the government and the Houthis, a Zaydi Shia minority, leading to six rounds of fighting between 2004 and 2010. Neither party has respected the different peace agreements over the years. The rebels have accused Saudi Arabia for supporting the Yemeni government,<sup>4</sup> while the government has accused Iran of meddling in its internal matters.<sup>5</sup>

By September 2014, the Houthis started to exert their strength over the Yemeni government by taking control of key sites in Sana'a and demanding the reversal of government policies, especially with regard to fuel subsidies.<sup>6</sup> Most recently, Yemen was pushed into a civil war when the Houthis seized the capital, leading President Hadi to flee the capital. Although the main battleground remains between the Houthi forces and those loyal to the President, both President Hadi and the Houthis also face al-Qaeda in the Arab Peninsula (AQAP).<sup>7</sup>

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<sup>4</sup> "Yemen Profile", *BBC*, 4 October 2014, <http://www.bbc.co.uk/news/world-middle-east-1470495>.

<sup>5</sup> "Yemen's Hadi Accuses Iran Of Supporting Secessionists," *Al-Monitor*, 5 October 2012, [http://](http://www.al-monitor.com/pulse/politics/2012/10/the-yemeni-president-iran-is-sup.html)

[www.al-monitor.com/pulse/politics/2012/10/the-yemeni-president-iran-is-sup.html](http://www.al-monitor.com/pulse/politics/2012/10/the-yemeni-president-iran-is-sup.html)

<sup>6</sup> "Houthis Clash with Police at Yemen's Airport" *Al Jazeera*, 11 November 2014

<sup>7</sup> "Yemen Crisis: Who Is Fighting Whom?" *BBC News*, 26 March 2015, <http://www.bbc.co.uk/news/world-middleeast-29319423>.

AQAP has been responsible for numerous attacks in the region, including against the US presence in the country while remaining engaged in fierce fighting with both the Houthis and Yemeni government forces, the latter being considered by AQAP, as a US proxy.<sup>8</sup>

In addition, since 2015 Saudi Arabia has led a coalition of nine African and Middle Eastern countries supporting the Yemeni government in the civil war. This military intervention has primarily consisted of bombing campaigns against the Houthis, which has resulted in a humanitarian catastrophe. The aerial bombardment of populated areas has resulted in massive civilian deaths and injuries, as well as destruction of civilian infrastructure leading to famine and the world's largest cholera outbreak.<sup>9</sup>

Against the backdrop of decades of political instability, the Yemeni economy has also suffered considerably. The World Bank indicates that Yemen is one of the poorest countries in the Arab world. Poverty, which was already on the rise prior to the latest political crisis, has further increased from 42% of the population in 2009 to 54.5% in 2012. Additionally, not only has Yemen one of the highest population growth rates in the world, but it is also one of the most food insecure countries with scarce water resources.<sup>10</sup>

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<sup>8</sup> "Yemen's AQAP Says Houthis Will Pay for Push into Country," Reuters, 21 November 2014, <http://www.reuters.com/article/2014/11/21/us-yemen-qaeda-warning-idUSKCN0J518B20141121>.

<sup>9</sup> See for example "Yemen: The world's largest humanitarian crisis," *Al Jazeera*, 3 July 2017, <http://www.aljazeera.com/news/2017/07/yemen-world-largest-humanitarian-crisis-170703130224623.html>; Cassady Rosenblum, "Yemen is a humanitarian catastrophe. U.S. officials don't want you to know why," *Los Angeles Times*, 3 August 2017, <http://www.latimes.com/opinion/opinion-la/la-ol-yemen-war-crimes-20170803-story.html>; and Pamela Falk, "Cholera crisis hits grim threshold in Yemen," CBS News, 14 August 2017, <http://www.cbsnews.com/news/cholera-crisis-yemen-world-health-organization>.

<sup>10</sup> "Yemen Overview," World Bank, <http://www.worldbank.org/en/country/yemen/overview#1>.

Although, the US have never declared war on Yemen, the threat posed by AQAP has been used to justify a dramatic increase in air and drone strikes under the Obama administration.<sup>11</sup> The London-based Bureau of Investigative Journalism estimates that between 2002 and 2014 there have been 71 to 83 confirmed drone strikes in Yemen, killing 362 to 531 people, including 64 to 83 civilians, among which 7 have been children. The Bureau also estimates possible extra drone strikes ranging between 101 to 120, having killed 345 to 553 people, of which 26 to 68 were civilians, including 6 to 11 children.<sup>12</sup> Yemen's ties with the United States were reinforced under the Obama administration. The Yemeni government has given US forces a free rein to participate in military operations over large areas, without any checks and balances on the use of force. Drone operations have, in turn, emerged as the "go-to method" for US military operations.<sup>13</sup>

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<sup>11</sup> Gregory Johnsen, "Resetting US Policy Toward Yemen," Council on Foreign Relations, 27 September 2011, <http://www.cfr.org/yemen/resetting-us-policytoward-yemen/p26026>.

<sup>12</sup> "Drone Wars: The Full Data," The Bureau of Investigative Journalism, <https://www.thebureauinvestigates.com/stories/2017-01-01/drone-wars-the-full-data>.

<sup>13</sup> Vivian Salama, "Death From Above: How American Drone Strikes Are Devastating Yemen," *Rolling Stone Magazine*, 14 April 2014, <http://www.rollingstone.com/politics/news/death-from-above-how-american-drone-strikes-are-devastating-yemen-20140414#ixzz3GEFtACru>.

## The Alkarama civilian PTSD screening study in Yemen

In order to take forward our earlier (2012–2013) research on the impact of the US drone attacks in Yemen on the civilian population,<sup>14</sup> as well as on their legal implications, we decided to survey a sample of individuals who live in Yemeni villages where drone operations are being carried out by the US.

Our goal was to understand whether or not civilians living under drones exhibit symptoms of PTSD similar to those who have directly lost a family member as a result of drone strikes. A Stanford-NYU report has qualitatively taken up a similar endeavour to highlight trauma among those “living under drones” in Pakistan.<sup>15</sup>

Our belief, which finds an empirical grounding in this study, is that the simple fact of living under drones has psychological consequences that are no different from those caused by the loss of a relative in a strike. In this sense, we are trying to show that the fear of being killed or having a relative killed by a drone at any moment and without knowing the reasons that might cause such a death is of such intensity that it can lead to PTSD. The intensity of the suffering is such that we believe it amounts to cruel, inhumane, and degrading treatment of civilians.

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<sup>14</sup> “The United States’ War on Yemen—Drone Attacks,” Report Submitted to the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terror, Alkarama, 3 June 2013, <http://en.alkarama.org/yemen/1335-yemen-the-united-states-war-on-yemen-drone-attacks>.

<sup>15</sup> *Living Under Drones: Death, Injury, and Trauma to Civilians from US Drone Practices in Pakistan*, International Human Rights and Conflict Resolution Clinic at Stanford University and Global Justice Clinic at New York University, September 2012, <http://chrgj.org/wp-content/uploads/2012/10/Living-Under-Drones.pdf>.

## Methodology

From July to September 2014, Alkarama conducted a study to assess the level of PTSD among the civilian population living in Yemeni villages where US drones are operational.

For this purpose, our field researchers surveyed 100 adults from different age groups, among whom 50 are women and 50 are men, along with 27 children, among whom 13 are girls and 14 are boys, who were selected randomly in two villages. In order to keep the respondents as well as our researchers out of harms way, we have anonymised everyone throughout this study.

The survey to conduct the PTSD screening is based on the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association.<sup>16</sup> We designed the screening in such a way that the panel chosen represented an equal number of men and women, from different age categories, and inclusive of individuals who have suffered the loss of a relative in a drone attack and those individuals who have not. Furthermore, we designed a separate survey for the PTSD screening of children in order to take into account the peculiar way children develop different symptoms.<sup>17</sup>

For both adults and children, the PTSD survey included a preliminary introduction in order to ensure that the respondents clearly knew what a drone and a drone attack were, as well as to ascertain that they were aware of drones operating in their region. Our study was thus designed to highlight the direct link between the

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<sup>16</sup> *Diagnostic and Statistical Manual of Mental Disorders*, Fourth Edition (Washington, DC: American Psychiatric Association, 1994).

<sup>17</sup> See Foa, E.B., Johnson, K.M., Feeny, N.C., & Treadwell, K.R.H., “The child PTSD symptom scale (CPSS): A preliminary examination of its psychometric properties,” *Journal of Clinical Child Psychology*, 30, 2001, pp. 376–384.

trauma arising from living under drones to PTSD.

The surveys were first translated from English into Arabic and were conducted in Arabic by Alkarama's research team in Yemen. They were carried out in the villages of Qawl (in the district of Jahana, region of Sana'a) and Al Sirin (in the district of Sanhan, region of Sana'a). Both villages are situated in the southeast of Sana'a and are in regions where drone operations are carried out by the United States against alleged al-Qaeda militants.

The questions asked as part of the PTSD survey were closed-ended, thereby implying that the respondent was asked a question, which could only be answered with either 'Yes', 'No', or 'Not Giving an Answer'. The last section of the screening, however, was left open-ended for the interviewer to assess the respondent's link between his/her PTSD and drone attacks based on their personal interaction, while also providing space for the interviewer to add further observations and for the interviewee to express her/himself. The comments by the interviewers, which often also included testimonies by the respondents included in this section, enabled us to collect valuable qualitative data in addition to the quantitative data collected from the PTSD questionnaire. The survey questionnaires for both adults and children are available in the Annexes contained in the full-length version of this report, for further reference.

This study presents the findings separately for adults and children, even if all respondents show common patterns of PTSD symptoms. A specific focus is also directed towards understanding the effects on the most vulnerable people. We believe that, in order to fully comprehend the suffering of a victim of inhumane and degrading treatment, it is also important to take into account subjective elements such as the particular vulnerabilities of some of the victims and the cultural specificities of Yemeni society.

## Findings

Our findings reveal that, among adults, PTSD is extremely prevalent, with 72 respondents displaying many of its symptoms, 27 respondents deemed as likely to have PTSD, and only one respondent showing a few symptoms.

We found the following common patterns of symptoms among all respondents regardless of age, gender, or whether or not they lost an immediate family member as a consequence of a drone strike:

- Constant anxiety;
- Constant fear to be killed or to have a relative killed by a drone attack;
- Sleep-related troubles, including insomnia, nightmares and enuresis for children;
- Deep emotional distress, especially when drone operations resume;
- Depression and sadness;
- Anger and frustration towards the Yemeni and US governments;
- Feelings of detachment from the ordinary world; and
- Feelings of being not worthy of protection or attention from the government.

Civilians who witnessed drone attacks on the ground are experiencing constant fear and insomnia. Even civilians who do not have casualties in their families express trauma syndromes in their daily lives. Comments underlying a “desire for revenge” are common, especially among men. During the day, the sounds of aerial vehicles make them stop their daily activities, while at night, they suffer from insomnia.<sup>18</sup> A recurring pattern is the feeling of disregard for their human dignity by both the US and the Yemeni government.

The constant fear of being targeted or having a relative targeted can also be seen in answers to questions asking if the respondent is feeling mostly “on guard” or whether he/she has an exaggerated startled response to a sudden noise. This highlights the constant state of tension that is present in the lives of the population.

Eighty per cent of adults answered positively to Question 25: “Do you feel “on guard” most of the time—i.e. being “super alert” or watchful?”<sup>19</sup> Similarly, 75% of adults answered yes to Question 26: “Do you have an exaggerated startled response most of the time?”

### Specificity of victims’ families

Victims’ families are particularly vulnerable to PTSD. They show symptoms that are both caused by the way their loved ones died as well as by the fear of losing another relative in the same way. The majority of men interviewed

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<sup>18</sup> More symptoms were reported. For example, Ahmed a young farmer who hadn’t lost a family member to drone attacks, says that he cannot stay in the kitchen because of the sound emitted by the fridge in the kitchen. It makes him particularly anxious because it gives him the feeling that there is a drone above him. Other respondents complained of increased blood pressure when they hear that drone operations are resuming in the region or after hearing about a drone attack.

<sup>19</sup> See Chart 12, Annex C in the full-length report available online.

reported being haunted by the horrifying image of their relatives’ bodies and remains and emphasised their fear of being killed in the same way. The fear is increased by the lack of understanding of the reasons why their relatives were killed, making them unable to prevent such a fate for themselves or their loved ones. Most of them are now also providing for the wife and children of their deceased relatives. This adds to the psychological pressure and anxiety, given the extreme poverty in these communities that further heightens vulnerabilities and economic pressures.

The fact that none of the victims’ families are being heard by the authorities, Yemeni or American, nor being offered any form of redress or explanation, is leading to a rise in anger among male respondents. Depression and sadness is rampant as well as the feeling of “not being treated like human beings.” Among the victims’ families, the knowledge that drone operations are about to resume serves as a constant reminder about the loss of their relatives, and perpetuates their feelings of hopelessness, anger, and sadness, as well as fear of losing other members of their family.<sup>20</sup>

### Effects on children

The study found that children, too, are expressing severe sadness and fear when they hear sounds of aircrafts or drones, or when they hear news that drone operations are about to resume in the region. More than half (51%) of the children screened said that drones got in the way of their general happiness in the two weeks preceding the screening. When we asked the children if they were feeling upset—i.e. scared, angry, sad, guilty—when they think or hear about drones, the answers were almost all positive, especially among girls, 100% of whom answered yes.

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<sup>20</sup> Vivian Salama, “Death From Above,” op. cit.

The answer to this question is further reinstated by a similar trend in the answers to the question around whether they had upsetting thoughts or images about drones that came into their heads when they did not want them to. 87% of the children respondent answered positively to the questions. Girls are more affected and the percentage is extremely high regardless of age or situation, as well between those that are family members of victims, and those that are not.

Sadness and depression is also assessed by the lack of interest children show in activities that they used to enjoy. When asked whether they are having much less interest in doing things they used to do, the answers are a striking yes for 85% of them.

Sadness and depression are combined with other symptoms, especially anxiety. The anticipation of another attack creates a recurrent sense of fear that is but furthered by anxiety. It is thus no surprise that answers to the question, “Are you afraid that a drone attack might harm you, or your family, or your community?” highlight that 96% of the children feel this way.

In general, the feeling of fear is further exacerbated among children when they hear sounds that resemble the buzzing of drones. 74% of children respondents say that they are jumpy or easily startled when someone walks behind them or when they walk in the street and/or hear any sudden sound.<sup>21</sup>

We also discovered a worrisome trend among boys who often talk about strong feelings of anger, hatred, and a desire for revenge against those responsible for the drone attacks. They clearly identify the US and Yemeni governments

as the perpetrators of violence that creates this suffering in their lives.

It is important to note that the children who had lost a family member have PTSD deriving from both the fact that they lost a loved one as well as due to the fear that a drone attack might strike again and kill another member of their family. For example, the son of one the victims of a drone attack, nine-year-old Taha, is suffering tremendously and sleeps only in the lap of his older brother. He is constantly scared of losing his brother, too. Eleven-year-old Muad, who lost his father to a drone attack in January 2013 in the village of Khawlan, is experiencing serious speech problems due to the trauma.

We also observed that boys who had lost a family member are more likely to answer yes to the question regarding feelings of irritability or having fits of anger. Although the figures drop significantly for boys who have not lost a family member, they stay very high for girls and for all the other categories.

Among girls, the prevalence of anxiety, stress, and sadness is generally higher. Those who lost a family member—like twelve-year-old Imen, who lost her mother, and twelve-year-old Yosra, who lost her father, both in a drone attack in 2013—stopped the enjoyable activities that they used to engage in, such as playing outdoors.<sup>22</sup> Thirteen-year-old Saqra, who lost her uncle, stopped painting and is constantly afraid of losing her brother and father. Girls who have not lost a family member tend to ask if the same thing will happen to their relatives and are constantly worried about their fates.

<sup>21</sup> This symptom is particularly prevalent amongst women and girls.

<sup>22</sup> Chart 6 in Annex C of the full report shows the prevalence of this symptom especially amongst children and women.

In addition, we have numerous children from both victims' families and families who have not lost a relative, who suffer from enuresis, especially when they hear that a drone attack happened or rumours that an attack is about to take place. Such manifestations of fear are bound to have long-term psychological and physical effects on these children.

In the community of Qawla (district of Jahanah, in the region of Sana'a), the death of a teacher killed by a drone strike had a particularly strong effect on the children of the school where the teacher used to give class. A strong desire for revenge now animates many children, especially boys, who associate it with a feeling of hatred and anger. Some of the boys have lost interest in school. One of the students of the deceased teacher even said that he lost interest in receiving an education due to the anger he was feeling following his teacher's death.

Lastly, children, like adults, display a high level of sleep related troubles such as insomnia or nightmares. While the majority of the children show symptoms of sleep-related troubles (67% of them), the girls in particular are most affected by nightmares, insomnia, and enuresis.

### Effects on women

Effects on women should be understood in the particular social and economic system that defines the Yemeni countryside. Here, nearly all married women are stay-at-home mothers who are expected to rely solely on their husbands or other men in the family for protection, as well as supporting the children. Becoming a single mother easily exacerbates social vulnerability in such a setting.

Furthermore, women's economic vulnerability is further amplified as a consequence of losing the family's sole breadwinner, the man, in a country

where no social care is provided. Drone attacks targeting male members of the society thus have a strong repercussion on the lives of women in these areas.

Women tend to show higher levels of fear of losing a child or another relative. 100% of women who have not lost a relative answer yes to the question, "Are you afraid that a drone attack might harm you, your family, or your community?" Women respondents also reported in the comments section that they increasingly feared social gatherings, including wedding celebrations, thereby further inhibiting their movements in the public sphere. Some specifically noted that they "avoided making too much noise" and "staying for too long in a large group" when participating in local functions or celebrations, for fear that it might trigger a drone attack.

For example, Fatima, aged 40, married and mother of five, reported that even sounds of joy and celebrations were causing an exaggerated startle reaction among women during festivities. It was also noted that mothers of teenage boys are particularly afraid that their children will be targeted or killed, as it has been the policy to target males that are of combat age. Atiqah, a 55-year-old mother of three who rarely steps out of her home, said that whenever she heard of a drone attack in the area, her blood pressure problems became more severe, forcing her to stay in bed for several days.

Finally, it is important to highlight certain unusual effects that were reported by other studies. There have been reports of women miscarrying as a direct consequence of a fear arising from drones. Rumours that drones are able to see inside the houses and watch women have also spread, leading some of them to live under the constant fear that, even inside their homes, they are watched by male US soldiers,<sup>23</sup> hence affecting their behavioural patterns as they believe they have lost all their privacy. Overall, women and girls show higher positive results as one can see in the overall charts contained in Annex C in the full study. For example, 100% of women who lost relatives and 95% of those who have not reported being easily startled. In the same vein, women and girls in both categories have higher results when it comes to sleeping problems.<sup>24</sup>

## Conclusions and recommendations

This study's objective was to shed light on the heavy cost paid by the most vulnerable people living under drones in Yemen. These civilians, who are already grappling with extreme poverty and famine, and are exposed to insecurities from diverse armed groups, are being further traumatised from the skies by a much more powerful actor.

The findings of this study are reflective of the severity of the costs that civilians have to forcibly cope within their daily lives. An overwhelming majority of adult respondents are seen to be suffering from numerous drone-inflicted symptoms of PTSD, which are even more prevalent amongst children. The situation has transcended the question about whether or

not an individual has lost a family member to a drone attack, simply because trauma has become pervasive in a society living constantly under the fear of drones. One of the causes of this fear is the complete lack of understanding, due to the absence of transparency in the drone policy, as to what might trigger a drone attack, who may be targeted, and when.

The most vulnerable people in the Yemeni society, namely women as well as children, are particularly at risk of suffering from severe psychological issues. When children start to fear going to school and worry about playing outside because drones might cause death, the growth of a psychologically healthy society that is capable of reducing existing conflicts is under serious jeopardy. Filled with anxiety, fear, depression, anger, and frustration, both the young and old are craving for justice and in some cases for revenge against those they identify as responsible for their suffering. An entire generation living in a constant state of uncertainty and unpredictability, with no recourse to justice or redress, and marked by a sense of powerlessness to plan a secure future of respect and dignity, is being lost under traumatising skies. These immediate consequences of drone operations, especially if they are not addressed urgently, will most certainly contribute towards long-term political, social, and economic instability in the region.

Furthermore, the asymmetry and inequality of power that marks the strength of US drone operations around vulnerable civilians is compounded by a complete absence of any administrative or judicial mechanisms, nationally or internationally, that can protect these civilians or provide them with any kind of redress. The legal implications of drone attacks, both in international and national legal frameworks, have been profound as drone attacks continue to

<sup>23</sup> Ibid.

<sup>24</sup> See Charts 1, 2, 3, 9 and 12 in Annex C found in the full-length report available online.

proliferate with minimal regulation, transparency, accountability, and retribution. A “legal black-hole” has engulfed all aspects of drone operations, while the international humanitarian law (IHL) and human rights law are increasingly being overlooked.

This most certainly is a failure of the international community in containing a weapon and process of warfare that has underhandedly been causing severe harm to civilian populations. Moreover, the very nature of drone technology and the peculiar landscape of warfare it invariably creates have not been engaged with adequately in legal and ethical contexts. The low political cost of drone operations for powerful countries is met on the other side by the constant suffering of a population towards whom none can be held responsible. For those who believe that fundamental rights of individuals are universal, a fundamental moral question needs to be raised: are we not equal with regard to our protection from this form of military action?

### Recommendations for the US government:

- We recommend to the US government to publish and explain in full transparency its legal standards and institutional processes for conducting drone strikes and targeted killings and take into account due process of law guarantee for both US and non-US nationals;
- That it also clarify its method of counting civilian casualties and explain how the method is consistent with IHL standards;
- Where factual disputes exist about the threat levels regarding past drone strikes, we request the US government to release the relevant details and explain why a particular threat was considered as imminent triggering the right to self-defence;
- Clarify the condition used to assess the validity of express sovereign’s consent or the inability and unwillingness of those sovereigns to suppress a legitimate threat for all past, current and future operations;
- Engage with the ethical issues, the blowback, and the negative consequences of the drone policy, including for the United States’ own interests, as the impact of drones on civilians has created strong feelings of resentment towards the US and its allies in the region, notably by providing families of victims with a right to effective remedy and compensation;
- Introduce institutional mechanisms which allows full accountability and retribution for violations associated with the use of drone;
- Acknowledge the consequence of this policy on affected populations and provide full reparation and apologies to these people;

- Assist in providing psychological care to those suffering from trauma due to drone operations through technical and financial assistance; and
- Stop drone attacks in Yemen and in all other territories and favour alternative means to “counterterrorism” by putting at the core of its policy respect for the rights and dignity of people affected by both terrorism and counterterrorism.

#### **Recommendations for the Yemeni government:**

- We request the Yemeni government to demand an immediate end to drone strikes within its territories and to hold itself accountable for violations committed with its consent to its population;
- To ensure that civilians affected by drone strikes directly or indirectly have provisions for redress within the domestic system;
- To ensure that the rights of the civilians are protected in regions where drones are operated; and
- To address the psychological consequences of drone operations and push the US government to implement the recommendations mentioned above.

#### **Recommendations for the international community:**

- We request that the debate on legal and ethical issues raised by the use of drones takes centre stage and receives more attention;
- That more pressure be placed on the US government as well as other states to revise policies and practices surrounding drone strikes;
- That international mechanisms for regulating and making drone strikes accountable be discussed and developed at the earliest within the United Nations human rights mechanisms; and
- That greater attention be placed on aspects of psychological impacts and loss of life due to drone strikes among civilians.

# 4. Harm to Global Peace and Security

Chris Cole

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The primary focus of the debate about the impact of armed drones has been their use for extrajudicial killing outside of the battlefield: targeted killing, as it has become more widely known. Almost since they were first deployed, armed drones have been used by the United States in particular but also more recently by Israel and the United Kingdom to “find, fix, and finish” those deemed to be a threat to national security. However, the aim of this chapter is to look beyond the issue of targeted killing and to argue that armed drones per se are a danger to global peace and security.

While the *policy* of using armed drones to carry out targeted killings beyond the battlefield is rightly an issue of serious concern, the wider impact of the *technology* itself also needs to be addressed. Drones combine various pre-existing technologies to form a new and radically different way of launching armed force—one with virtual impunity. The impact of this new weapon system, enabling so-called risk-free war, on the political-military decision making process in times of crisis, as well as on long term military policy, needs to be carefully examined. It is the advent of the remote-controlled armed drone that has enabled the huge expansion of targeted killing over the past decade. There is growing evidence that the existence of this new form of war making and its impact on policymakers is lowering the threshold for the use of armed force, transferring the risk of warfare from combatants to civilians, and increasingly disconnecting the public from the human impact of armed combat.

## Are drones different?

Although some insist that armed unmanned drones are in effect no different from other military aircraft and therefore the technology itself cannot be at issue, there are two very real and important differences. Firstly and most obviously, armed drones can be operated remotely, sometimes over very great distances, via satellite links. Drone advocates routinely insist that remoteness is nothing new, often referring to the fact that soldiers attacked from a distance using the longbow or trebuchet (a roman catapult) in the distant past. To suggest, however, that there is little ethical or military difference between the distance given through use of a longbow, and that hyper-remoteness given through use of an armed drone controlled from the other side of the globe, is akin to suggesting that smart phones are little different from carrier pigeons.

Separate, but linked to the ability of armed drones be operated remotely, is the issue of persistence. Due to the lack of crew on board, drones can remain airborne far longer than a piloted aircraft. Typically a fast-jet can fly for around eight hours before the crew become fatigued. Armed drones fly far longer, currently around 20 hours, by simply changing the crew on the ground. The length of time that armed drones can stay aloft, watching and waiting before striking at “targets of opportunity,” is increasing all the time. It is this ability to be persistent, in combination with hyper-remoteness, which makes armed drones different from other armed military aircraft.

So, there are very real and important differences between armed unmanned systems like the Reaper and Predator—never mind the much more advanced armed drones that are beginning to make their way off the drawing board—and

traditional piloted aircraft. Armed remote persistence is a new and important strategic capability, much prized by military planners. This new capability, coming at a time when we have seen a real decline in public appetite for military intervention, is having an important impact, both on the way armed conflict is being initiated, as well as the way it is being fought.

## Lowering the threshold for use of armed force

The primary way that drones are impacting peace and security is the way they appear to be lowering the threshold for use of force, both in terms of resorting to the use of force (*ad bellum*) and the use of force during armed conflict (*in bello*). Linked with this is the way the presentation of drone warfare as precise and “risk-free” is rehabilitating warfare as a normal and legitimate means of solving political and security problems.

## Drones and the resort to force

In modern democracies, politicians understand that there is a political cost to launching military intervention overseas. Whatever the arguments about whether a particular intervention is justified under international law, time and time again, polling has shown that the public do not like to see young service men and women sent overseas returning in wheelchairs or coffins.<sup>1</sup> The potential political impact of TV footage showing grieving families awaiting the funeral corteges of those killed in foreign wars is a definite restraint on political leaders weighing up the option of a possible military intervention.

<sup>1</sup> Christopher Gelpi, Peter D. Feaver, and Jason Reifler, “America’s Tolerance for Casualties, 1950–2006,” in *Paying the Human Costs of War: American Public Opinion and Casualties in Military Conflicts* (Princeton: Princeton University Press, 2009), pp. 23–66. See also Joel Faulkner Rogers, “Report on British attitudes to defence, security and the armed forces,” *YouGov*, 25 October 2014, <https://yougov.co.uk/news/2014/10/25/report-british-attitudes-defence-security-and-armed>.

Take away that potential cost, however, by using armed unmanned systems and it makes it much easier for political leaders to opt to use lethal military force. Recognising this, British military planners circulated a discussion document on how to avoid “casualty aversion,” as it is known, by using a strategy of lowering the profile of repatriation ceremonies, as well as using armed drones, mercenaries, and special forces.<sup>2</sup>

The availability of armed drones, it appears, pushes political leaders away from engaging in the often difficult and long-term work of solving the root causes of conflicts through diplomatic and political means, towards a quick, short-term “fix” of “taking out the bad guys”.

While campaigners have been making this argument for some time, as the use of armed drones has grown, establishment voices, too, are now recognising the dangers of the technology itself. General Stanley McChrystal, for example, former commander of US and NATO forces in Afghanistan, told a conference in London in 2015 that he believes the capabilities of drones make them more palatable to military decision-makers and “lower the threshold” for lethal force.<sup>3</sup> Towards the end of his presidency, Barack Obama, too, seemed to accept this when he told CNN, “It became so easy to use them without thinking through all the ramifications.”<sup>4</sup> Even the UK Ministry of Defence seems to have come to this conclusion, stating in a recent policy document, *Future Operating Environment 2035*:

*Increased use [of remote and automated systems] in combat and support functions will reduce the risk to military personnel and thereby potentially change the threshold for the use of force. Fewer casualties may lower political risk and any public reticence for a military response...<sup>5</sup>*

In a 2015 empirical study into the public perception of the use of armed drones, academics James Igor Walsh and Marcus Schulzke surveyed 3000 individuals on their perception of the use of force when drones were used in comparison to the deployment of other

<sup>2</sup> Ben Quinn, “Mod study sets out how to sell wars to the public,” *The Guardian*, 26 September 2013, <https://www.theguardian.com/uk-news/2013/sep/26/mod-study-sell-wars-public>. Note original discussion paper has been removed from MoD website.

<sup>3</sup> Richard Norton-Taylor and Alice Ross, “RAF base may be legitimate target for Isis, says ex-Nato commander,” *The Guardian*, 25 November 2015, <https://www.theguardian.com/uk-news/2015/nov/25/raf-base-may-be-legitimate-target-isis-ex-nato-commander>.

<sup>4</sup> Nicole Gaouette, “Obama on the future of terrorism after bin Laden raid,” *CNN*, 3 May 2016, <http://edition.cnn.com/2016/05/02/politics/obama-terror-doctrine-bin-laden-raid>.

<sup>5</sup> *Strategic Trends Programme: Future Operating Environment 2035*, Ministry of Defence, August 2015, pp. 31–32, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/607612/20150731-FOE\\_35\\_Final\\_v29-VH.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/607612/20150731-FOE_35_Final_v29-VH.pdf).

types of force.<sup>6</sup> The results show, say Walsh and Schulzke, “that participants are more willing to support the use of force when it involves drone strikes.” They go on:

*Drones lower inhibitions against initiating armed conflicts as many critics of this technology have predicted. Respondents were consistently more likely to favor the use of UAVs over ground forces in each of the experiments, regardless of the objectives being pursued. They were also more willing to initiate conflicts using drones than piloted aircraft...<sup>7</sup>*

The US use of armed drones to attack al-Qaeda in Pakistan in recent years is often cited as an example of how this is happening in practice. According to The Bureau of Investigative Journalism (TBIJ) there have been over 420 US airstrikes in Pakistan (up to the end of 2016), all carried out by armed drones. Pakistan has publicly condemned the strikes on numerous occasions but does not attempt to shoot down the drones for fear of causing all-out war with the US (although there are reports that indicate some officials within the Pakistan administration secretly supported the strikes, at least for some time.<sup>8</sup>)

The US has never risked piloted aircraft to undertake these strikes, relying wholly on armed drones. While it is hard to prove, it is difficult to imagine the US would have undertaken so many incursions and strikes without the availability of this technology. As respected US think tank,

<sup>6</sup> James Igoe Walsh and Marcus Schulzke, *The Ethics of Drone Strikes: Does Reducing The Cost of Conflict Encourage War?* US Army War College Strategic Studies Institute, 2015, <https://ssi.armywarcollege.edu/pubs/display.cfm?pubID=1289>.

<sup>7</sup> Ibid. p. 25.

<sup>8</sup> Greg Miller and Bob Woodward, “Secret memos reveal explicit nature of US, Pakistan agreement on drones,” *The Washington Post*, 26 April 2010, [https://www.washingtonpost.com/world/national-security/top-pakistani-leaders-secretly-backed-cia-drone-campaign-secret-documents-show/2013/10/23/15e6b0d8-3beb-11e3-b6a9-da62c264f40e\\_story.html?utm\\_term=.f6d2a9409e35](https://www.washingtonpost.com/world/national-security/top-pakistani-leaders-secretly-backed-cia-drone-campaign-secret-documents-show/2013/10/23/15e6b0d8-3beb-11e3-b6a9-da62c264f40e_story.html?utm_term=.f6d2a9409e35).

The Stimson Center puts it, “the availability of lethal UAV [unmanned aerial vehicle] technologies has enabled US policies that likely would not have been adopted in the absence of UAVs.”<sup>9</sup>

The British use of armed drones in Syria in 2014 and 2015 also shows how drones are lowering the threshold for the resort of the use of armed force. In September 2014, following a request for help from the Iraqi government, British MPs debated a government motion to authorise the use of armed force against ISIS strictly within the borders of Iraq. MPs approved the motion and strikes in Iraq began almost immediately. Within six weeks, however, British drones were crossing the border into Syria, with intelligence gathered by the British drones used by the US-led coalition forces to undertake strikes in Syria.<sup>10</sup> When questioned by the media about legal authorisation for such missions, the Prime Minister’s official spokesman said it was because the flights did not amount to military action. He stated, “The prime minister and government have made clear that we would return to parliament for a separate decision if we were proposing to take military action. This is about intelligence gathering.”<sup>11</sup>

Despite these claims it is difficult to understand how armed military flights over a sovereign country do not amount to “military action”. Flights by Russian military aircraft that come near, but not within, UK air space incur a strong

<sup>9</sup> *Recommendations and Report of The Task Force on US Drone Policy*, The Stimson Center, April 2015, [https://www.stimson.org/sites/default/files/file-attachments/recommendations\\_and\\_report\\_of\\_the\\_task\\_force\\_on\\_us\\_drone\\_policy\\_second\\_edition.pdf](https://www.stimson.org/sites/default/files/file-attachments/recommendations_and_report_of_the_task_force_on_us_drone_policy_second_edition.pdf).

<sup>10</sup> Rowena Mason, “UK to fly military drones over Syria,” *The Guardian*, 21 October 2014, <http://www.theguardian.com/uk-news/2014/oct/21/uk-to-fly-military-drones-over-syria>. See also FCO response to PQ from Andrew Rosindell MP, 23 February 2015, <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2015-02-11/224326>.

<sup>11</sup> Ibid.

response from UK government. Without a UN resolution or a request from the Syrian government, any military operation by the UK within Syria is contentious at best.<sup>12</sup> While drone advocates often insist that armed drones are no different from other aircraft, it is very difficult to believe that the UK would have sent piloted aircraft into Syria in this way, as the operational and political risk was far too great.

From mid-2015, UK military officials began arguing that it was “illogical” and even “immoral” that UK forces could not undertake airstrikes against ISIS in Syria as well as Iraq. In August 2015, UK drones operating in Syria controversially undertook the targeted killing of Cardiff-born Reyaad Khan.<sup>13</sup> The fact that British drones were already flying missions in Syria, and had already launched one strike and assisted with others, was used in part to leverage support by the public and MPs for wider military action in Syria. A government motion to extend UK military action from Iraq into Syria was subsequently tabled and passed in December 2015.

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<sup>12</sup> See for example: Jennifer Daskat, Ashley Deeks, and Ryan Goodman, “Strikes in Syria: The International Law Framework” *Just Security*, 24 September 2014, <https://www.justsecurity.org/15479/strikes-syria-international-law-framework-daskal-deeks-goodman>; and Louise Arimatsu and Michael Schmitt, “The legal basis for the war against Isis remains contentious,” *The Guardian*, 6 October 2014, <http://www.theguardian.com/commentisfree/2014/oct/06/legal-basis-war-isis-syria-islamic-state><http://www.theguardian.com/commentisfree/2014/oct/06/legal-basis-war-isis-syria-islamic-state>.

<sup>13</sup> “Cardiff jihadist Reyaad Khan, 21, killed by RAF drone,” *BBC News*, 7 September 2015, <http://www.bbc.co.uk/news/uk-wales-34176790>.

The overall question here is whether these military interventions, both the campaign of US airstrikes against Al Qaeda and others in Pakistan, and UK operations and strikes against ISIS in Syria prior to the December 2015 vote, would have occurred without the availability of armed drone systems. It seems extremely unlikely in both cases and thus it seems the technology itself is enabling an expansion of warfare.

## Drones and the use of force within armed conflict

Questions around whether drones are lowering the threshold for use of force *within* a situation of armed conflict (*in bello*) are harder to answer without much more transparency. Former UN Special Rapporteur Philip Alston talked of the possibility of a “PlayStation Mentality” where, due to the physical and psychological distance from the target, drone operators and crew may perceive strike operations as a kind of video game.<sup>14</sup> “We have to impress upon them that they are not just shooting electrons, they’re killing people,” Major Sam Morgan, a trainer of Predator drone pilots told the *Boston Globe* in 2005.<sup>15</sup>

Drone advocates insist this proposition denigrates the professionalism of serving military officers, ignores the fact there is a chain of command overseeing strikes, and overlooks the number of drone pilots suffering from post-traumatic stress disorder (PTSD) as evidence that drone pilots are far from “videogame warriors”.

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<sup>14</sup> Charlie Savage, “UN Report Highly Critical of US Drone Attacks”, *New York Times*, 2 June 2010, [www.nytimes.com/2010/06/03/world/03drones.html](http://www.nytimes.com/2010/06/03/world/03drones.html).

<sup>15</sup> Bryan Bender, “Attacking Iraq, from a Nev. Computer,” *The Boston Globe*, 3 April 2005, [http://archive.boston.com/news/world/middleeast/articles/2005/04/03/attacking\\_iraq\\_from\\_a\\_nev\\_computer](http://archive.boston.com/news/world/middleeast/articles/2005/04/03/attacking_iraq_from_a_nev_computer).

While it seems true the drone pilots appear to have little leeway to launch strikes independently, the only publicly available US military investigation into a drone operation in which multiple civilians were killed found that the Predator drone crew had “a propensity towards kinetic operations” (in non-military speak: they were gung-ho to launch a strike).<sup>16</sup> In addition, reports of so-called “double-tap” strikes, and statements from former drone pilots, provide some insight into the possibility that such a mind-set may exist among drone crews.<sup>17</sup> Brandon Bryant, a former US drone pilot turned whistle-blower has said:

*One guy I knew tattooed a Hellfire missile on his ribs for every shot he took. Another tattooed the word “Infidel” around his neck. I mean there were some real, honest-to-god psychos in that program who wanted nothing more than to kill people on the ground.<sup>18</sup>*

Others former drone pilots, however, tell a different story. One argued, “Drone operators are licensed pilots. We are not terminators rampaging across the countryside like war’s a video game. We are not heartless; we are not brainless. And we do not like to make mistakes.”<sup>19</sup>

Far from being gung-ho warriors, drone supporters argue, drone crews are suffering PTSD, as they are required to monitor the

consequences of strikes against individuals they kill. While not wanting to dismiss these findings, official studies show that in fact the level of PTSD among drone crews is around half that of the general population of the United States.<sup>20</sup> Drone crews are facing high levels of stress and burnout, but this may be more related to the high workload and long hours they are required to work owing to increasing use of armed drones.<sup>21</sup>

It is crucial to remember that concerns about whether drones are lowering the threshold for force within an armed conflict is not a question of whether drone operators are “psychos”. That is a misrepresentation of the concern and a misunderstanding of both drone and wider military operations. The drone crew—pilot and sensor operator—are at one end of a long chain of command. All of those in the decision-making process—military commanders, defence officials, intelligence analysts, “counterterrorism” officers, policymakers, etc.—are engaged in the decision to launch a lethal attack. It’s important to remember that remote “unmanned” warfare may be engendering a “propensity to use kinetic force” all along that kill-chain, not just at the “sharp end”.

<sup>16</sup> David S. Cloud, “Anatomy of an Afghan war tragedy,” *LA Times*, 10 April 2011, [articles.latimes.com/2011/apr/10/world/la-fg-afghanistan-drone-20110410](http://articles.latimes.com/2011/apr/10/world/la-fg-afghanistan-drone-20110410).

<sup>17</sup> Chris Woods, “Bureau investigation finds fresh evidence of CIA drone strikes on rescuers,” *The Bureau of Investigative Journalism*, 1 August 2013, <https://www.thebureauinvestigates.com/2013/08/01/bureau-investigation-finds-fresh-evidence-of-cia-drone-strikes-on-rescuers>.

<sup>18</sup> Vegas Tenold, “The Untold Casualties of the Drone War,” *Rolling Stone*, 18 February 2016, [www.rollingstone.com/politics/news/the-untold-casualties-of-the-drone-war-20160218](http://www.rollingstone.com/politics/news/the-untold-casualties-of-the-drone-war-20160218).

<sup>19</sup> T. Mark McCurley, “I Was a Drone Warrior for 11 Years. I Regret Nothing,” *Politico*, 18 October 2015, [www.politico.com/magazine/story/2015/10/drone-pilot-book-213263](http://www.politico.com/magazine/story/2015/10/drone-pilot-book-213263).

<sup>20</sup> Agata Blaszcak-Boxe, “Drone Pilots Suffer PTSD Just Like Those in Combat,” *Live Science*, 20 August, 2014, [www.livescience.com/47475-drone-operators-develop-ptsd.html#sthash.7k3plvmK.dpuf](http://www.livescience.com/47475-drone-operators-develop-ptsd.html#sthash.7k3plvmK.dpuf).

<sup>21</sup> Christopher Drew and Dave Phillips, “As Stress Drives Off Drone Operators, Air Force Must Cut Flights,” *New York Times*, 16 June 2015, [www.nytimes.com/2015/06/17/us/as-stress-drives-off-drone-operators-air-force-must-cut-flights.html](http://www.nytimes.com/2015/06/17/us/as-stress-drives-off-drone-operators-air-force-must-cut-flights.html).

Much more information about how drones are being used on a day-to-day basis is needed in order to assess the impact of armed remote technology on the decision to launch a strike. Unfortunately, secrecy prevails and pretty much all that tends to be released are rather bland statements, often from anonymous sources, reporting the elimination of “terrorist suspects”. There is a crucial need for much more transparency about the decision-making process in the day-to-day use of armed drones.

### The problem of “precision”

Another important aspect in relation to the lowering of the threshold for the use of force is the constant presentation of drone warfare as “precision” warfare. This precision narrative underlies much of the support for the use of armed drones both within the political and military command establishment, but also by the general public.

While most people would understand “precision” to mean “accuracy,” it is very important to be aware that when the military use the term “precision strike,” they are not referring to the accuracy of a strike. Rather, they are pointing to a process of bringing a wide system of assets to bear to enable the strike to take place.<sup>22</sup>

Lt. Colonel Jill Long of the USAF explains:

*The term “precision” does not imply, as one might assume, accuracy. Instead, the word precision exclusively pertains to a discriminate targeting process.... By using a word that has such specific meaning in the mind of most civilians, it is easy to see how a gap in understanding and expectations has been fostered.<sup>23</sup>*

When military spokespeople describe an aircraft or drone as undertaking a “precision strike” it tends to get reinterpreted both in the media and in the minds of the public as being an “accurate” strike, a misunderstanding that the military seem to have little interest in correcting.

The persistent presentation of drone strikes as “precise” and “pinpoint accurate” in this way has serious implications for the understanding of the actual impact of war. Due to the nature of today’s military interventions, few people have access to first-hand accounts of the impact on the ground. Even media reports from these locations are extremely rare.<sup>24</sup> This creates in the minds of many the idea that drone strikes are clean, safe and victimless. War, it seems, is no longer the hell it once was.

<sup>22</sup> See “Precision Engagement” in *Vision 2020*, US Joint Chiefs of Staff, 2000, <http://www.pipr.co.uk/wp-content/uploads/2014/07/jv2020-2.pdf>,

<sup>23</sup> Lt Col. Jill A. Long, “The Problem with “Precision: Managing Expectations for Air Power,” MA Thesis, 2012, <http://www.dtic.mil/cgi-bin/GetTRDoc?AD=ADA589415>.

<sup>24</sup> For rare media report from on the ground of impact of US drone/special forces raid see Iona Craig, “Death in Al Ghayil,” *The Intercept*, 9 March 2017, <https://theintercept.com/2017/03/09/women-and-children-in-yemeni-village-recall-horror-of-trumps-highly-successful-seal-raid>.

However, data gathered by casualty recording organisations and the few journalists covering this issue show that there are of course civilian casualties. In Pakistan, where US airstrikes were exclusively carried out by drones, The Bureau of Investigative Journalism (TBIJ) reports between 420–960 civilians killed in just over 400 drone strikes—although the civilian casualty rate, along with the number of strikes, has plummeted since 2012 following an increasing international outcry.<sup>25</sup>

Far from being able to sit above “the fog of war” and launch “pinpoint accurate” attacks as advocates argue, the human rights organisation, Reprieve, found that US drone strikes in Yemen and Pakistan killed 1147 unknown people in multiple strikes targeting just 41 named individuals. Next door in Afghanistan, US military analyst Larry Lewis found that in the 12 months from mid-2011 to mid-2012, armed drones caused 10 times more civilian casualties than strikes by “manned” fighter aircraft. Unfortunately, we cannot examine this data, as it remains classified.<sup>26</sup>

On occasion it becomes very clear that all the victims of drone strikes are not enemy combatants. In January 2015, a US drone strike in Pakistan killed American development expert Warren Weinstein and Italian aid worker Giovanni Lo Porto, who were being held hostage at the site of the strike.<sup>27</sup> In February 2016, a US airstrike involving drones and F-15s on an ISIS

training camp in Libya appears to have killed two Serbian diplomats being held there. Both sites, it should be noted, had prolonged and persistent observation by drones prior to the strikes, undermining the notion that such persistence can enable precision and eliminate civilian casualties.<sup>28</sup>

The notion that they enable civilian-casualty free strikes is not only engendering support for the use of armed drones amongst the public but also amongst military commanders and politicians who are now able to expand the battlefield to include areas which would previously have been off-limits. As Professor Michael Schmitt notes in his article on precision strike and international humanitarian law for the International Committee of the Red Cross:

*Greater precision enables targets to be attacked that previously were off-limits due to likely excessive collateral damage or incidental injury. This is particularly true with regard to urban and dual-use targets. To the extent that such attacks are seldom free of collateral damage and incidental injury, opening additional targets to attack results in a net increase in potential harm to the civilian population.*<sup>29</sup>

<sup>25</sup> “Get the data: Drone Wars,” *The Bureau of Investigative Journalism*, <https://www.thebureauinvestigates.com/category/projects/drones>.

<sup>26</sup> “You Never Die Twice, Multiple Kills in the US Drone Program,” *Reprieve*, November 2014, [www.reprieve.org.uk/press/2014\\_11\\_25\\_us\\_drone\\_strikes\\_kill\\_28\\_each\\_target](http://www.reprieve.org.uk/press/2014_11_25_us_drone_strikes_kill_28_each_target); Spencer Ackerman, “US drone strikes more deadly to Afghan civilians than manned aircraft – adviser,” *The Guardian*, 2 July 2013, [www.theguardian.com/world/2013/jul/02/us-drone-strikes-afghan-civilians](http://www.theguardian.com/world/2013/jul/02/us-drone-strikes-afghan-civilians).

<sup>27</sup> Zeke J Miller, “Obama Apologizes to Families of al-Qaeda Hostages Killed in US Drone Strike,” *Time*, 23 April 2015, <http://time.com/3832781/warren-weinstein-giovanni-lo-porto-drone>.

<sup>28</sup> Sharif Abdel Kouddous, “Evidence mounts that US airstrike on ISIS in Libya killed Serbian diplomats,” *The Intercept*, 16 March, 2016, <https://theintercept.com/2016/03/16/u-s-airstrike-on-isis-in-libya-killed-serbian-diplomats>.

<sup>29</sup> Michael N. Schmitt, “Precision attack and international humanitarian law,” *International Review of the Red Cross* 87, September 2005, pp. 445–466, [https://www.icrc.org/eng/assets/files/other/irrc\\_859\\_schmitt.pdf](https://www.icrc.org/eng/assets/files/other/irrc_859_schmitt.pdf).

While it is beyond question that precision weapons are more accurate than their unguided predecessors, the idea that such weapons hit their target accurately every time unless there is a human-induced error is merely the stuff of Hollywood. In the way that the precision narrative is both opening up previous off-limits civilian areas to aerial bombardment, and, at the same time making warfare more acceptable, the precision narrative may be leading to an increase in civilian casualties.

The important issue here is whether intervention using armed drones is transferring the risk of armed conflict onto civilians. Over the past decade we have seen a growing change in how western society sees armed forces personnel. Increasingly, the lives of “western” soldiers are much more highly valued than the lives of civilians in a conflict zone. The desire to protect “our boys” for domestic political reasons is leading to the use of remote armed systems, which may be more risky for civilians on the ground. Such risk-transfer, as Christian Enemark puts it, is totally “contrary to the spirit of *jus in bello* discrimination”.<sup>30</sup> While it is right that all must be done to lessen the risk to for service personnel, the principle that combatants should endure a greater risk than civilians during an armed conflict appears to be being eroded.

## The problem of proliferation

While the majority of attention on armed drones has focused on US use (and to some extent on UK and Israeli use), growing proliferation of these systems has meant that a number of other countries have acquired or developed armed drones and are beginning to regularly use them to launch strikes. Most of these “second wave” countries have acquired their armed drones from China, but some, like Turkey and Iran, have successfully developed their own.

It is highly likely that other countries will acquire the technology and begin launching drone strikes over the next few years. Some commentators insist that armed drone proliferation will not be a problem, arguing that for smaller countries, the technical and financial barriers to operating such systems are prohibitive.<sup>31</sup> However, a short survey by Drone Wars UK identified in December 2016 that four of the new wave of users (United Arab Emirates [UAE], Saudi Arabia, Iran, and Turkey) had already launched cross border strikes on at least six occasions (UAE in Yemen and Libya; Saudi in Yemen; Iran in Syria and Iraq; and Turkey in Iraq).<sup>32</sup> The implications for global peace and security of multiple nations using armed drones to launch cross border strikes is very serious.

While there are embryonic moves by international community to develop controls over the proliferation and use of armed drones,<sup>33</sup>

<sup>30</sup> Christian Enemark, “Drones, Risk, and Perpetual Force,” *Ethics and International Affairs* 28:3, 2014, pp. 365–381, [http://cadair.aber.ac.uk/dspace/bitstream/handle/2160/26329/Enemark\\_drones\\_EIA\\_2014.pdf?sequence=1&isAllowed=y](http://cadair.aber.ac.uk/dspace/bitstream/handle/2160/26329/Enemark_drones_EIA_2014.pdf?sequence=1&isAllowed=y).

<sup>31</sup> Andrea Gilli and Mauro Gilli, “So what if Iranian drones did strike Syria? We are not entering a dark age of robotic warfare,” *The Washington Post*, 4 April 2016, [https://www.washingtonpost.com/news/monkey-cage/wp/2016/04/04/so-what-if-iranian-drones-did-strike-syria-we-are-not-entering-a-dark-age-of-robotic-warfare/?utm\\_term=.ae7cbf550049](https://www.washingtonpost.com/news/monkey-cage/wp/2016/04/04/so-what-if-iranian-drones-did-strike-syria-we-are-not-entering-a-dark-age-of-robotic-warfare/?utm_term=.ae7cbf550049).

<sup>32</sup> Chris Cole, “Drone strikes spread as proliferation surges,” *Drone Wars UK*, 6 December 2016, <https://dronewars.net/2016/12/06/drone-strikes-spread-as-proliferation-surges>.

<sup>33</sup> Mohammad Zargham, “U.S., other countries issue declaration on export, use of armed drones,” *Reuters*, 5 October 2016, <http://www.reuters.com/article/us-usa-drones-idUSKCN1252IG>.

analysts and campaigners alike agree that they need to be much stronger than presently proposed—and draw in China and other exporters—if there is to be any realistic chance of stemming the tide of cross border drone strikes.<sup>34</sup>

## Drones: Damaging peace and security by eroding hard won limits on warfare

This chapter has tried to describe some of the ways in which “unmanned” weapons technology is lowering the threshold for the use of armed force. Through enabling military intervention without “boots on the ground” and therefore drastically reducing the political risk, drones allow political leaders to bypass the restraint of a casualty averse and war-wary population.

We are also beginning to see the way that armed drones are having an impact on the wider debate about how to achieve peace in our insecure world. In a 2015 op-ed for *The Wall Street Journal*, for example, US academic Amy Zegart argues that drones should be used not just for targeted Killing but for “targeted hurting”:

*Lethal drones may make possible a new form of high-tech coercion: targeted hurting. Targeted terrorist-killing operations are designed to take an enemy off the battlefield. Targeted hurting could be designed to change any enemy’s behavior—by destroying selectively the family members, friends, associates, villages or capabilities that the enemy holds most dear.*<sup>35</sup>

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**34** Rachel Stohl, “New Draft on Drone Export Rules ‘More Problematic’ Than Original,” *Defense News*, 29 September 2016, <http://www.defensenews.com/articles/new-draft-on-drone-export-rules-more-problematic-than-original>.

**35** Amy Zegart, “The Coming Revolution of Drone Warfare”, *The Wall Street Journal*, 18 March 2015, [https://cisac.fsi.stanford.edu/sites/default/files/amy\\_zegart\\_-\\_the\\_coming\\_r.\\_of\\_drone\\_warfare\\_-\\_wsj.pdf](https://cisac.fsi.stanford.edu/sites/default/files/amy_zegart_-_the_coming_r._of_drone_warfare_-_wsj.pdf).

The very existence of drones means that the use of lethal force is being contemplated and put into effect in ways that did not happen before the development of such technology. Above all, it must be remembered that we are still only at the beginnings of the drone war era. The Predator and Reaper drones currently in operation are fairly unsophisticated prototypes of future drones that are slowly but surely making their way from the drawing board to the skies.

It is right that that the policy of using armed drones to undertake targeted killing outside international law norms is strongly challenged by human rights advocates. But attention must also be paid to the how the technology itself is also undermining those norms and is impacting on peace and security around the globe.

## Country case study:

## Djibouti

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Editors' note: This case study is based on a larger publication written by Ray Acheson to be published by the Women's International League for Peace and Freedom in September 2017, titled *Remote warfare and sexual violence in Djibouti*.

"Djibouti is a country of less than 900,000 people that would not register significantly in the global consciousness except for its strategic location in East Africa, at the mouth of the Red Sea and the rest of the Persian Gulf," writes investigative journalist Tim Mak of *The Daily Beast*.<sup>1</sup> A small, hot, dry country with high levels of poverty, it has made its claim to fame by virtue of its location, attracting the militaries of some of the most powerful countries in the world. The United States, China, France, Japan, Saudi Arabia, and Italy have or are constructing military bases in the country. Russia, Spain, Germany, and the United Kingdom also have troops operating out of Djibouti.

<sup>1</sup> Tim Mak, "Inside The Tiny Police State With Seven Armies," *The Daily Beast*, 2015, <http://www.thedailybeast.com/longforms/2015/djibouti/inside-the-tiny-police-state-with-seven-armies.html>.

The military attraction has in part to do with antipiracy efforts off the coast of Somalia. All ships passing through the Suez Canal to Europe or to the Indian Ocean need to sail through the Bab al-Mandab Strait. Twenty thousand ships and 20 percent of global exports travel this route every year.<sup>2</sup>

Beyond that, however, Djibouti is critical for geostrategic military operations in the post-9/11 world. Djibouti sits between East Africa and the Arabian Peninsula, allowing aircraft stationed there to reach Somalia or Yemen in minutes. Many of the foreign militaries operating in Djibouti participate in operations against al-Shabaab in Somalia or al Qaeda in the Arabian Peninsula in Yemen—either directly through drone strikes or by training Djiboutian and other East African militaries.<sup>3</sup> US special forces use their base in Djibouti for operations against Boko Haram, the Lord's Resistance Army, and Daesh, and as a launching pad for drone strikes.<sup>4</sup>

## US drones in Djibouti

"This is not an outpost in the middle of nowhere that is of marginal interest," US officials have said about Djibouti. "This is a very important location in terms of US interests, in terms of freedom of navigation,

<sup>2</sup> Ben Ho Wan Beng, "The Strategic Attractions of Djibouti," *The National Interest*, 18 March 2016, <http://nationalinterest.org/blog/the-buzz/the-strategic-attractions-djibouti-15533>.

<sup>3</sup> "U.S. and Djibouti Launch Binational Forum of Cooperation," US Department of State, Office of the Spokesperson, Washington, DC, 2 March 2015, <http://www.state.gov/r/pa/prs/ps/2015/03/238107.htm>; David Styan, *Djibouti: Changing Influence in the Horn's Strategic Hub*, Chatham House, April 2013, [https://www.chathamhouse.org/sites/files/chathamhouse/public/Research/Africa/0413bp\\_djibouti.pdf](https://www.chathamhouse.org/sites/files/chathamhouse/public/Research/Africa/0413bp_djibouti.pdf), pp. 4, 9.

<sup>4</sup> Katrina Manson, "Jostling for Djibouti," *FT Magazine*, 1 April 2016, <http://www.ft.com/cms/s/2/8c33eefc-f6c1-11e5-803c-d27c7117d132.html>.



A crashed US drone in Djibouti.

Photo from a declassified Accident Investigation Board

when it comes to power projection.”<sup>5</sup> It has become an instrumental location in the US-led “global war on terror”.

The US Navy operates a base at Camp Lemonnier, near the Djibouti-Ambouli International Airport. It is a former French Foreign Legion outpost and was previously used as a CIA “black site” where terrorism suspects were detained without charges and allegedly tortured.<sup>6</sup> It is currently home to about 4,000 US and allied military and civilian

personnel and US Department of Defense contractors. The base also employs about 1,100 local and third-country workers.<sup>7</sup>

The operations of Camp Lemonnier are shrouded in secrecy. Some is known from unclassified and also leaked classified documents and investigative reporting. “Virtually the entire 500-acre camp is dedicated to counterterrorism,” reported Craig Whitlock of *The Washington Post* in 2012, “making it the only installation of its kind in the Pentagon’s global network of bases.”<sup>8</sup>

<sup>5</sup> Craig Murphy, “Remote U.S. base at core of secret operations,” *The Washington Post*, 25 October 2012, [https://www.washingtonpost.com/world/national-security/remote-us-base-at-core-of-secret-operations/2012/10/25/a26a9392-197a-11e2-bd10-5ff056538b7c\\_story.html](https://www.washingtonpost.com/world/national-security/remote-us-base-at-core-of-secret-operations/2012/10/25/a26a9392-197a-11e2-bd10-5ff056538b7c_story.html).

<sup>6</sup> “Secret prisons: Obama’s order to close ‘black sites’,” *The Guardian*, 22 January 2009, <https://www.theguardian.com/world/2009/jan/23/secret-prisons-closure-obama-cia>; Jason Leopold, “Senate report set to reveal Djibouti as CIA ‘black site’,” *Al Jazeera America*, 2 May 2014, <http://america.aljazeera.com/articles/2014/5/2/djibouti-senate-cia.html>.

<sup>7</sup> “Camp Lemmonier, Djibouti,” Commander, Navy Installations Command, [http://www.cnicy.navy.mil/regions/cnreurfswa/installations/camp\\_lemonnier\\_djibouti.html](http://www.cnicy.navy.mil/regions/cnreurfswa/installations/camp_lemonnier_djibouti.html).

<sup>8</sup> Craig Whitlock, “Remote U.S. base at core of secret operations,” *The Washington Post*, 25 October 2012, [https://www.washingtonpost.com/world/national-security/remote-us-base-at-core-of-secret-operations/2012/10/25/a26a9392-197a-11e2-bd10-5ff056538b7c\\_story.html](https://www.washingtonpost.com/world/national-security/remote-us-base-at-core-of-secret-operations/2012/10/25/a26a9392-197a-11e2-bd10-5ff056538b7c_story.html).

Among other things, the US Joint Special Operations Command (JSOC) is responsible for the operation of US drone strikes in the region. *The Washington Post* reported in 2012 orders to find, track, or kill people that the US government has designated terrorists were increasingly delivered to Camp Lemonnier. Originally, the Pentagon described Lemonnier as temporary, but it has “hardened into the U.S. military’s first permanent drone war base.”<sup>9</sup>

After six drones armed with Hellfire missiles crashed, one only 1.5 kilometres from Djibouti City, the US moved its drones to Chabelley airfield in 2013, about 10 kilometres away from the main base.<sup>10</sup> While this was thought to be temporary, in June 2015 the US made a “long-term implementing arrangement” with Djibouti to establish Chabelley as an “enduring” base, allocating \$7.6 million to construct a new perimeter fence around the base.<sup>11</sup> The US Air Force also reportedly installed a “tactical automated security system,” a suite of integrated sensors,

<sup>9</sup> Craig Whitlock, “Remote U.S. base at core of secret operations,” *The Washington Post*, 25 October 2012, [https://www.washingtonpost.com/world/national-security/remote-us-base-at-core-of-secret-operations/2012/10/25/a26a9392-197a-11e2-bd10-5ff056538b7c\\_story.html](https://www.washingtonpost.com/world/national-security/remote-us-base-at-core-of-secret-operations/2012/10/25/a26a9392-197a-11e2-bd10-5ff056538b7c_story.html).

<sup>10</sup> Nick Turse, “The stealth expansion of a secret U.S. drone base in Africa,” *The Intercept*, 21 October 2015, <https://theintercept.com/2015/10/21/stealth-expansion-of-secret-us-drone-base-in-africa>; Craig Whitlock, “Chaos in tower, danger in skies at base in Africa,” *The Washington Post*, 30 April 2015, [https://www.washingtonpost.com/world/national-security/miscues-at-us-counterterrorism-base-put-aircraft-in-danger-documents-show/2015/04/30/39038d5a-e9bb-11e4-9a6a-c1ab95a0600b\\_story.html](https://www.washingtonpost.com/world/national-security/miscues-at-us-counterterrorism-base-put-aircraft-in-danger-documents-show/2015/04/30/39038d5a-e9bb-11e4-9a6a-c1ab95a0600b_story.html); Craig Whitlock, “Remote U.S. base at core of secret operations,” *The Washington Post*, 25 October 2012, [https://www.washingtonpost.com/world/national-security/remote-us-base-at-core-of-secret-operations/2012/10/25/a26a9392-197a-11e2-bd10-5ff056538b7c\\_story.html](https://www.washingtonpost.com/world/national-security/remote-us-base-at-core-of-secret-operations/2012/10/25/a26a9392-197a-11e2-bd10-5ff056538b7c_story.html).

<sup>11</sup> Letter to Committee of Appropriations from the Undersecretary of Defense, 25 June 2015, [http://comptroller.defense.gov/Portals/45/Documents/execution/reprogramming/fy2015/milcon/15-10\\_MC\\_May\\_2015\\_Request.pdf](http://comptroller.defense.gov/Portals/45/Documents/execution/reprogramming/fy2015/milcon/15-10_MC_May_2015_Request.pdf).

thermal imaging devices, radar, cameras, and communications.<sup>12</sup>

Camp Lemonnier was known as “the busiest Predator drone base outside the Afghan war zone.”<sup>13</sup> Documents leaked to *The Intercept* in 2015 indicated that at the time, the base operated ten MQ-1 Predators and four MQ-9 Reapers.<sup>14</sup> However, the Predator drones have reportedly since been removed from Djibouti, after more than 100 missions in Yemen and Somalia.<sup>15</sup>

From Chabelley, investigative journalist Nick Turse found, US drone missions cover “Yemen, southwest Saudi Arabia, a large swath of Somalia, and parts of Ethiopia and southern Egypt.”<sup>16</sup> The drones are flown via satellite link by pilots at Creech Air Force Base in Nevada and Cannon Air Force Base in New Mexico.<sup>17</sup> They are maintained and launched in Djibouti by an Air Force squadron.

<sup>12</sup> “USAF boosts security of AFRICOM’s AOR with TASS installation,” *airforce-technology.com*, 1 May 2014, <http://www.airforce-technology.com/news/newsusaf-boosts-security-of-africom-aor-with-tass-installation-4256028>.

<sup>13</sup> Craig Murphy, “Remote U.S. base at core of secret operations,” *The Washington Post*, 25 October 2012, [https://www.washingtonpost.com/world/national-security/remote-us-base-at-core-of-secret-operations/2012/10/25/a26a9392-197a-11e2-bd10-5ff056538b7c\\_story.html](https://www.washingtonpost.com/world/national-security/remote-us-base-at-core-of-secret-operations/2012/10/25/a26a9392-197a-11e2-bd10-5ff056538b7c_story.html).

<sup>14</sup> Nick Turse, “The stealth expansion of a secret U.S. drone base in Africa,” *The Intercept*, 21 October 2015, <https://theintercept.com/2015/10/21/stealth-expansion-of-secret-us-drone-base-in-africa>

<sup>15</sup> Joseph Trevithick, “Why the US Air Force Pulled Its Predator Drones from a Secret Base in Africa,” *Motherboard*, 4 December 2015, <http://motherboard.vice.com/read/why-the-us-air-force-pulled-its-predator-drones-from-a-secret-base-in-africa>.

<sup>16</sup> Nick Turse, “The stealth expansion of a secret U.S. drone base in Africa,” *The Intercept*, 21 October 2015, <https://theintercept.com/2015/10/21/stealth-expansion-of-secret-us-drone-base-in-africa>

<sup>17</sup> Craig Murphy, “Remote U.S. base at core of secret operations,” *The Washington Post*, 25 October 2012, [https://www.washingtonpost.com/world/national-security/remote-us-base-at-core-of-secret-operations/2012/10/25/a26a9392-197a-11e2-bd10-5ff056538b7c\\_story.html](https://www.washingtonpost.com/world/national-security/remote-us-base-at-core-of-secret-operations/2012/10/25/a26a9392-197a-11e2-bd10-5ff056538b7c_story.html).

*The Washington Post* reported in 2012 that the unit designed a uniform patch emblazoned with a skull, crossbones, and the nickname “East Africa Air Pirates”.<sup>18</sup>

Based on an internal US Department of Defense report from 2013 obtained by *The Intercept*, Camp Lemmonier also housed “six U-28As—a single-engine aircraft that conducts surveillance for special operations forces—and two P-3 Orions, a four-engine turboprop aircraft originally developed for maritime patrols but since repurposed for use over African countries.” The report also indicates eight F-15E Strike Eagles, fighter jets that are faster and more heavily armed than drones. “By August 2012” explains Nick Turse, “an average of 16 drones and four fighter jets were taking off or landing there each day.”<sup>19</sup>

Apart from the direct and significant humanitarian impact of drone strikes launched from Djibouti into neighbouring countries, there are indirect but equally serious repercussions stemming from the existence of the bases that also warrant consideration.

## A militarist rentier economy

The foreign military bases pull in at least \$300 million annually in lease fees. The government recently turned away Russia, worried it would upset relations with the numerous western countries that are already tenants—though it

<sup>18</sup> Craig Murphy, “Remote U.S. base at core of secret operations,” *The Washington Post*, 25 October 2012, [https://www.washingtonpost.com/world/national-security/remote-us-base-at-core-of-secret-operations/2012/10/25/a26a9392-197a-11e2-bd10-5ff056538b7c\\_story.html](https://www.washingtonpost.com/world/national-security/remote-us-base-at-core-of-secret-operations/2012/10/25/a26a9392-197a-11e2-bd10-5ff056538b7c_story.html).

<sup>19</sup> Nick Turse, “Target Africa: The U.S. military’s expanding footprint in East Africa and the Arabian peninsula,” *The Intercept*, 15 October 2015, <https://theintercept.com/drone-target-africa>.

did allow China to take up residency, perhaps because China was already financing several major infrastructure projects related to ports, airports, and railways, worth about \$9 billion.<sup>20</sup>

Meanwhile, nearly two-thirds of the Djiboutian population lives in poverty and half the labour force is unemployed.<sup>21</sup> Djibouti’s GDP (purchasing power parity) in 2015 was estimated at \$3.094 billion, ranked 186 out of 230 countries.<sup>22</sup> Twenty-three per cent of the population lives below the poverty line. The country has few natural resources or industry.<sup>23</sup>

## Militarism and human rights abuses, including sexual violence and exploitation

Within this context of high levels of militarism and poverty, respect for human rights is also a major issue in Djibouti. The President, who was recently elected for a fourth-term in elections considered corrupt by most human rights groups, actively suppresses freedom of speech and dissent.<sup>24</sup> In addition, the country’s family laws discriminate against

<sup>20</sup> “China ‘negotiates military base’ in Djibouti,” *AlJazeera*, 9 May 2015, <http://www.aljazeera.com/news/africa/2015/05/150509084913175.html>.

<sup>21</sup> Katrina Manson, “Jostling for Djibouti,” *FT Magazine*, 1 April 2016, <http://www.ft.com/cms/s/2/8c33eefc-f6c1-11e5-803c-d27c7117d132.html>.

<sup>22</sup> “Country comparison: GDP (purchasing power parity),” *The World Factbook*, Central Intelligence Agency, accessed 22 July 2016, <https://www.cia.gov/library/publications/the-world-factbook/rankorder/2001rank.html#dj>.

<sup>23</sup> “Africa: Djibouti,” *The World Factbook*, Central Intelligence Agency, accessed 22 July 2016, <https://www.cia.gov/library/publications/the-world-factbook/geos/dj.html>.

<sup>24</sup> “Djibouti President Ismail Omar Guelleh wins fourth term,” *BBC*, 9 April 2016, <http://www.bbc.com/news/world-africa-35995628>.

women and in some cases facilitate gender-based violence, such as female genital mutilation.

The government has also continued to fail to effectively combat human trafficking and sexual violence.<sup>25</sup> About 100,000 men, women, and children from Eritrea, Ethiopia, and Somalia transit through Djibouti each year, most heading to Saudi Arabia, Yemen, or other Middle Eastern countries. Since March 2015, Djiboutians, Yemenis, and others have also fled Yemen via Djibouti.<sup>26</sup> These people are fleeing poverty, drought, war, or repression, looking for better opportunities abroad. However, these migrants and refugees are at grave risk of trafficking, forced labour, sexual exploitation and abuse, and forced prostitution.

The foreign military presence in Djibouti exacerbates these risks, providing a steady market in particular for “prostitutes”—women, girls, and boys who are forced to sell their bodies due to poverty or who are trafficked for sex.

The government has consistently failed to prosecute traffickers, operationalise its national action plan to combat trafficking, or to identify or provide protection for trafficking victims.<sup>27</sup> It also has poor practices regarding those it arrests for prostitution, including

<sup>25</sup> “Djibouti: Tier 3,” *2016 Trafficking in Persons Report*, Office to Monitor and Combat Trafficking in Persons, US Department of State, June 2016, <http://www.state.gov/j/tip/rls/tiprpt/2016/index.htm>.

<sup>26</sup> “Djibouti,” *Humanitarian Compendium*, International Organization for Migration, last updated 3 March 2016, <http://humanitariancompendium.iom.int/djibouti/2016>.

<sup>27</sup> “Djibouti: Tier 3,” *2016 Trafficking in Persons Report*, Office to Monitor and Combat Trafficking in Persons, US Department of State, June 2016, <http://www.state.gov/j/tip/rls/tiprpt/2016/index.htm>, pp. 155–156.

children.<sup>28</sup> At the same time, the US government has failed to enforce its own laws prohibiting its soldiers or contractors from buying sex or facilitating trafficking.

### “Power without vulnerability”

The culture of impunity around trafficking and sexual exploitation when militaries are involved is nothing new. But this sense of power without vulnerability, in the case of Djibouti, is in some ways matched by the type of military operations carried out there.

The emphasis on special operations, particularly out of the US base, is critical. The US special forces are among the US military’s most male-dominated units. According to a Pentagon-sponsored survey by the RAND Corporation, 85 per cent of men oppose integrating women into special forces units.<sup>29</sup>

Similarly, private military and security companies—personnel from which constitute a high proportion of those on the US base in Djibouti—tend to intensify gender inequalities compared to public militaries, many of which are in the process of “integrating” men and women into combat roles. Women are a minority in private armies and, because they are private, there are far fewer gender equity guidelines.<sup>30</sup> There have been glimpses of the

<sup>28</sup> Sanne Terlingen, “Fear and loathing in Djibouti,” *OneWorld*, 2 December 2015, [http://longreads.oneworld.nl/en/Djibouti\\_trafficking;\\_Djibouti](http://longreads.oneworld.nl/en/Djibouti_trafficking;_Djibouti),” *2014 Findings on the Worst Forms of Child Labor*, Bureau of International Labor Affairs, US Department of Labor, 2014, <https://www.dol.gov/agencies/ilab/resources/reports/child-labor/djibouti>.

<sup>29</sup> Rowan Scarborough, “U.S. special forces not ready to integrate women, report finds,” *The Washington Times*, 15 February 2016, <http://www.washingtontimes.com/news/2016/feb/15/us-special-forces-not-ready-to-integrate-women-rep>.

<sup>30</sup> Maya Eichler, “Militarized Masculinities in International Relations,” *Brown Journal of World Affairs*, Volume XXI, Issue I, Fall/Winter 2014.

levels of misogyny of which such companies are capable. For example, DynCorp, which has provided support for US military operations for 50 years, failed to hold its employees accountable when they were engaged in illicit trafficking, sexual enslavement, and rape of women in post-conflict Bosnia.<sup>31</sup>

Both the special forces and private mercenaries have an air of invulnerability and impunity. So too do some of their missions launched from Djibouti, such as those involving armed drones. Air Force official David Deptula has stated, “The real advantage of unmanned aerial systems is that they allow you to project power without projecting vulnerability.”<sup>32</sup> The expanding use of armed drones is not yet known to be increasing rates of sexual violence by military personnel or within the military. Many factors on military bases facilitate or even condone sexual violence. The history of US military bases around the world clearly show the threat posed to women and girls by the institutionalisation of women’s sexual objectification by military systems and personnel. In Djibouti, this threat may be reinforced by the further dehumanisation of warfare and the perceived “emasculatation” of soldiers through the growing use of armed drones to kill remotely, where at the same time the sense of “power without vulnerability” is enhanced. (See Chapter 8 on gender perspectives for more details.)

History has shown that foreign military bases, regardless of the nature of their operations, undermine human rights, increase geopolitical tensions, and facilitate sexual violence. The symbiotic economic and political relationship between the foreign military powers and the “host” country in this context seems to be a deterrent to any of the governments involved to confront the human rights abuses by their own soldiers or by their host government. It is a chokepoint of violence against local populations, particularly women. This mode of militarism is damaging to local people, local economies, and as Vine has argued, “they’ve helped lock us inside a permanently militarized society that has made all of us—everyone on this planet—less secure.”<sup>33</sup>

<sup>31</sup> Ed Vulliamy, “Has the UN learned lessons of Bosnian sex slavery revealed in Rachel Weisz film?,” *The Guardian*, 14 January 2012, <https://www.theguardian.com/world/2012/jan/15/bosnia-sex-trafficking-whistleblower>.

<sup>32</sup> David Patrikarakos, “Eyes in the sky: the legal and philosophical implications drone warfare,” *NewStatesmen*, 25 June 2015, <http://www.newstatesman.com/politics/2015/06/eyes-sky-legal-and-philosophical-implications-drone-warfare>.

<sup>33</sup> David Vine, “The United States Probably Has More Foreign Military Bases Than Any Other People, Nation, or Empire In History,” *The Nation*, 14 September 2015, <https://www.thenation.com/article/the-united-states-probably-has-more-foreign-military-bases-than-any-other-people-nation-or-empire-in-history>.

## Country case study:

# Philippines

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The use of armed—and unarmed—“unmanned” aerial vehicles (UAVs) or drones remains a complex issue in the Philippines. Recent military operations, which have resulted in deaths and compromised the ongoing peace process with the armed group the Moro Islamic Liberation Front in the southern part of the country, have brought this issue in to the national spotlight.

The use of UAVs was first admitted in public in 2013, when the Armed Forces of the Philippines (AFP) confirmed that it had used UAVs in a military operation in Zamboanga City. On 9 September 2013, a faction of the Moro National Liberation Front (MNLF) attempted to raise the flag of the self-proclaimed Bangsamoro Republik at Zamboanga City Hall. An armed clash erupted between the MNLF group and the AFP and the Philippine National Police (PNP). The MNLF took hostages and the resulting standoff degenerated into urban warfare, where parts of the city were destroyed due to use of explosive weapons. Based on newspaper reports in December 2013, the military admitted to the use of “unmanned aerial systems” during the crisis, which occurred from 9 September 2013 until the military declared the end of the military operations on 28 September 2013. The AFP-operated UAVs were later displayed in public at Camp Aguinaldo.<sup>1</sup>

<sup>1</sup> Frances Mangosing, “PH Army displays drones to public,” *Philippine Daily Inquirer*, 13 December 2013, <http://newsinfo.inquirer.net/549269/ph-army-displays-drones-to-public#ixzz4exAJfgHg>.

In Mamasapano, Maguindanao on 25 January 2015 a military operation that targeted known terrorists affiliated with the Jemaah Islamiyah Zulkifli Abdhir (also known as Marwan) and Abdul Basit Usman, resulted in the death of 44 Special Action Forces of the Philippine National Police and 18 civilians. After this armed clash, the Philippine government authorities were questioned during Senate hearings on the use of UAVs and the role of the US military in these operations. The hearing was shown live in public, and one of the biggest questions was the role of the United States in the operations and about the technology used during the operations that enabled an operation at night.

During the public hearings in the Senate after the Mamasapano incident, the PNP and the AFP were asked to explain the role of UAVs in their operations. They were also questioned on the issue of foreign intervention in the internal affairs of the Philippines as a sovereign state and in particular the role of the United States, as it was also alleged that the US military provided the Philippine National Police assistance in intelligence gathering for the operation, which resulted in 62 deaths.

The AFP made several statements emphasizing the use of UAVs for intelligence and reconnaissance operations, and asserting that there was no use of armed UAVs in the country. In February 2015, the AFP through its spokesperson reportedly stated that its primary interest in using UAVs was related to humanitarian and disaster relief (HADR), which was echoed by the Department of National Defense.<sup>2</sup>

General public opinion towards the use of UAVs was formed during the public hearings, with the emerging views that: (1) UAVs are effective for intelligence gathering; and (2) the use of UAVs could shift from intelligence gathering to tactical use. The emerging view that UAVs are effective intelligence gathering tools has also gained traction in the recent years because of the claims of China and the Philippines on the same islands in the South China Sea or West Philippine Sea.<sup>3</sup>

Proponents of the use of UAVs have established the perspective that in the case of intelligence gathering and surveillance, the military intelligence provided with UAV assistance is more reliable.

<sup>2</sup> Alden M. Monzon, "Philippines places emphasis on drones' search and rescue, not military, capabilities," *Business World*, 19 February 2015, <http://www.bworldonline.com/content.php?section=Nation&title=philippines-places-emphasis-on-drones&8217-search-and-rescue-not-military-capabilities&id=102969>.

<sup>3</sup> Andrea Shalal and Emily Stephenson, "Philippines eyes US spy drones," *Reuters*, 18 February 2017, <http://news.abs-cbn.com/focus/02/18/15/afp-philippines-eyes-us-spy-drones>.

However, there are questions and concerns about who has access to the intelligence data gathered and what the role of foreign intervention is in these operations, specifically that of the United States. During the Mamasapano incident, the Philippines did not possess equipment such as UAVs with the capacity to operate during nighttime, and the PNP or the AFP had no skills to execute the intelligence gathering with the use of the technologically advanced UAVs.

The US government recently delivered UAVs including a RQ-11B Raven to the Philippines, to help with “counterterrorism” efforts that both countries have agreed on in the past.<sup>4</sup> The Philippines and the United States have an ongoing bilateral agreement in place since the late 1990s called the US Visiting Forces Agreement (VFA). The VFA allows US troops in the Philippines for a temporary stay in the country to conduct military exercises and training. Technical assistance and training is a big component of this agreement. According to the US Embassy’s official website:

In addition to the small-arms transfer, the U.S. government provided a Raven unmanned aerial vehicle system through the grant counterterrorism program. As part of the grant, and in addition to the three unmanned aerial vehicles included in the Raven system, Philippine service members received training in the United States on its operations and maintenance. The Raven is a hand-launched unmanned aerial vehicle that will increase

the AFP’s capabilities to conduct intelligence collection, mission planning, and reconnaissance operations.

The equipment transfer and continued bilateral training efforts demonstrate the commitment between the Philippines and U.S. to work towards safer communities and the eradication of global terror networks.<sup>5</sup>

There is an ongoing push to sway the Philippines’ government’s position in favour of using armed UAVs within the Philippines due to several factors: (1) lobbying from manufacturers; (2) threats from terrorism; and (3) the rise of extremism in the Philippines. These factors are helping to push for the use of armed UAVs because these platforms are perceived as ensuring fewer human casualties for the AFP/PNP forces, and because there is perceived a tactical advantage in their use for surgical operations in the island areas where kidnapping and extremism is growing.

<sup>4</sup> Dana Sioson, “US delivers new counter-terrorism weapons to Philippine forces,” *Asian Journal*, 2 February 2017, <http://asianjournal.com/news/us-delivers-new-counterterrorism-weapons-to-philippine-forces>.

<sup>5</sup> US Embassy in the Philippines, “U.S. Military Delivers Counterterrorism Equipment to the Philippine Army and Marine Corps,” 1 February 2017 <https://ph.usembassy.gov/us-military-delivers-counterterrorism-equipment-philippine-army-marine-corps>.

Crucial in this debate is the government policy on no collateral damage. Currently, the government has repeatedly stated that it only uses unarmed UAVs for intelligence and surveillance and for humanitarian and disaster relief operations. However, the ongoing military operations against the Abu Sayyaf<sup>6</sup> group, which vowed allegiance to ISIS—though many analysts consider that they are ISIS-inspired not ISIS-directed—could change this policy. The AFP is actively pursuing the terrorist group Abu Sayyaf in several islands. The government may be pushed to shift its position on no collateral damage to minimum collateral damage, and when this shift in policy happens, the likelihood of buying and using armed UAVs in the areas affected by the terrorist groups who are also kidnapping foreign nationals will be high.

The military is not adept at urban warfare and has been employing open battlefield tactics in urban settings, as seen in the cases of Marawi City and Zamboanga City described above. The long, drawn out armed confrontations have cost many lives and led to the destruction of infrastructure and resources for the government and civilians alike. Armed drones are seen as more accurate and discriminate, so this weighs in favour of their use. The United States has offered this technology, but the Philippines has recently refused the use of it.<sup>7</sup>

One of the major considerations against using armed UAVs is that the Philippines has no capacity to operate and maintain armed UAVs, and they will entail a big cost for the AFP. The Philippines will have to rely on the assistance of the United States to obtain armed UAVs and to develop capacity for their use and maintenance, which will imply heavy reliance on US help. This will, in turn, have implications for the role of foreign intervention in national affairs.

A further concern in the development of this technology and capacity is the chance that non-state armed groups will also have access to and develop their own capacity for armed UAVs. There will be an increased risk of diversion, and an added burden on the government to prevent technology and skill transfer to non-state armed groups.

<sup>6</sup> Maria A. Ressa, "Experts warn PH: Don't underestimate ISIS," *Rappler*, 13 January 2016, <http://www.rappler.com/nation/118850-experts-warn-ph-not-to-underestimate-isis>.

<sup>7</sup> See "Military official: We don't need US drones, we can finish Marawi conflict alone," GMA News Online, 9 August 2017, <http://www.gmanetwork.com/news/news/nation/621303/military-official-we-don-t-need-us-drones-we-can-finish-marawi-conflict-alone/story>; and Jose Cielito Reganit, "Treaty prohibits US airstrikes in PH soil – Palace," *Republic of the Philippines Philippine News Agency*, <http://www.pna.gov.ph/articles/1005352>.

# 5. Harm to Governmental Transparency

Anna Diakun

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## Introduction

Since the US government started its targeted killing programme, it has sought to keep the programme officially secret, even as top government officials proclaimed it to be lawful, effective, and strategic. This "official secrecy" is entirely at odds with foundational principles of democracy, and, of course, the often-devastating human consequences of these lethal strikes are anything but secret for communities subjected to them. The United States has killed at least hundreds of civilians, many of them children. Human rights organizations and journalists have documented the deaths of entire families, the destruction of homes, and widespread distrust of the US government abroad.<sup>1</sup> But government officials have refused to acknowledge basic details about its targeted killing programme (and, for a time, even the programme's very existence).

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<sup>1</sup> See, e.g., *The Civilian Impact of Drones: Unexamined Costs, Unanswered Questions*, Columbia Law School Human Rights Clinic & Center for Civilians in Conflict, 2012, pp. 24-25, 46, <http://www.law.columbia.edu/sites/default/files/microsites/human-rights-institute/files/The%20Civilian%20Impact%20of%20Drones.pdf>.

This lack of transparency prevents the victims and their families from obtaining any semblance of accountability, and foments anger and fear among communities in targeted regions. It also undermines democratic legitimacy and the rule of law, because still-secret legal justifications for and consequences of this lethal force mean that the public is unable to independently assess the merits and legality of this deeply controversial programme. Greater transparency is critical to ensuring that US policies and practices comport with international and domestic legal standards, and that the US government is held accountable when they do not.

Years of litigation and pressure on the US government have gradually illuminated the contours of the targeted killing programme, including through the disclosure of policy constraints the Obama administration imposed on strikes and the procedures governing decision-making. But despite several hard-fought victories for transparency, the public still lacks many critical details about the programme. Importantly, the continuing force of the publicly released policy constraints—limited though they are—is uncertain: these Obama-era rules are nonbinding and the Trump administration can easily withdraw them.<sup>2</sup> As the US government's reliance on remote lethal force abroad only continues to grow, persistent pressure is as critical as ever to achieving accountability and transparency.

## The stakes: why the fight for transparency matters

For years, the US condemned other countries that carried out lethal strikes outside recognised armed conflict. But beginning in the mid-2000s, both Republican and Democratic administrations nevertheless embraced a programme of just these kinds of strikes.<sup>3</sup> The US government sought to hide from the public—domestically and abroad—its legal justifications, who it was killing, and why—all in the name of national security. Although there may certainly be operational details that the US government could legitimately withhold, the government's secrecy claims are sweeping by any reasonable measure. Furthermore, concealing this information has far-reaching negative consequences: this lack of transparency hides the human costs of the targeted killing programme and undermines the rule of law.

Greater disclosure of information would help prevent abuses, facilitate democratic accountability, and increase the legitimacy of US action abroad. Yet the US government not only fails to affirmatively release complete information about its targeted killing programme, it attempts to stymie the work of non-profit and media organisations that use the US Freedom of Information Act to obtain documents critical to understanding the legal justifications for and the consequences of the programme. The government's efforts to block access to this information disfigure the adversarial system and add an additional hurdle on the path to transparency.

<sup>2</sup> Hina Shamsi, "Trump Is Considering Expanding Killing Powers Abroad. The Consequences for Civilians will Be Disastrous," *ACLU Speak Freely Blog*, 15 March 2017, <https://www.aclu.org/blog/speak-freely/trump-considering-expanding-killing-powers-abroad-consequences-civilians-will-be>.

<sup>3</sup> Andrea Prasow, "The Year of Living More Dangerously: Obama's Drone Speech Was a Sham," *Human Rights Watch*, 24 May 2014, <https://www.hrw.org/news/2014/05/24/year-living-more-dangerously-obamas-drone-speech-was-sham>.

## The human costs of the targeted killing programme

Since President George W. Bush ordered the first drone strikes abroad, the targeted killing programme has grown into a prominent component of US national security policy. Under President Obama, the United States carried out an estimated 542 such strikes.<sup>4</sup> The human costs have been extensive: according to one estimate, these strikes together killed around 4,000 people, including more than 300 civilians.<sup>5</sup> Other tallies put the number of civilian deaths much higher: according to The Bureau of Investigative Journalism, between 384 and 807 civilians died in Pakistan, Somalia, and Yemen as a result of 563 strikes, most of which were drone strikes.<sup>6</sup> (See chapter one for further details and statistics).

The figures from the early months of President Trump's administration are just as troubling: from January to July 2017, The Bureau of Investigative Journalism reported that US drone strikes killed between thirty-three and forty civilians in

Yemen<sup>7</sup> and three in Pakistan.<sup>8</sup> Early signs indicate that the Trump administration is increasing the use of drones in its "counterterrorism" activities abroad.<sup>9</sup>

Distilling the consequences to mere numbers, though, masks the terrible consequences that these strikes have. In December 2013, for example, a US drone launched missiles on a wedding procession that was transporting the bride to the hometown of the groom.<sup>10</sup> Human Rights Watch reported that "some, if not all" of the twelve men killed and the many more injured were civilians.<sup>11</sup> The effects of strikes such as these reverberate beyond the immediate victims: one report documented that fear of drone strikes caused community members to avoid meeting in groups, parents to keep their children out of school, and family members to not attend funerals.<sup>12</sup> (See chapter three on psychological harms for more examples and details.)

In 2014, the United Nations Human Rights Council expressed concern over the use of armed drones on children, families, and

<sup>4</sup> Micah Zenko, "The (Not-So) Peaceful Transition of Power: Trump's Drone Strikes Outpace Obama," Council on Foreign Relations, 2 March 2017, <http://blogs.cfr.org/zenko/2017/03/02/the-not-so-peaceful-transition-of-power>; Micah Zenko, "Obama's embrace of Drone Strikes Will Be a Lasting Legacy," *New York Times*, 12 January 2016, <https://www.nytimes.com/roomfordebate/2016/01/12/reflecting-on-obamas-presidency/obamas-embrace-of-drone-strikes-will-be-a-lasting-legacy> (last updated 3 April 2017).

<sup>5</sup> Micah Zenko, "Obama's Final Drone Strike Data," Council on Foreign Relations, 20 January 2017, <http://blogs.cfr.org/zenko/2017/01/20/obamas-final-drone-strike-data>.

<sup>6</sup> Jessica Purkiss and Jack Serle, "Obama's Covert Drone War in Numbers: Ten Times More Strikes Than Bush," The Bureau of Investigative Journalism, 17 January 2017, <https://www.thebureauinvestigates.com/stories/2017-01-17/obamas-covert-drone-war-in-numbers-ten-times-more-strikes-than-bush>.

<sup>7</sup> "Strikes in Yemen," The Bureau of Investigative Journalism, [https://www.thebureauinvestigates.com/projects/drone-war/charts?show\\_casualties=1&show\\_injuries=1&show\\_strikes=1&location=yemen&from=2017-1-1&to=now](https://www.thebureauinvestigates.com/projects/drone-war/charts?show_casualties=1&show_injuries=1&show_strikes=1&location=yemen&from=2017-1-1&to=now) (last accessed 11 August 2017).

<sup>8</sup> "Strikes in Pakistan," The Bureau of Investigative Journalism, [https://www.thebureauinvestigates.com/projects/drone-war/charts?show\\_casualties=1&show\\_injuries=1&show\\_strikes=1&location=pakistan&from=2017-1-1&to=now](https://www.thebureauinvestigates.com/projects/drone-war/charts?show_casualties=1&show_injuries=1&show_strikes=1&location=pakistan&from=2017-1-1&to=now) (last accessed 11 August 2017).

<sup>9</sup> Murtaza Hussain, "U.S. Has Only Acknowledged a Fifth of its Lethal Strikes, New Study Finds," *The Intercept*, 13 June 2017, <https://theintercept.com/2017/06/13/drone-strikes-columbia-law-human-rights-yemen>.

<sup>10</sup> Letta Tayler, "A Wedding That Became a Funeral," Human Rights Watch, 19 February 2014, <https://www.hrw.org/report/2014/02/19/wedding-became-funeral/us-drone-attack-marriage-procession-yemen>.

<sup>11</sup> *Ibid.*

<sup>12</sup> *Living Under Drones: Death, Injury, and Trauma to Civilians From U.S. Drone Practices in Pakistan*, Stanford Law School International Human Rights and Conflict Resolution Clinic & NYU School of Law Global Justice Clinic, 12 September 2012, Available at <http://chrgj.org/wp-content/uploads/2012/10/Living-Under-Drones.pdf>.

communities, noting the consequences beyond civilian injury and death—including “the interruption of education, the undermining of religious and cultural practices and the reluctance to assist the victims of drone strikes for fear of being caught in secondary strikes.”<sup>13</sup> The Council adopted a resolution calling on all states “to ensure transparency in their records” relating to the use of armed drones and “to conduct prompt, independent, and impartial investigations whenever there are indications of a violation to international law caused by their use.”<sup>14</sup>

Despite these calls for transparency—and indeed, a pledge from President Obama himself to make lethal targeting “more transparent to the American people and the world”—the US government has failed to deliver.<sup>15</sup> The government’s disclosures and unofficial leaks about the programme consistently downplay the harms to civilians while repeating assertions that cannot be independently tested about legality and strategic effectiveness. Although the US government has, on occasion, admitted that specific strikes have resulted in civilian deaths, its official civilian death count is typically lower than the counts of journalists and independent organisations. For example, in July 2016, the US government announced that it had killed between 64 and 116 “non-combatants” in “counterterrorism strikes” between 20 January 2009 and 31 December 2015.<sup>16</sup>

<sup>13</sup> The full text of the resolution is available at [http://www.un.org/ga/search/view\\_doc.asp?symbol=A/HRC/25/L.32](http://www.un.org/ga/search/view_doc.asp?symbol=A/HRC/25/L.32).

<sup>14</sup> Ibid.

<sup>15</sup> Matthew Spurlock, “Obama Promised Transparency on Drones, But We’re Still in the Dark,” *ACLU Speak Freely Blog*, 16 March 2015, <https://www.aclu.org/blog/obama-promised-transparency-drones-were-still-dark>.

<sup>16</sup> “Summary of Information Regarding U.S. Counterterrorism Strikes Outside Areas of Active Hostilities,” Office of the Director of National Intelligence, 1 July 2016, <https://www.dni.gov/files/documents/Newsroom/Press%20Releases/DNIRReleaseCTStrikesOutsideAreasofActiveHostilities.PDF>.

Media organisations and human rights groups painted a far grimmer picture, reporting figures ranging from 200 to almost 1,000 civilians killed in that same time period.<sup>17</sup> Although the government claimed that it took media and non-governmental organisation reports into account when formulating its tally, it asserted that the discrepancy could be explained by the US government’s access to information “that is generally unavailable” to outside groups.<sup>18</sup> The government was essentially arguing that the public should credit US government tallies over those of independent reporters and researchers on the basis of trust alone.

This secrecy surrounding who the US government has killed and why has prevented affected communities from obtaining official acknowledgment of deaths and injuries or other forms of public accountability. The government has failed to adequately investigate credible allegations of civilian deaths, and when it does carry out investigations, the full results are concealed. Although the UN Human Rights Committee has specifically advised the United States to “[p]rovide victims or their families with an effective remedy where there has been a violation, including adequate compensation,”<sup>19</sup> public acknowledgment of responsibility for specific deaths and compensation for families is the rare exception, rather than the norm.

In April 2015, for example, President Obama apologised for a drone strike that killed an American and an Italian citizen. He explained that when he learned what had happened, he “directed that the existence of this operation be

<sup>17</sup> Ibid. at 2.

<sup>18</sup> Ibid.

<sup>19</sup> UN Human Rights Committee, “Concluding Observations on the Fourth Periodic Report of the United States of America,” at ¶ 9, U.N. Doc. CCPR/C/USA/CO/04, 23 April 2014.



A man walks past a graffiti, denouncing strikes by U.S. drones in Yemen, painted on a wall in Sanaa November 13, 2014.

© REUTERS/Khaled Abdullah

declassified and disclosed publicly.”<sup>20</sup> He did so, he said, because those “families deserve to know the truth.”<sup>21</sup> President Obama ordered a “full review” of the operation and the US government offered the families financial compensation.<sup>22</sup> While this particular step toward public accountability was undoubtedly positive, it stood in stark contrast to the government’s typical response to deaths of non-Western victims in Yemen and elsewhere. US strikes have killed hundreds of Pakistani and Yemeni civilians, but their families rarely receive

<sup>20</sup> “Statement by the President on the Deaths of Warren Weinstein and Giovanni Lo Porto,” White House, 23 April 2015, <https://obamawhitehouse.archives.gov/the-press-office/2015/04/23/statement-president-deaths-warren-weinstein-and-giovanni-lo-porto>.

<sup>21</sup> Ibid.

<sup>22</sup> Ibid.; Peter Baker, “Obama Apologizes After Drone Kills American and Italian Held by Al Qaeda,” *New York Times*, 23 April 2015, <https://www.nytimes.com/2015/04/24/world/asia/2-qaeda-hostages-were-accidentally-killed-in-us-raid-white-house-says.html>.

compensation from the US government, much less public acknowledgment of responsibility.

In short, President Obama’s acknowledgement of the deaths of Warren Weinstein and Giovanni Lo Porto served to highlight that the Obama administration’s vision of transparency and accountability for drone strikes did not apply equally to all civilians. For example, although credible reports indicate that a US drone killed twelve members of a Yemeni wedding party in 2013 and that the US government compensated the victims’ families,<sup>23</sup> the US government has never publicly acknowledged responsibility for the strike nor offered an explanation for it.

<sup>23</sup> Lucy Draper, “The Wedding that Became a Funeral: U.S. Still Silent One Year on from Deadly Yemen Drone Strike,” *Newsweek*, 12 December 2014, <http://www.newsweek.com/wedding-became-funeral-us-still-silent-one-year-deadly-yemen-drone-strike-291403>.

## Impact of the lack of transparency on the rule of law

In addition to the devastating toll that the targeting killing programme wreaks on victims, their families, and their communities, the pervasive secrecy surrounding it undermines democratic accountability and the rule of law. According to the UN Human Rights Committee, “transparency and accountability ... are ... essential for the promotion and protection of human rights.”<sup>24</sup> Yet, as the Committee points out, the US targeted killing programme is marked by “the lack of transparency regarding the criteria for drone strikes, including the legal justification for specific attacks, and the lack of accountability for the loss of life resulting from such attacks.”<sup>25</sup>

Transparency in this area would help promote the rule of law in a number of ways. First, transparency acts to prevent abuses of authority.<sup>26</sup> If officials know that each operation will face public scrutiny, they will be more likely to strictly adhere to (and document their compliance with) the laws and safeguards in place, such as those requiring a “near certainty” that non-combatants will not be injured or killed in the operation.<sup>27</sup>

Second, transparency is necessary for democratic accountability. The public, both in the United States and abroad, needs information to

<sup>24</sup> UN Human Rights Committee, “General Comment No. 34, Article 19, Freedoms of Opinion and Expression” at ¶ 3, UN Doc. CCPR/C/GC/34, 12 September 2011.

<sup>25</sup> UN Human Rights Committee, “Concluding Observations on the Fourth Periodic Report of the United States of America” at ¶ 9, U.N. Doc. CCPR/C/USA/CO/04, 23 April 2014.

<sup>26</sup> *Out of the Shadows: Recommendations to Advance Transparency in the Use of Lethal Force*, Columbia Law School Human Rights Clinic & Sana’a Center for Strategic Studies, June 2017, <https://www.outoftheshadowsreport.com..>

<sup>27</sup> *Ibid.* The 2013 Presidential Policy Guidance, which describes the policy constraints put in place by the Obama administration, is available in PDF form at [https://www.aclu.org/sites/default/files/field\\_document/presidential\\_policy\\_guidance.pdf](https://www.aclu.org/sites/default/files/field_document/presidential_policy_guidance.pdf).

judge the government’s claimed assertions of legality and wisdom in using lethal force abroad. Under international law, lethal force may only be used outside recognised armed conflict as a last resort in response to an imminent threat, when non-lethal means are unavailable. Under the US Constitution, both the Fourth and Fifth Amendments provide safeguards similar to those found in human rights law. Unless there is a truly imminent threat, the Fourth Amendment prohibits the deprivation of life and the use of excessive force in effecting seizures. In the absence of such an imminent threat, the Fifth Amendment’s Due Process Clause requires—at the very least—fair notice and an opportunity to be heard before such action is taken.

The targeted killing programme operates far from any traditional battlefields and likely violates both international and domestic law. But because the US government has not disclosed the full legal and policy standards governing it, an informed and robust public debate about the merits of the programme has been impossible, creating “an accountability vacuum.”<sup>28</sup> As it stands, the public must primarily rely on the US government’s selective disclosures, which are often self-serving and designed to shape public opinion on the government’s terms alone. When the public is only privy to partial, biased, and at times incorrect information, it is unable to serve as a check on its representatives—a critical element of representative democracy.

Finally, greater transparency may help the United States reclaim some of the legitimacy and moral authority it has lost with unsupportable claims of authority to kill in secrecy and with virtually no public accountability. For example, the US

<sup>28</sup> Navi Pillay, “Pillay Briefs Security Council on Protection of Civilians on Anniversary of Baghdad Bombing,” United Nations Human Rights Office of the High Commissioner, 19 August 2013, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13642&LangID=E>.

government's drone programme in Pakistan has for years been one of the government's worst keep secrets. Despite regular and detailed news reports of US strikes there, current and former US officials' statements about the programme,<sup>29</sup> and a district court ruling that apparently agreed that this information has indeed been officially acknowledged,<sup>30</sup> the government still goes to extraordinary lengths to maintain in court, to the public, and to the international community that this programme is secret. Such claims of secrecy—when the programme is anything but—costs the United States legitimacy with the US public and abroad. As one report remarked, “where [investigations] are conducted with a degree of transparency, [they] send a meaningful signal to foreign publics that the U.S. is committed to human dignity and human life.”<sup>31</sup> Conversely, the failure to do so sets a dangerous precedent for other countries, further undermining the rule of law.

### The unique challenges of the legal fight for transparency

Given the significant costs of the secrecy surrounding the targeted killing programme, non-profit organisations and media outlets have turned to the courts to try to gain access to this information. Litigants suing for information about the targeted killing programme under the US Freedom of Information Act (“FOIA”) have had critically important successes, but still face an uphill battle and hurdles imposed by excessive

<sup>29</sup> Anna Diakun, “The Drone Program in Pakistan Is One of the Government's Worst-Kept Secrets,” *ACLU Speak Freely Blog*, 18 July 2017, <https://www.aclu.org/blog/speak-freely/drone-program-pakistan-one-governments-worst-kept-secrets>.

<sup>30</sup> The ACLU's Second Circuit brief explaining why it appears that a federal district court held this fact to be acknowledged is available at <https://www.aclu.org/legal-document/aclu-v-doj-brief-plaintiffs-appellees>.

<sup>31</sup> *The Civilian Impact of Drones: Unexamined Costs, Unanswered Questions*, Columbia Law School Human Rights Clinic & Center for Civilians in Conflict, 2012, <http://www.law.columbia.edu/sites/default/files/microsites/human-rights-institute/files/The%20Civilian%20Impact%20of%20Drones.pdf>.

executive branch secrecy—and, often, excessive judicial deference to those secrecy claims.

Transparency litigation suffers from a fundamental challenge: the US government often argues that its records are so secret that it cannot even disclose the reasons for keeping those records secret. In responding to FOIA lawsuits, the government frequently informs the plaintiffs that relevant documents exist, but then gives a cursory explanation of why it believes it can keep that information secret. When plaintiffs are not informed of the US government's full arguments for keeping documents secret, they are hard-pressed to argue that those arguments are incorrect. This purported need for secrecy disfigures the adversarial legal process, violating principles of openness and fairness that are embedded in the FOIA and in the judicial branch as a whole.

This problem is perpetuated when even the judicial opinions deciding these cases are redacted, such that the court may rule for or against the plaintiff without the plaintiff knowing why. Plaintiffs must decide whether to appeal without knowing why the court rejected their arguments or the ultimate basis for the court's reasoning. Even when the court rules against the government and holds that a particular fact or document may not remain secret, plaintiffs may still not get the information they seek. If the US government appeals, its briefs may be riddled with redacted section headings, redacted topic sentences, redacted lists, and entirely redacted pages.<sup>32</sup> As an extreme example, in one of the American Civil Liberties Union (ACLU)'s recent targeted killing FOIA lawsuits, the ACLU prevailed on a certain issue before the district court. But because this ruling was redacted at

<sup>32</sup> See, e.g., *ACLU v. DOJ*, 844 F.3d 126 (2d Cir. 2016). The government's brief in this case is available at [https://www.aclu.org/sites/default/files/field\\_document/105.\\_govt\\_cross-appeal\\_brief\\_2016.06.06.pdf](https://www.aclu.org/sites/default/files/field_document/105._govt_cross-appeal_brief_2016.06.06.pdf).

the request of the government, the ACLU was not aware that it had prevailed on this issue. When the government appealed that ruling, it redacted from its briefs any reference to the subject of the appeal, leaving the ACLU in the dark about the ruling at issue, the reasoning for it, and the government's arguments for vacating that ruling.<sup>33</sup> This secrecy creates problems not just for the plaintiffs, but for the courts as well. When facts and legal arguments are withheld from a party, this hinders the party's ability to respond, depriving courts of the full benefits of the adversarial process.

Coupled with the deference courts often give to the US government's own assessment of when national security requires secrecy, this characteristic of transparency litigation poses a significant challenge for plaintiffs seeking disclosure and accountability.

### Targeted killing transparency litigation and Obama administration disclosures

Despite the challenges inherent in transparency litigation, much of what the public does know about the US government's targeted killing programme and its legal justifications is a result of years-long FOIA litigation by the ACLU, the *New York Times*, and other groups.

These lawsuits have had varying degrees of success, with some resulting in the release of critical documents and others being denied in their entirety.

The ACLU's FOIA lawsuits have sought legal and policy memoranda, statistics, and other information concerning the targeted killing programme, and the government has been forced to disclose a few significant documents.

<sup>33</sup> The ACLU's brief responding to the government's secrecy in the 2017 Second Circuit case *ACLU v. DOJ* is available at <https://www.aclu.org/legal-document/aclu-v-doj-brief-plaintiffs-appellees>.

Some detail the government's legal reasoning supporting its claimed authority to target US citizens abroad, and one—the “Presidential Policy Guidance” (“PPG”)—describes the executive branch's approval process for targeted killings outside areas of active hostilities.

### Overcoming the US government's refusal to acknowledge the programme in court

The ACLU submitted its first FOIA request concerning the targeted killing programme in January 2010. Specifically, the ACLU requested records pertaining to who the US government may target; how the government determined that these individuals should be placed on the “kill list”; what efforts the government made to minimise civilian injury and death before carrying out a strike; where these drone strikes occurred; and which agencies were involved in executing targeted killings.<sup>34</sup>

Even though the US government had disclosed some information—both officially and through strategic leaks—the Central Intelligence Agency (“CIA”) denied the request in full.<sup>35</sup> It asserted that it was unable to either confirm or deny even whether it had an “intelligence interest” in the targeted killing programme. This exemplified the hypocrisy of the government's stance on the issue: when it served the government's purposes, it would disclose information about the programme or coordinate unofficial leaks. All the while, it would claim in court that the programme was so secret that to even acknowledge its existence would put the national security of the United States at risk.

<sup>34</sup> The ACLU's 13 January 2009 FOIA request on predator drone strikes is available at [https://www.aclu.org/sites/default/files/field\\_document/2010-1-13-PredatorDroneFOIARequest.pdf](https://www.aclu.org/sites/default/files/field_document/2010-1-13-PredatorDroneFOIARequest.pdf).

<sup>35</sup> The CIA's memorandum in support of its motion for summary judgment on the basis of its *Glomar* response is available at [https://www.aclu.org/sites/default/files/field\\_document/15\\_cia\\_s\\_motion\\_for\\_summary\\_judgment\\_10\\_01\\_10.pdf](https://www.aclu.org/sites/default/files/field_document/15_cia_s_motion_for_summary_judgment_10_01_10.pdf).

The federal appeals court in Washington, DC, saw through the US government's attempt to have it both ways.<sup>36</sup> In a victory for transparency, the court held that given the many public statements by senior administration officials concerning the nature of the targeted killing programme, the CIA's refusal to confirm or deny even an intelligence interest was unreasonable and unwarranted. The court wrote that the CIA's arguments in favor of secrecy asked the court "to give their imprimatur to a fiction of deniability that no reasonable person would regard as plausible."<sup>37</sup> In light of this, the Court ordered the CIA to produce a list of all of its documents that addressed the information sought through the FOIA request, and to explain why it chose to withhold these documents.<sup>38</sup>

But this victory only went so far. After several more years of litigation, the appeals court ultimately held that the CIA had demonstrated that it had properly withheld its records and that government officials had not officially acknowledged any of the information within those records.<sup>39</sup>

### The legal basis for killing US citizens

While the ACLU's first case was still in its early stages, the ACLU filed a separate FOIA request seeking information concerning the legal and factual bases for the killing of three US citizens.<sup>40</sup> In September 2011, a drone strike killed US citizens Anwar al-Aulaqi and Samir

Khan in Yemen.<sup>41</sup> Just weeks later, another US drone strike killed Anwar al-Aulaqi's son, sixteen-year-old US citizen Abdulrahman.<sup>42</sup> Later that month, in October 2011, the ACLU submitted a FOIA request seeking records pertaining to the legal basis, factual basis, and actual process by which the US government targeted and killed these three Americans.

In February 2012, when the government agencies once again refused to disclose information, the ACLU sued, as did the *New York Times*. (Their cases were almost immediately consolidated.) The district court ruled against the ACLU and the *New York Times*, while nonetheless expressing frustration that the government was seemingly not required to release any additional information under FOIA.<sup>43</sup> The court pointed out that the targeted killings "seem on their face incompatible with our Constitution and laws," but lamented that it could find no basis to compel the US government to explain the killings' legality.<sup>44</sup> As the district court explained:

*This Court is constrained by law, and under the law, I can only conclude that the Government has not violated FOIA by refusing to turn over the documents sought in the FOIA requests, and so cannot be compelled by this court of law to explain in detail the reasons why its actions do not violate the Constitution and laws of the United States. The Alice-in-Wonderland nature of this pronouncement is not lost on me; but*

<sup>36</sup> ACLU v. CIA, 710 F.3d 422 (D.C. Cir. 2013).

<sup>37</sup> Ibid. at 431.

<sup>38</sup> Ibid. at 432.

<sup>39</sup> ACLU v. CIA, 640 F. App'x 9 (D.C. Cir. 2016).

<sup>40</sup> A PDF version of the ACLU's 19 October 2011 FOIA request is available at [https://www.aclu.org/files/assets/awlaki\\_foia\\_final\\_2011\\_10\\_19.pdf](https://www.aclu.org/files/assets/awlaki_foia_final_2011_10_19.pdf).

<sup>41</sup> Mark Mazzetti, Eric Schmitt, and Robert F. Worth, "Two-Year Manhunt Led to Killing of Awlaki in Yemen," *New York Times*, 30 September 2011, <http://www.nytimes.com/2011/10/01/world/middleeast/anwar-al-awlaki-is-killed-in-yemen.html>.

<sup>42</sup> Craig Whitlock, "U.S. Airstrike that Killed American Teen in Yemen Raises Legal, Ethical Questions," *Washington Post*, 22 October 2011, [https://www.washingtonpost.com/world/national-security/us-airstrike-that-killed-american-teen-in-yemen-raises-legal-ethical-questions/2011/10/20/gIQAAdvUY7L\\_story.html?utm\\_term=.634f71a2dc35](https://www.washingtonpost.com/world/national-security/us-airstrike-that-killed-american-teen-in-yemen-raises-legal-ethical-questions/2011/10/20/gIQAAdvUY7L_story.html?utm_term=.634f71a2dc35).

<sup>43</sup> *New York Times v. DOJ*, 915 F. Supp. 2d 508 (S.D.N.Y. 2013).

<sup>44</sup> Ibid. at 515-16.

*after careful and extensive consideration, I find myself stuck in a paradoxical situation in which I cannot solve a problem because of contradictory constraints and rules—a veritable Catch-22. I can find no way around the thicket of laws and precedents that effectively allow the Executive Branch of our Government to proclaim as perfectly lawful certain actions that seem on their face incompatible with our Constitution and laws, while keeping the reasons for their conclusion a secret.*<sup>45</sup>

On appeal, the Second Circuit Court of Appeals reversed the district court's decision, resulting in a major victory for transparency.<sup>46</sup> The court ordered the release of a redacted version of a 41-page July 2010 Office of Legal Counsel (OLC) memorandum (the "Barron Memorandum"), which analyzed the legality of the proposed lethal strike operation against Anwar al-Aulaqi.<sup>47</sup> This document is the most in-depth legal analysis yet released about the government's claimed authority to target US citizens abroad, but much was still missing.<sup>48</sup> Significantly, throughout the Barron Memorandum, the author—who President Obama later nominated to become a federal appellate judge—conditions important legal conclusions on "the facts represented to" the OLC by other departments of the executive branch. Because the discussion of those facts is redacted, it is impossible for the public to evaluate whether the killing of al-Aulaqi meets the legal standards described in the memo. Moreover, key terms in the memo are undefined, so it is not even clear what exactly the legal standards are and how they operate in practice.

<sup>45</sup> Ibid. at 516-17.

<sup>46</sup> *New York Times v. DOJ*, 756 F.3d 100 (2d Cir. 2014).

<sup>47</sup> Ibid. at 124.

<sup>48</sup> Brett Max Kaufman, "Five Takeaways from the Newly Released Drone Memo," *ACLU Speak Freely Blog*, 23 June 2014, <https://www.aclu.org/blog/five-takeaways-newly-released-drone-memo>.

## Presidential Policy Guidance

While these cases were pending, the Obama administration took initial steps toward transparency and accountability, likely in preparation for the possibility that a Republican candidate could win the 2012 Presidential election.<sup>49</sup> The administration began to develop the "Presidential Policy Guidance," or "PPG," a document that sets out the law and policy that the US government must follow when it carries out targeted killings.<sup>50</sup> The administration released a fact sheet describing the document in 2013, but refused to disclose the entire document even after President Obama personally pointed to it to defend the targeted killing programme.<sup>51</sup>

Later that year, the ACLU filed a FOIA request seeking, among other information, all records pertaining to the US government's process for designating individuals or groups for targeted killing.<sup>52</sup> The ACLU specifically sought the PPG, arguing that if the government was going to publicly describe and rely on this document, the PPG must be disclosed.

The government refused, so the ACLU again sued. During the course of this lawsuit, the government abandoned extremely broad claims of executive privilege and released the PPG, along with four Defense Department

<sup>49</sup> Scott Shane, "Election Spurred a Move to Codify U.S. Drone Policy," *New York Times*, 24 November 2012, <http://www.nytimes.com/2012/11/25/world/white-house-presses-for-drone-rule-book.html>.

<sup>50</sup> Brett Max Kaufman, "Court Considers Releasing Key Documents Governing Secretive Targeted Killing Program," *ACLU Speak Freely Blog*, 26 February 2016, <https://www.aclu.org/blog/speak-freely/court-considers-releasing-key-documents-governing-secretive-targeted-killing>.

<sup>51</sup> "Obama's Speech on Drone Policy," *New York Times*, 23 May 2013, <http://www.nytimes.com/2013/05/24/us/politics/transcript-of-obamas-speech-on-drone-policy.html>.

<sup>52</sup> The ACLU's 15 October 2013 FOIA request is available at <https://www.aclu.org/legal-document/aclu-v-doj-records-casualties-targeted-killing-program-foia-foia-request>.

documents.<sup>53</sup> These documents, although partially redacted, revealed further details about how the targeted killing programme operates, including information about the policy standards concerning the use of force outside areas of active hostilities. One document, the “Report on Associated Forces,” contains the government’s assessment of the groups against which the United States asserts it is at war.<sup>54</sup> The report explains the US government’s view of the legal difference between groups that are “associated forces” of al-Qaida, against which the government claims it may use lethal force under the 2001 Authorization for Use of Military Force (AUMF), and groups that are merely “affiliates” or “adherents” of al-Qaida, against which the government thinks it may not.

But significant information was missing from these documents, hidden behind redactions or omitted entirely. For example, while the PPG states that “[l]ethal action should be taken . . . only when capture of an individual is not feasible,” nowhere does the government explain how “feasibility” is assessed.<sup>55</sup> And another document, a so-called “Report on Process,” states that to be eligible for targeting, “the proposed target [must] pose a continuing, imminent threat to U.S. persons.”<sup>56</sup> The document’s discussion of the “imminence” standard merely repeats the vague considerations that had been laid out in prior public speeches, without providing any sense of what this standard means in practice.<sup>57</sup>

<sup>53</sup> “U.S. Releases Drone Strike ‘Playbook’ in Response to ACLU Lawsuit,” ACLU Press Release, 6 August 2016, <https://www.aclu.org/news/us-releases-drone-strike-playbook-response-aclu-lawsuit>.

<sup>54</sup> This document is available at <https://www.aclu.org/foia-document/report-associated-forces-0>.

<sup>55</sup> Brett Max Kaufman, “Details Abound in Drone ‘Playbook’—Except for the Ones That Really Matter Most,” *ACLU Speak Freely Blog*, 8 August 2016, <https://www.aclu.org/blog/speak-freely/details-abound-drone-playbook-except-ones-really-matter-most>.

<sup>56</sup> *Ibid.*

<sup>57</sup> *Ibid.*

Similarly, in the Report on Associated Forces, the government redacted information that apparently indicates sources of legal authority on which the government is relying in addition to the AUMF in carrying out the targeted killing programme.

Notably, much of this redacted information relates to the US government’s *legal* justifications for the targeted killing programme—meaning that while government officials freely assert publicly that the programme is lawful, the government at the same time refuses to back up those broad assertions with its actual legal analysis. This refusal to disclose the rules by which the government is purportedly playing undermines the legitimacy of the US government and its actions abroad and prevents the public from holding the government accountable when it violates those rules.

### The Obama administration attempts to entrench its policies

After the courts ordered the Obama administration to release policy and legal memoranda, it made a public showing of taking “steps” toward transparency.<sup>58</sup> These efforts sought to institutionalize the administration’s policies and practices—and asserted safeguards—before the next administration took office. These attempts were incomplete, however, and often had the effect of emphasising the administration’s secrecy even as it heralded its own transparency. Moreover, it made clear just how precarious its steps were in terms of setting a lasting transparency policy with respect to targeted killing.

<sup>58</sup> Toby Shepard, “Obama’s New Drone Policy Is a Step Forward for Transparency,” Open Society Foundations, 15 July 2016, <https://www.opensocietyfoundations.org/voices/obama-s-new-drone-policy-step-forward-transparency>.

In July 2016, President Obama signed an Executive Order on “United States Policy on Pre- and Post-Strike Measures to Address Civilian Casualties in U.S. Operations Involving the Use of Force.”<sup>59</sup> The stated purpose of this Executive Order was to “maintain and promote best practices that reduce the likelihood of civilian casualties, take appropriate steps when such casualties occur, and draw lessons from [the government’s] operations to further enhance the protection of civilians.”<sup>60</sup>

Although several of the commitments enshrined in the Executive Order are positive developments toward transparency and accountability, it is unclear what effect that they will actually have. For example, the Executive Order instructs the “relevant agencies” to “review or investigate incidents involving civilian casualties”<sup>61</sup>—a step for which civil society organisations have long advocated. But very little information has been released to the public. What’s more, the information that is released often conflicts with the independent assessments of outside groups. Investigations carried out in such a manner do little to foster accountability, provide justice for victims, or strengthen the rule of law.

Similarly, the Executive Order committed the government to releasing an unclassified summary each year of the number of US government strikes outside areas of active hostilities and “assessments of combatant and non-combatant deaths resulting from those strikes.”<sup>62</sup> As described above, however, the government’s official statistics varied

considerably from the estimates of human rights organisations and journalists. These figures were thus difficult to take seriously, and were only an empty gesture toward transparency.

Despite the flaws, the Executive Order was an advance. While much more needs to be done, the Trump administration appears headed in exactly the wrong direction. The Obama administration’s figures expressly excluded “civilian casualties” in “areas of active hostilities,” meaning that civilian deaths in Afghanistan, Iraq, and Syria were not counted, but deaths in countries like Yemen and Somalia were counted and at least minimally acknowledged.<sup>63</sup> Since taking office, President Trump has “temporarily” designated parts of Yemen and Somalia as areas of active hostilities,<sup>64</sup> meaning that the administration could plausibly exclude from the Executive Order-mandated tally any civilian deaths from bombing campaigns in those areas.

More substantively, the Obama administration likely hoped it would entrench policy safeguards such as the requirement that there be “near certainty” that non-combatants will not be injured or killed before approving a strike. But because it articulated safeguards mostly as a matter of policy rather than law, it left the door open for the Trump administration to sweep in with its own interpretations of loose policies and standards or to circumvent them altogether. This threatens to undo the victories for transparency that have been won over the past few years and make democratic accountability even more difficult to achieve.

<sup>59</sup> E.O. 13732, “United States Policy on Pre- and Post-Strike Measures to Address Civilian Casualties in U.S. Operations Involving the Use of Force,” 1 July 2016, <https://obamawhitehouse.archives.gov/the-press-office/2016/07/01/executive-order-united-states-policy-pre-and-post-strike-measures>.

<sup>60</sup> Ibid.

<sup>61</sup> Ibid.

<sup>62</sup> Ibid.

<sup>63</sup> Ibid. at 1.

<sup>64</sup> Charlie Savage and Eric Schmitt, “Trump Administration Is Said to Be Working to Loosen Counterterrorism Rules,” *New York Times*, 12 March 2017, <https://www.nytimes.com/2017/03/12/us/politics/trump-loosen-counterterrorism-rules.html>; Bonnie Kristian, “Trump’s dangerous Expansion of Executive War Powers,” *Politico*, 3 April 2017, <http://www.politico.com/agenda/story/2017/04/trumps-dangerous-expansion-of-executive-war-powers-000387>.

## Conclusion

The lack of transparency surrounding the use of drones in targeted killing programmes has undermined the rule of law and caused significant harms to civilian populations. Even though the United States has carried out hundreds of lethal drone strikes, resulting in hundreds of civilian deaths, the public still does not have enough information to meaningfully debate whether this use of lethal force is legal or wise. As the United States expands its use and reliance on drones, the risk of officials acting with impunity and overstepping their bounds of authority continues to grow. Moving forward, transparency will be as critical as ever in preventing abuses from occurring and in holding the government accountable when abuses do occur.

## Country case study:

## The United States

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Although a comprehensive US drone policy has yet to be developed, President Trump's approach to drone export and use is coming into focus. In short, the Trump administration seems intent on undoing many of the policies, procedures, and restraints put in place by the Obama administration.

Current US drone policy rests on policies established during the Obama administration, perhaps most notably a 2013 Presidential Policy Guidance (PPG)<sup>1</sup> that:

- Outlines parameters of drone use in counterterrorism operations;
- Establishes a standard of "near certainty" that no civilians will be injured or killed in counterterrorism strikes; and
- Establishes a standard that targets of drone strikes must pose a "continuing and imminent threat."

<sup>1</sup> US Department of Justice, *Procedures for Approving Direct Action Against Terrorist Targets Located Outside the United States and Areas of Active Hostilities*, 22 May 2013, [https://www.justice.gov/oip/foia-library/procedures\\_for\\_approving\\_direct\\_action\\_against\\_terrorist\\_targets/download](https://www.justice.gov/oip/foia-library/procedures_for_approving_direct_action_against_terrorist_targets/download).

From a use standpoint, the Trump administration has increased the use of armed drones, averaging one drone strike every 1.5 days versus every 5.4 days during the Obama administration, according to data compiled by the Council on Foreign Relations.<sup>2</sup> These strikes have occurred in a growing number of theaters. The Trump administration has also demonstrated a willingness to increase the number of places in which drones can be used with relatively fewer restraints. Previously, these areas only included Afghanistan, Iraq, and Syria, but may now include certain provinces in Yemen and Somalia as well.

Reports also indicate that the Trump administration has reestablished Central Intelligence Agency (CIA) authority to conduct lethal strikes, perhaps reflecting an inclination toward a more hands-on CIA role in Yemen, Libya, Somalia, and other areas where counterterrorism operations are priorities.<sup>3</sup>

In addition, the Trump administration seems to be on track to rescind or relax certain standards for drone strikes as detailed in the 2013 PPG including the necessity for targets to pose a "continuing and imminent threat" and for there to be "near certainty" that no civilians be injured or killed in a given strike. Such relaxation could put civilians at heightened risk should the threshold for conducting lethal strikes be lowered.

<sup>2</sup> Micah Zenko, "The (Not-So) Peaceful Transition of Power: Trump's Drone Strikes Outpace Obama," Council on Foreign Relations, 2 March 2017, <https://www.cfr.org/blog/not-so-peaceful-transition-power-trumps-drone-strikes-outpace-obama>.

<sup>3</sup> Gordon Lubold and Shane Harris, "Trump broadens CIA Powers, Allows Deadly Drone Strikes," *The Wall Street Journal*, 13 March 2017, <https://www.wsj.com/articles/trump-gave-cia-power-to-launch-drone-strikes-1489444374>.

Less than a year into the Trump administration, we are seeing an acceptance of greater civilian casualties – and risk to civilians – and a lower threshold for lethal strikes. As a result, the United States could see greater opposition to its drone programme by partners and allies, as well as countries targeted by American strikes.

The Trump administration does seem to be committed to the Obama-era effort of developing global norms and standards however. The October 2016 launch of the Joint Declaration for the export and subsequent use of armed or strike-enabled unmanned aerial vehicles (UAVs) established a process for the future development of these global norms.<sup>4</sup> The Trump administration decided in June 2016 that the United States would remain a co-leader of this process and engaged in its development.

The Trump administration's current actions on US drone policy, however, could undermine its leadership on multilateral efforts to develop international standards to guide drone transfer and use. Governments will question American motivations if US actions are in direct contravention of the proposed global framework that it is pushing simultaneously.

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<sup>4</sup> US Department of State, *Joint Declaration for the Export and Subsequent Use of Armed or Strike-Enabled Unmanned Aerial Vehicles (UAVs)*, October 28, 2016, <https://2009-2017.state.gov/r/pa/prs/ps/2016/10/262811.htm>

# Perspectives

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# 6. Human Rights Perspectives

Shahzad Akbar

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**“In Pakistan, things fall out of the sky all the time.”<sup>1</sup>**

The above statement was made by Pervez Musharraf, the former president of Pakistan as a response to the first use of a drone by the CIA, to target and kill Nek Muhammad. In 1993, Muhammad was recruited to fight alongside the Afghan Taliban in Afghanistan's civil war against Ahmed Shah Massoud's Northern Alliance after the Soviet exit from the country. Muhammad was known to be the “host” for al-Qaeda operatives, who found shelter in the mountainous regions of the Federally Administered Tribal Areas of Pakistan.<sup>2</sup> However, he continuously denied the existence of any “terrorists” living in the secluded rough terrain areas. In 2004, Muhammad entered, and conveniently broke a peace deal with, the Pakistani government for a ceasefire on attacks on Pakistani soil that evidently infuriated the government. Soon after, through a back-door agreement with the US's Central Intelligence Agency (CIA), Muhammad was targeted by a Predator drone and a Hellfire missile, that severed his left leg and left hand, leading to an instantaneous death.<sup>3</sup> This was the first time a drone strike was used in Pakistan.

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<sup>1</sup> Mark Mazzetti, “A True Pashtun”, *The Way of The Knife*, (New Delhi: Penguin Books, 2013), p.109.

<sup>2</sup> *Ibid*, p.108.

<sup>3</sup> *Ibid*, p. 108-110.

At the time, Muhammad's death seemed to be an exception, a mere derogation from the normal rule, a nuisance of an ally to the terrorists who had to be dealt with, but since then attacks by drones have become a daily practice. Hundreds of innocent civilians have fallen victim to this new era weapon of warfare, which has alarmingly become the preferred choice of weapon of the US and its allies in their "War on Terror".

It has been claimed that the unmanned aerial vehicle (UAV) or in more common parlance, the drone, fulfills a checklist of three P's for a successful strike: precision, precaution and planning. But in reality there is one factor that takes precedence over all others: safety. In this new era of warfare, a member of the CIA or the US military sits thousands of miles away safely in a room, watching a screen through which a drone's cameras allow that person to see "virtual" surroundings, and when he sees his intended target it just takes the push of a button to lock on to the "enemy" and kill them. Just like that, the enemy's body is shredded to pieces and a battle of "War on Terror" is won.

It sounds safe and it sounds simple—lock on to the target and push a button, just like a video game, and then go home, have dinner with your family and ask them how their day was. It almost seems surreal that it can be this easy. Some would suggest that costless is the appropriate word; costless in more ways than the standard monetary implication. But what if you target the wrong person? What if the person targeted is returning home from a shift of chromite mining and as he sits with his family to talk about his day, he is blown to pieces along with the rest of his family within the safety of his own home? There are few checks and balances within the drone warfare strategy; either you got the 'bad guy' or you just targeted civilians. The CIA has not disclosed any facts or figures and it is

presumed that the admitted and true figures on the accuracy of this strategy will never be publicly known. Succinctly put, there is no risk of harm for the one controlling the drone but all is at risk for the ones on the ground. In an alternative view, while a drone pilot may be physically safe from harm and injury, it has been claimed that despite being removed from the real battlefield, drone operators have higher chances of developing post-traumatic stress disorder.<sup>4</sup>

This perception of a costless war is further perpetuated by the fact that waging a war with drones comes at no human costs to the United States. As the *New York Times* columnist Roger Cohen stated, going to war can become difficult to distinguish from going to work.<sup>5</sup> Without men and women coming home in coffins, the American public is less likely to object to war. The costless war is not subject to the political checks and accountability that are characteristic of waging war in a democratic society. Extending this argument to its logical extreme, a costless war could potentially lead to an increased willingness to use force, essentially invalidating the premise of the democratic peace theory.<sup>6</sup>

The lack of attention paid to the legal concerns and civilian casualties surrounding the CIA's drone program underlies the indifference of the American public toward drone warfare. This is due to multiple reasons that all work in the favour of a drone-use strategy; for example, there is no debate over military expenditure and where the American troops should go or be

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<sup>4</sup> Rebecca Hawkes, "Post-traumatic stress disorder is higher in drone operators", *The Telegraph*, 30 May 2015, <http://www.telegraph.co.uk/culture/hay-festival/11639746/Post-traumatic-stress-disorder-is-higher-in-drone-operators.html>.

<sup>5</sup> Roger Cohen, "Of fruit flies and drones", *New York Times*, 12 November 2009, <http://www.nytimes.com/2009/11/13/opinion/13iht-edcohen.html>.

<sup>6</sup> Andrew Callam, "Drone Wars: Armed Unmanned Aerial Vehicles", *Drone Wars: Armed Unmanned Aerial Vehicles, International Affairs Review*, Winter 2010, 10 May 2017.

called back from; there is no devastation experienced by family members who will not have to anticipate that their loved ones are risking their lives while on duty; and predominately, no loss to American lives. This suggests that the use of drones instead of humans can create the perception of a costless war. The primary reason for this is that these strikes occur away from American eyes. Journalists typically cannot enter areas where drone strikes take place, and very few videos or photographs are available to the public, which in turn isolates Americans from the destruction these strikes can cause.

### The Federally Administered Tribal Areas—where “things fall out of the sky”

One of the key targeted regions of US drone strikes has been the Federally Administered Tribal Areas, or FATA, which make up Pakistan’s northwestern boundary with Afghanistan. FATA, a legacy of the colonial era in the subcontinent, is a significantly underdeveloped area in comparison with the rest of Pakistan.<sup>7</sup> There is no well-established infrastructure, hospitals, schools, or recreation facilities, and adherence to custom, tradition and religion is of optimum importance. As the area is disconnected from the rest of Pakistan’s more settled areas in a plethora of ways, it would be apt to assert that FATA is a vulnerable area, and its vulnerability has in turn shaped it into a victim of profound ignorance and the senseless killing of innocent civilians.

<sup>7</sup> To date FATA has been targeted in at least 425 drone strikes, see the ‘Strikes in Pakistan’ database from the Bureau of Investigative Journalism, available at [https://www.thebureauinvestigates.com/projects/drone-war/charts?show\\_casualties=1&show\\_injuries=1&show\\_strikes=1&location=pakistan&from=2004-1-1&to=now](https://www.thebureauinvestigates.com/projects/drone-war/charts?show_casualties=1&show_injuries=1&show_strikes=1&location=pakistan&from=2004-1-1&to=now).

These civilians may be people who happen to be in the garb similar to that of the “enemy”. However, there have been instances of drone strikes where there is no room for mistaken identity; the elderly, women and children have been unlawfully and cruelly targeted.

Since 2004, according to the London-based Bureau of Investigative Journalism, between 424 and 966 civilians primarily in the FATA have fallen victim to the wrath of the American “War on Terror” with complete impunity.<sup>8</sup> The whirring sound generated by a drone, and the psychological effect of the near constant presence on a wider population, has been studied. The journalist David Rohde described the effect of hearing drones above him for hours at a stretch and called them a “potent unnerving symbol of unchecked American power.”<sup>9</sup> Similarly, the joint Stanford-New York University study, *Living under Drones*, has described the waves of fear that a local population feels from the constant presence of drones and the extent to which this fear has started to interrupt normal economic, political, and social life in these countries.<sup>10</sup>

<sup>8</sup> Ibid.

<sup>9</sup> David Rohde, “The Drone War”, *Reuters Magazine*, 17 January 2012, <http://www.reuters.com/article/davos-reutersmagazine-dronewar-idAFL1E8CHCXX20120117>.

<sup>10</sup> Michael J. Boyle, “The Legal and Ethical Implications of Drone Warfare”, *The International Journal of Human Rights* 2015, Taylor & Francis, 10 May 2017, pp. 116-117, <http://www.tandfonline.com/doi/full/10.1080/13642987.2014.991210?src=recsys>.

## Humanity - an aspect absent from drone strike dialogue

As various commentators have pointed out,<sup>11</sup> it is the humanitarian side of the debate about drone attacks that is most often absent in public discourse. The dialogue in policy circles often becomes focused on strategic and policy issues of the “war on terror” —whether drones are helpful in fighting terrorists, or whether they can be manufactured more cheaply and used more efficiently. The concerns being made by international human rights organizations gets lost in a befuddling interpretation of the language of international law. For example, whether the CIA, the Taliban, or a more recent target, the Tehrik e Taliban Pakistan (TTP), are lawful combatants; or whether the killings were proportionate. Including the aforementioned, there are many questions and no plausible answers in the drone strike dialogue. Furthermore, there is blatant ignorance in both policy and legal circles with regard to the human rights implications of drone strikes. Seldom is the issue perceived from the victim’s perspective. It is as if, in a world governed by strategic imperatives and international law, the human stories simply do not matter.

With regard to whether the strikes are proportionate or not, it should be considered that the psychological effect that the deployment of drones has on the affected populations could result in a violation of the fundamental criterion of proportionality. In his article, Michael J. Boyle explains that the US administration has employed a narrow calculation of proportionality, focusing exclusively on the body count associated with drones. Hence, even if the

number of civilian casualties reported by the CIA were considered as accurate, exclusively taking into account only the body count paints a misleading picture of the real effects of drones. As Daniel Brunstetter and Arturo Jimenez Bacardi point out, the principle of proportionality is difficult to measure when the psychological consequences of drones are added into the equation. The majority of the discourse has revolved around a narrow calculation of proportionality, which measures only civilian deaths in comparison the military gains associated with a strike, and engages in a form of “proportionality relativism”.<sup>12</sup>

## Women, children, and the elderly: justifiable “collateral damage”?

By focusing on a small number of victims, one can deduce how egregious the covert drone strike strategy is. For example, Sadaullah, 15, was a student in the village of Machi Khel, Mir Ali, North Waziristan, Pakistan. On 7 September 2009, two drones were observed hovering over the village throughout the day. This prompted fear and anger amongst the villagers, who viewed the drones’ presence as a threat and an interference with their religious observations of the holy month of Ramadan.

In the evening, Sadaullah and his family, including grandfathers, uncles, and cousins, gathered at his grandfather’s house to celebrate the breaking of their fast. Upon the ritual breaking of the fast, the family stepped outside into the courtyard to offer *Maghrib*, the evening prayer. Sadaullah joined the prayer late, as he had been serving the guests. As his family members finished their prayers, they returned into the main room of the house. Sadaullah and his elder cousin Ajman Ullah were the last to finish their prayers. As they were about to re-

<sup>11</sup> See Madiha Tahir, “The Business of Haunting,” *Wounds of Waziristan*, 2 September 2013, <http://woundsofwaziristan.com/business-of-haunting/>; and T. Gregory, “Drones, Targeted Killings, and the Limitations of International Law”, *International Political Sociology* 9, 2015, pp. 197-212.

<sup>12</sup> Boyle.

The anti-drone attacks in Pakistan protest against the US government that took place in Hong Kong on 2012.7.8.



© Yu Pong, 2012

enter the house from the courtyard, the two drones fired their missiles at the building. Sadaullah was hit by the debris that fell from the roof and was knocked unconscious.

He woke up in a hospital in Peshawar. Both his legs had been amputated, and he had lost the use of one eye due to flying shrapnel. A number of his family members had been killed in the blasts: Mautullah Jan, his uncle, who had been in a wheelchair for a decade and his cousins; Kadaan ullah Jan and Sabir-ud-Din.<sup>13</sup>

Sadaullah died in 2013 due to an infection that developed from the wounds on his amputated legs caused by the wooden legs he was forced to use because he could not afford prosthetics.

<sup>13</sup> Stanford University, *Living under Drones* 91, [https://law.stanford.edu/wp-content/uploads/sites/default/files/publication/313671/doc/slspublic/Stanford\\_NYU\\_LIVING\\_UNDER\\_DRONES.pdf](https://law.stanford.edu/wp-content/uploads/sites/default/files/publication/313671/doc/slspublic/Stanford_NYU_LIVING_UNDER_DRONES.pdf). The author conducted additional interviews with the victims, which have also been utilised as a resource.

Justice and redress are important for the victims of drone strikes. Justice may begin with an acknowledgment of the strikes' existence, but for redress, immediate steps for compensation of such victims ought to be taken.

To cite another example, Kareem Khan, who now resides in Islamabad was a permanent resident of the Federally Administered Tribal Areas. His family lives in the village of Machi khel, Mir Ali, North Waziristan, Pakistan, in his ancestral house. On 31 December 2009, at approximately 21:00, his home was attacked with missiles fired from a Predator drone. Three people inside the house were killed, and severely damaged Khan's house.<sup>14</sup> The three killed were Asif Iqbal, Kareem's brother and a secondary school teacher at a local public school; Zahin Ullah Khan, Kareem's son, a government employee

<sup>14</sup> Case study: Kareem Khan, Reprieve, <http://www.reprieve.org.uk/case-study/kareem-khan/>.

working at the Government Girls Public School Mira Khan Kot; and Khaliq Dad, a mason who was working on construction of the village mosque, and was staying with Khan's family in the house. None of the victims were involved in any terrorist activity or with any terrorist organizations.

On 24 October 2012, Momina Bibi, aged 67, was working in a field in the village of Tappi, North Waziristan, collecting vegetables when she was struck by a drone missile which killed her and also the family's livestock. A second drone strike soon followed the first and left her body in pieces. Momina Bibi is described by her son, Rafiq ur Rehman and her grandchildren as the life and light of their household and the organizer of the festive events in the family. She was killed in front of her grandchildren; Safdar ur Rehman, aged 3, Asma Bibi, aged 5, Naima Bibi, aged 7, Nabila Bibi, aged 8, Samad ur Rehman, aged 12, Zubair ur Rehman, aged 13 and Kaleem ur Rehman, aged 17, who were playing in the field near her.<sup>15</sup>

On 17 March 2011, residents of Datta Khel, North Waziristan, Pakistan participated in a *jirga*, which is the Pashtun word for "grand council". The purpose of such mass meetings is to provide a forum for the tribal elders to resolve dispute and arrive at collective decisions. The *jirga* in this instance was for the resolution of a chromite mine dispute. As the meeting was underway a drone fired a missile at the group, killing approximately fifty people. Among those killed was Malik Hajji Babat. Previously, Malik Hajji Babat had served as a police officer and was the primary earner in the family. After his demise, his family continues to face difficulties in day to day living and expenses. These victims and their stories are only a handful of the havoc and

devastation that has befallen upon the residents of FATA.

For many years, there had been no acknowledgement of these civilian deaths by the United States but finally in July 2016 the Obama administration reluctantly released a vague estimate of civilian deaths from 2009 to 2015. The estimate was between 64 and 116 persons, however, these figures encompassed a holistic view of civilian victims of drone strikes in multiple countries and not Pakistan specifically. Moreover, these figures are in stark contrast to the findings of organizations such as the Bureau of Investigative Journalism that collect data regarding drone strike victims.<sup>16</sup>

## Drones accuracy claims and statistics – a paradox

According to estimates by independent sources and at the time of writing, there have been at least 425 drone attacks within the sovereign territory of Pakistan, 370 of which were authorized by US President Obama.<sup>17</sup> These drone strikes, over the two presidencies of George Bush and Barack Obama, killed, extra-judicially and illegally, between 2,501 and 4,003 people.<sup>18</sup> Of these, between 424 and 966 were confirmed to be civilians.<sup>19</sup> FFR believes the real number is far higher than these figures but the difficulty in accessing the areas where the drone strikes are being carried out to conduct independent investigations and the covert nature of the drone program makes it impossible to

<sup>16</sup> Karen Deyoung and Greg Miller, "White House releases its count of civilian deaths in counterterrorism operations under Obama", *The Washington Post*, 1 July 2016, [https://www.washingtonpost.com/world/national-security/white-house-releases-its-count-of-civilian-deaths-in-counterterrorism-operations-under-obama/2016/07/01/3196aa1e-3fa2-11e6-80bc-d06711fd2125\\_story.html](https://www.washingtonpost.com/world/national-security/white-house-releases-its-count-of-civilian-deaths-in-counterterrorism-operations-under-obama/2016/07/01/3196aa1e-3fa2-11e6-80bc-d06711fd2125_story.html).

<sup>17</sup> The Bureau of Investigative Journalism, *CIA and US military drone strikes in Pakistan*, 2004 to present, see above, note 2.

<sup>18</sup> Ibid.

<sup>19</sup> Ibid.

<sup>15</sup> Case study: Momina Bibi, Reprieve, [http://rightsadvocacy.org/client\\_stories.html#](http://rightsadvocacy.org/client_stories.html#).

know the true number of civilian casualties. At least 172 of those killed were children. Over a thousand more have been injured and have lost their property or livelihoods.<sup>20</sup> It has been claimed that for every militant killed, at least 10 to 15 civilians are killed.<sup>21</sup> A comprehensive investigation by the Bureau for Investigative Journalism found that only 12 per cent of those killed in Pakistan by drones over the past ten years were militants. As stated above, al-Qaeda members—the original intended targets of the drone program—constituted only four per cent of those killed.<sup>22</sup>

It seems that civilians are not just “collateral damage” but in fact account for the overwhelming proportion of drone strikes victims.<sup>23</sup> According to a report conducted by a London-based human rights charity, Reprieve, in killing one targeted militant at least 128 people were killed.<sup>24</sup> However, what really belittles the concept of human rights is not just the lack of investigative journalism conducted into the thousands of civilian casualties but the empty claims of minimal civilian casualties coming from the White House and the CIA. In a contrasting view, the New America Foundation proposes civilian casualties to be much less than those

<sup>20</sup> Ibid.

<sup>21</sup> D. Byman, “Do targeted killings work?” *Brookings Institute*, 14 July 2009, <http://www.brookings.edu/research/opinions/2009/07/14-targeted-killings-byman>; and “US Drone strikes in Pakistan claiming many civilian victims, says campaigner”, *The Guardian*, 17 July 2011, <http://www.theguardian.com/world/2011/jul/17/us-drone-strikes-pakistan-waziristan>.

<sup>22</sup> The Bureau of Investigative Journalism, “Covert War on Terror”, at <http://www.thebureauinvestigates.com/category/projects/drones/drones-graphs/>.

<sup>23</sup> Spencer Ackerman, “41 men targeted but 1,147 people killed: US drone strikes – the facts on the ground”, *The Guardian*, 24 November 2014, <https://www.theguardian.com/us-news/2014/nov/24/-sp-us-drone-strikes-kill-1147>.

<sup>24</sup> *You Never Die Twice: Multiple Killings in the US drone program*, Reprieve, 14 November 2014, [http://www.reprieve.org/wp-content/uploads/2014\\_11\\_24\\_PUB-You-Never-Die-Twice-Multiple-Kills-in-the-US-Drone-Program-1.pdf](http://www.reprieve.org/wp-content/uploads/2014_11_24_PUB-You-Never-Die-Twice-Multiple-Kills-in-the-US-Drone-Program-1.pdf). Note that here we refer to specific research concerning targeted killing, that follows a different methodology than other research on militant-civilian killing ratios referred to later in this chapter.

claimed by the Bureau of Investigative Journalism. Currently, the New America Foundation’s statistics state that the total casualties of which pertain to civilians stand between 245 and 303 persons. However, it is imperative to note that those deaths of those attributed to an “unknown” status in the area amount up to 211 to 328 additional deaths.<sup>25</sup>

Moreover, a 2013 report submitted to the UN General Assembly by Ben Emmerson, the Special Rapporteur on Counter Terrorism and Human Rights, with the help of the Pakistani government, found the statistics of civilian casualties to be similar to those provided by the Bureau of Investigative Journalism:

*[...] Government records showed that there had been at least 2,200 deaths caused by such strikes and that, in addition, at least 600 people had suffered serious injuries. Officials pointed out that efforts to identify the exact number of deceased (and therefore to establish the exact number of civilian deaths) were hampered by security concerns and by topographical and institutional obstacles to effective and prompt investigation on the ground by officials working on behalf of the Federally Administered Tribal Areas secretariat, as well as by the cultural tradition of Pashtun tribes in the Federally Administered Tribal Areas of burying their dead as soon as possible. Nonetheless, the Special Rapporteur was informed that the Government was able to confirm that at least 400 civilians had been killed as a result of remotely piloted aircraft strikes and a further 200 individuals were regarded as probable non-combatants.*

<sup>25</sup> Statistics provided by the New America Foundation website, available at: <https://www.newamerica.org/in-depth/americas-counterterrorism-wars/pakistan/>.

Officials indicated that, owing to underreporting and obstacles to effective investigation, those figures were likely to be an underestimate.<sup>26</sup>

## Campaigns against unlawful targeted killings by the most underprivileged

On 9 and 10 December 2010, Sada ullah, aged 15, Faheem Qureshi, aged 14, and Saddam Hussein, aged 13, traveled hundreds of miles from their native villages in North Waziristan Agency, FATA, to protest outside the Parliament in Islamabad against the atrocities committed by the CIA's drone program.<sup>27</sup> This was their first trip to the capital and they were accompanied by at least a dozen victims who had lost loved ones to drone strikes. This was a long way from home. Yet these brave *Waziris* decided to register their protest and seek justice from their government and from the most powerful nation, the United States. This was the first occasion in Pakistan since the beginning of drone strikes in 2004 that civilian victims had publicly protested against these unlawful extrajudicial killings and demanded justice and redress.

The civilian victims' campaign against unlawful drone strikes in Pakistan struggled to gain attention in Pakistan and internationally. The protestors sought to highlight a daunting aspect of drone strikes: that the drone strikes are not conducted with the precision or accuracy that the US and its CIA claimed to be a hallmark of the technology.

<sup>26</sup> Ben Emmerson, Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, 10 March 2014, UN Doc. A/HRC/25/59.

<sup>27</sup> "Drone victims stage sit-in outside Parliament", Pakistan Today, 11 December 2010, <https://www.pakistantoday.com.pk/2010/12/11/drone-victims-stage-sit-in-outside-parliament/>

For this, Momina Bibi's grandchildren, Nabila Rahman and Zubair ur Rahman travelled to the United States and spoke with congressmen. Another victim, Kareem Khan, visited German, Dutch and British parliaments and met with members of the European Parliament to brief them about the damage inflicted by drone strikes in Pakistan. All these efforts finally yielded fruit; they managed to have an impact on specific segments of the international community.

The first response to these efforts came from two American universities: Stanford University and New York University. They issued a detailed report on the impact of drone strikes in Pakistan titled, *Living under Drones*.<sup>28</sup> Following this report, other international human rights groups also raised their voices. The efforts of victims were also vindicated in a judgment of the Peshawar High Court,<sup>29</sup> which unequivocally declared these strikes unlawful and a war crime. The UN Special Rapporteur on Counter Terrorism and Human Rights, too, recognized the high proportion of civilian harm and the lack of redress for victims.<sup>30</sup> In 2014, the UN Human Rights Council convened a special session on drone strikes in Pakistan that recognized the alarming proportion of civilian harm and called on member states to address the issue of civilian victims.

<sup>28</sup> International Human Rights and Conflict Resolution Clinic (Stanford Law School) and Global Justice Clinic (NYU School of Law), *Living Under Drones: Death, Injury, Trauma to Civilians from US Drone Practices in Pakistan* (September 2012).

<sup>29</sup> Peshawar High Court, Judgement Sheet, Writ Petition No. 1551-P/2012, 11 April 2013, [https://www.peshawarhighcourt.gov.pk/image\\_bank/Mr\\_Justice\\_Dost\\_Muhammad\\_Khan/wp1551-12.pdf](https://www.peshawarhighcourt.gov.pk/image_bank/Mr_Justice_Dost_Muhammad_Khan/wp1551-12.pdf).

<sup>30</sup> Report of the special rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, 18 September 2013.

## Selective compensation: Pakistani victims do not qualify

Despite the international community's recognition of the plight of civilian victims of these atrocities, the perpetrator of these drone strikes, the US, offers only a deafening silence. It took a very long time for the US to admit that it had been conducting the drone program and to date it has not recognized any deaths of Pakistani civilians.

In stark comparison to his response on the deaths of Pakistan civilians, President Obama apologized for the deaths by drone of two western hostages in 2015 and not only recognized his mistake but also offered both families his full support and compensation. He also promised a full investigation to determine the cause of such a mistake.<sup>31</sup>

It is this selective approach which sends the wrong message to Faheem, Saddam and Saadullah, Nabila Bibi, Zubair ur Rehman and other Pakistani victims of drone strikes. Does one need to be from the west to be publicly acknowledged as a human being worthy of an apology, or for one's family to receive compensation for the unlawful death of their innocent loved ones?

## Legal challenges on home ground

On 11 May 2013, in its judgment titled, "Foundation for Fundamental Rights vs. Federation of Pakistan & Four others",<sup>32</sup> the Peshawar High Court (PHC) found that up to

<sup>31</sup> Stephanie Kirchgaessner, "US to pay €1m to family of Italian aid worker killed in drone strike", *The Guardian*, 13 July 2017, <https://www.theguardian.com/us-news/2016/sep/16/us-to-pay-1m-euros-family-italian-giovanni-lo-porto-drone-strike>.

<sup>32</sup> Alice Ross, "Pakistani court rules US drone strikes are illegal", *The Bureau of Investigative Journalism*, 9 May 2013, <https://www.thebureauinvestigates.com/stories/2013-05-09/pakistani-court-rules-cia-drone-strikes-are-illegal>.

1,449 Pakistani civilians were killed between 2008 and 2012 while a "negligible" number of al-Qaeda operatives have been killed by the drone strikes. This finding was based on physical verification by the civil administration authorities of North and South Waziristan Agencies on orders of the Court.

The PHC gave clear directions to the Government of Pakistan to protect the citizens of Pakistan from any future drone strikes by petitioning for their rights at international forums or even shooting down the drones. This case was filed on behalf of the civilian victims of the March 2012 *jirga* strike that killed over forty tribal elders and tribesmen who had gathered in a public place to resolve a mining dispute between two tribes, as described earlier in this article.

The decision itself is a declaratory order, asking the Pakistani government to primarily protect the right to life of its citizens against any foreign power. Following the decision, the Pakistani government kept dragging its feet until the petitioner went to the court again. This time it was to indict the Prime Minister for contempt of court for not implementing a clear direction of the High Court. These actions taken by the victims, coupled with advocacy and public campaigning by political parties and civil society in 2014, finally brought down the frequency of drone strikes on Pakistani soil. However, the issue of accountability and redress remains unresolved.

In 2014 the Islamabad High Court, on petition of civilian drone victim Kareem Khan, ordered Islamabad police to initiate criminal proceedings against the CIA station chief in Islamabad and against other CIA officials involved in drone strikes. This decree from the High Court vindicated the argument of victims of drone

strikes in Pakistan that drone strikes in Pakistan are illegal and those involved in such killings could be held accountable for homicide.

Despite these efforts, the drones physically remain in the skies over FATA, and their presence is felt by locals always. In recent years, the CIA unofficially claimed to have abandoned the most troubling types of strikes, such as signature strikes and double tap strikes but recent events show this assertion to be false. The killing of two western civilian hostages<sup>33</sup> in early 2015 is one example of continuity of the same old practice of signature strikes where targets are selected on basis of their “pattern of life”.

### Ambiguities surrounding secrecy of the “only game in town”<sup>34</sup>

As previously stated, one prominent issue that remains with drone strikes inside Pakistan pertains to secrecy. We never hear the names or identities of those targeted, or the extent of someone’s purported involvement in militant/terrorist activity; instead we hear merely numbers and figures of the “bad guys” that have been killed. It seems that the citizens of Pakistan are expected to idly sit, wait, and watch as the push of a button continues to authorize another extrajudicial killing in FATA, which not only violates the very extent of its legal system but completely disregards due process and undermines the sovereignty of Pakistan as a nation.

<sup>33</sup> See “US hostage deaths: Western captives held by al-Qaeda were killed in US counter-terrorism operation, says White House”, *Independent*, 23 April 2015, <http://www.independent.co.uk/news/world/americas/warren-weinstein-and-giovanni-lo-porto-western-hostages-held-by-al-qaeda-were-killed-in-us-counter-10198909.html>.

<sup>34</sup> Statement by former CIA Director Leon Panetta to the Pacific Council on International Policy in Los Angeles; and Gardner, Lloyd, *Killing Machine: The American Presidency in the Age of Drone Warfare*, p. 133.

The US did not officially recognize its drone program until 2012. Before then it was referred to as the “alleged drone program”. To date the US has not publicly declared who has been killed apart from those rare occasions when a prominent militant the victim. According to one report<sup>35</sup> and judicial findings in PHC<sup>36</sup> a rough ratio is that for every militant killed, 30 civilians are killed.

One significant reason for secrecy around drone strikes is apparent from the outset: the lack of intelligence and the fact that the United States itself does not have any idea who they are killing. Jonathan Landay, a well-known American journalist writing for *McClatchy* reviewed the CIA’s leaked data on drone strikes carried out between 2010 and 2011.<sup>37</sup> His most important finding was that more than half of the people killed were not al-Qaeda but assessed to be associates, probably Afghans, by the CIA. Only six top al-Qaeda leaders were killed, among the more than eight hundred drone casualties that year. Furthermore, the CIA has no on-the-ground human intelligence in Waziristan.

The little information the CIA gathers is through local spies who are reporting in return for large sums of money and are thus hardly reliable or credible informants. There are hardly any (technical) intercepts in Waziristan as there is no mobile phone service or access to the internet. Landlines are operated by the Pakistan military, which listens to each and every conversation of the locals but the “bad guys” are well informed of this practice of phone surveillance. Another

<sup>35</sup> Spencer Ackerman, “41 men targeted but 1,147 people killed: US drone strikes – the facts on the ground”, *The Guardian*, 24 November 2014, <https://www.theguardian.com/us-news/2014/nov/24/-sp-us-drone-strikes-kill-1147>

<sup>36</sup> Ross.

<sup>37</sup> “Obama’s drone war kills ‘others,’ not just al Qaida leaders”, *McClatchy*, 9 April 2013, available at <http://www.mcclatchydc.com/2013/04/09/188062/obamas-drone-war-kills-others.html#Ue4Vm43I1RY>.

question that remains unanswered is, who are the local assets on ground? Tribal animosity or fear of pointing out the real targets might impose more of a threat than pointing out some irrelevant civilian or low-level militants who do not meet the necessary threshold. It is believed that there might have been some cooperation between Pakistani intelligence (ISI) and the CIA in the past. Does it still continue, or has it ceased to exist since 2009?

To further highlight the vulnerability of intelligence in remote territories such as FATA, in April 2011 in Afghanistan—where the US/NATO are on the ground and can have access to better intelligence than in Waziristan—two American soldiers were killed by a drone after being mistaken for Taliban fighters by US troops.<sup>38</sup> Another such occurrence took place in September 2010, when the intended assassination of Muhammad Amin, the then-Taliban deputy governor of Takhar province, went awry and instead killed someone named Zabet Amanullah, who was out campaigning in parliamentary elections. Nine of his fellow election workers were also killed in the strike.<sup>39</sup>

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<sup>38</sup> “Two US soldiers killed in friendly-fire drone attack in Afghanistan,” *The Guardian*, 11 April 2011, <https://www.theguardian.com/world/2011/apr/11/us-soldiers-killed-in-drone-attack>. While this occurred in Helmand Province, Afghanistan, it underscores the dubious nature of the intelligence relied upon by the US to carry out these strikes.

<sup>39</sup> “How lawyers sign off on drone attacks”, *The Guardian*, 15 June 2011, available at <https://www.theguardian.com/commentisfree/cifamerica/2011/jun/15/drone-attacks-obama-administration>; ‘The Takhar attack: Targeted killings and the parallel worlds of US intelligence and Afghanistan,’ Afghanistan Analysts Network, May 2011, available at [http://aan-afghanistan.com/uploads/20110511KClark\\_Takhar-attack\\_final.pdf](http://aan-afghanistan.com/uploads/20110511KClark_Takhar-attack_final.pdf).

## Conclusion

The US has adopted an approach to combat the enemy without ever setting foot on enemy territory. This has kept US troops safe and minimized US military budgets but FATA's residents have had to change their lifestyle in order to protect themselves from falling victim to drone strikes. Dispute settlements through local *jirgas* have been minimized; children refuse to play outdoors; chromite workers travel to the mountains to extract chromite and earn their living in fear; and the constant whirring sound of the drones has caused unrest and fear amongst all factions of FATA's society. There is a ubiquitous pipe dream for every day to be a cloudy day because drones do not fly on such days.<sup>40</sup>

Recently, there have been increasing murmurs in the parliament of merging FATA with the province of Khyber Pakhtunkhwa. Politicians and lawmakers alike believe that merging FATA with the province will end FATA's isolation from the rest of Pakistan, and so far, a five-year plan has been introduced. A question that remains unanswered is: what will this mean for the people of FATA? There is wide media coverage of the development aid package that is going to be used for the region, which will in turn enable better infrastructure, road networks, opening of banks, and new schools. There is no debate on whether Pakistan's sovereignty as a country will be taken more seriously when FATA is no longer an underdeveloped and deserted part of the country.

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<sup>40</sup> Karen McVeigh, “Drone strikes: tears in Congress as Pakistani family tells of mother's death”, *The Guardian*, 29 October 2013, <https://www.theguardian.com/world/2013/oct/29/pakistan-family-drone-victim-testimony-congress>.

It is also pertinent to note that, with such alarming statistics of civilian casualties and the more time it takes for US officials to acknowledge their errors, resentment will grow within the victims, their families and the society of FATA. It should not be forgotten that the *pukhtoons* value their self-dignity and integrity very highly and they have suffered in silence for many years. Just as FATA's geographic location is delicate in nature, so is the status of its people. It is imperative that the US re-evaluates the merits of drone warfare as part of its counter-terrorism strategy. Retired US Army general, Stanley McChrystal aptly recognized the risk factor attributed to the misuse of drones when he stated:

“To the United States, a drone strike seems to have very little risk and very little pain. At the receiving end, it feels like war. Americans have got to understand that. If we were to use our technological capabilities carelessly—I don't think we do, but there's always the danger that you will—then we should not be upset when someone responds with their equivalent, which is a suicide bomb in Central Park, because that's what they can respond with.”<sup>41</sup>

Experts have backed the claim that the “collateral damage” of these attacks creates more militants than they eliminate. According to Andrew Exum and David Kilcullen of the Center for New American Security, the drone campaign has created a siege mentality among Pakistani civilians. They further add, “While violent extremists may be unpopular, for a frightened population they seem less ominous than a faceless enemy that wages war from afar and often kills more civilians than militants.” The drone program has been counter-productive in the region and if the loss of innocent civilian victims is not acknowledged by the US government, the costless war may solidify popular support of Islamic militants and may prevent success in the FATA region.

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<sup>41</sup> Chris Woods, *Sudden Justice: America's Secret Drone Wars*, p. 285.

## Country case study: Yemen

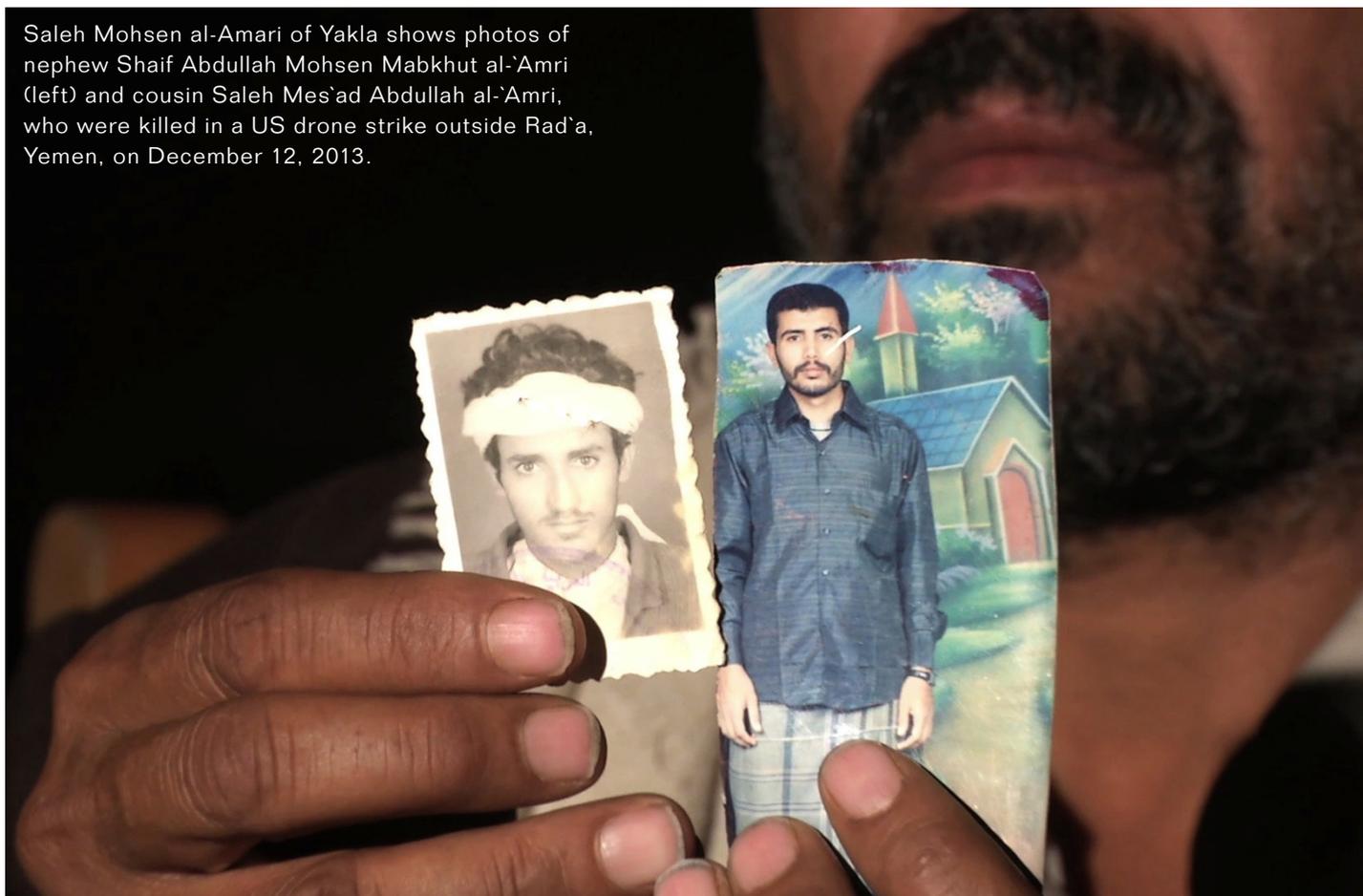
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Missile strikes from remotely piloted “unmanned” aircraft, or “drones,” have become a defining symbol of the United States for most Yemenis. If the United States has built a school in Yemen, most Yemenis don't know about it; if the United States has built a hospital in Yemen, most Yemenis don't know this either; but what almost every Yemeni has heard about are the children, families, and homes of their countryfolk blown apart in drone strikes. With Yemen having been central to the US “War on Terror” and an early testing site for military drones since 2002, the first thought that a generation of Yemenis now have when they think of the United States is that of fiery death raining down from the sky.

To this day, drones are a frequent visitor in the skies over Yemen, officially on the hunt for members of al-Qaeda in the Arabian Peninsula (AQAP) and its affiliate, Ansar al-Sharia. However, everyone on the ground knows that anyone can be a target of these weapons, which have shown the ability to strike with incredible precision and destruction, but which also often leave those who pick through the rubble demanding to know why their loved ones were obliterated.

The nature of the US drone programme, coupled with issues of secrecy and a cooperative response from the Yemeni government, have created the situation described above. A deeply problematic feature of the US drone programme overall are its “signature strikes,” whereby the decision to undertake a strike is based on a potential target's patterns of behavior. These are observed from cameras in the sky, rather than hard intelligence gathered on the

Saleh Mohsen al-Amari of Yakla shows photos of nephew Shaif Abdullah Mohsen Mabkhut al-'Amri (left) and cousin Saleh Mes'ad Abdullah al-'Amri, who were killed in a US drone strike outside Rad'a, Yemen, on December 12, 2013.



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ground.<sup>1</sup> Local and international human rights groups have documented many cases of people with no relation to extremist groups being targeted, or killed because they were within too close a proximity to a targeted person.<sup>2</sup> These innocent casualties have come to signify, for many Yemenis, US ruthlessness and has resulted in general fear and public anger, which facilitates the propaganda used as a recruiting tool for AQAP in many affected communities.

<sup>1</sup> Jo Becker and Scott Shane, "Secret 'Kill List' Proves a Test of Obama's Principles and Will", *New York Times*, 29 May 2012, <http://www.nytimes.com/2012/05/29/world/obamas-leadership-in-war-on-al-qaeda.html>.

<sup>2</sup> *Out of the Shadows: Recommendations to Advance Transparency in the Use of Lethal Force*, Columbia Law School Human Rights Clinic and Sana'a Center for Strategic Studies, June 2017, <https://www.outoftheshadowsreport.com>.

While the drones have killed thousands of AQAP leaders and members, the drones have also actually created far more extremists seeking revenge. Drones might best be described as a self-defeating tool that creates the problem it is meant to counter. Today AQAP has become "arguably more powerful, resource-rich, entrenched, and operating with more institutional flexibility and adaptive capacity than ever before," according a recent Sana'a Center report.<sup>3</sup> The report further says that, "The use of military force alone will almost certainly fail to defeat AQAP." This is because both the drone programme and similarly blunt and violent counter-terrorism tactics not only overlook the complex and

<sup>3</sup> Farea Al-Muslimi and Adam Baron, "The Limits of US Military Power in Yemen: Why al-Qaeda in the Arabian peninsula continues to thrive", 27 March 2017, <http://sanaacenter.org/publications/analysis/86>.

interconnected historical context and the socio-political, tribal, security and economic dynamics in Yemen through which AQAP has risen—they fired missiles into this social fabric, oblivious to the long-term fallout.

Another contentious aspect of the US drone programme is the high level of its secrecy, which leaves the ordinary US citizen and taxpayer unaware of the specifics and effectiveness of the drone program. (See Chapter 5 on Harm to Governmental Transparency for more details.) US mainstream media has little information on drones sourced from places other than the US military itself. Among the reasons for the deliberately scant amount of available information may be the drone programme's questionable legality under international law, in particular the employment of extra-judicial lethal measures outside of active and declared war zones—such as Yemen was prior to the September 2014 civil war.

It is noteworthy that the US had not acknowledged civilian deaths due to drone strikes until shortly before former US President Obama left office. In July 2016, President Obama issued Executive Order 13732 regarding “United States Policy on Pre- and Post-Strike Measures to Address Civilian Casualties in U.S. Operations Involving the Use of Force,” acknowledging that there have indeed been civilian casualties in strikes, and citing future steps to minimise casualties and acknowledge harm.

In January 2017, the US government released its casualty figures for 2016. Between January 2009 and December 2016, the US government said its airstrikes, including drones, killed between 2,867 and 3,138 people in places far from traditional battlefields, specifically Pakistan, Somalia, and Yemen. It claims that between 65 and 117 were “non-combatants.”<sup>4</sup> The US government's figures and estimates are significantly lower, however, than those gathered by independent organizations, including those that use on-the-ground, fact-finding missions to calculate casualty figures.<sup>5</sup>

Nonetheless, these efforts were steps toward transparency, though they came very late and were very limited in definition and application. The current US administration, under President Trump, has more recently, however, made signs that it is against both increased transparency and heavily in favour of increasing drone strikes in Yemen. The frequency of strikes has increased during President Trump's first few months in office, far outpacing his predecessor.

<sup>4</sup> “Summary of Information Regarding US Counter terrorism strikes outside areas of active hostilities”, Office of the Director of National Intelligence, 2016, <https://www.dni.gov/files/documents/Newsroom/Press%20Releases/DNI+Release+on+CT+Strikes+Outside+Areas+of+Active+Hostilities.PDF>.

<sup>5</sup> Columbia Law School Human Rights Clinic and Sana'a Center for Strategic Studies.

However, there is also culpability on the side of the Yemeni government. Both its former and current presidents had reportedly sanctioned American use of drones in their country, with the US government stating so officially in December 2016.<sup>6</sup> In return the US had helped arm and train special military counterterrorism units, headed by the former Yemeni president's son, Ahmad Ali Saleh, and helped develop a strong security and intelligence apparatus. This then happened to be the same security apparatus the Yemeni regime used to crackdown on political opponents, activists, and civil society workers that questioned the conduct of the Yemeni state or policies of foreign governments in Yemen.

After the 2011 uprising that ousted President Ali Abdullah Saleh, transitional President Abd Rabbuh Mansour Hadi continued to allow US drones in Yemen's airspace. This seemed a clear attempt on Hadi's part to increase his political and security-related importance in the "War on Terror" in the eyes of his US ally, and to alleviate foreign pressure to address the rampant corruption and ineptitude of his administration—factors that ultimately undermined his legitimacy with a large swath of the Yemeni public and helped precipitate the current civil war.

Thus, in the 15 years in which the US has deployed military drones in Yemen, there have been hundreds of civilian deaths, untold suffering endured by the injured and loved ones of the victims. This has deeply marred the image of the United States in the eyes of Yemenis and enables recruitment for AQAP. At the same time US policy surrounding drones has helped a repressive regime repress its people, and then a corrupt regime remained corrupt. And despite the thousands of members of AQAP the drones have killed, the group today has never been so flush with arms and loyalists.

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<sup>6</sup> Marty Lederman, "President Obama's Report on the Legal and Policy Frameworks Guiding and Limiting the Use of Military Force [UPDATED]," *Just Security*, 5 December 2016, <https://www.justsecurity.org/35239/president-obamas-report-legal-policy-frameworks-guiding-united-states-military-force-related-national-security-operations>.

# 7. International Law Perspectives

Adriana Edmeades

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## Introduction

The prevalence of the use of armed drones in contemporary warfare has been accompanied by a considerable body of concerned political and legal commentary.<sup>1</sup> The ability to conduct a worldwide campaign of strikes, with minimal immediate risk to serving personnel, has fundamentally disrupted the calculus of risk and strategic reward associated with military intervention. Their deployment from command centres housed far from the relevant military theatre has proved irresistible. The United Kingdom, France, Italy, Germany, China, Russia, and Saudi Arabia among others, have followed the lead of America and Israel, with the result that there is a now almost global campaign of drone warfare.

Much recent scholarship has considered the challenges posed by the contemporary use of drones, including whether domestic human rights law applies extra-territorially to the use of drones, what legal regime applies (international humanitarian law (IHL) or international human rights law, or a combination of the two), and, if IHL does apply, what is the threshold for its application. Questions have also been raised about whether international law yet recognises a doctrine of anticipatory self-defence, and, if it does, how this would apply to the use of drones. An issue that has come into sharp focus recently,

<sup>1</sup> See, for instance: Christof Heyns, Dapo Akande, Lawrence Hill-Cawthorne, and Thompson Chengeta, "The International Law Framework Regulating the Use of Armed Drones," *International and Comparative Law Quarterly* 65(4) (2016): 791-827; and Michael J Boyle, "The Legal and Ethical Implications of Drone Warfare," *International Journal of Human Rights* 19(2) (2015), pp. 105-126.

following recent speeches by the British and Australian Attorney-Generals, is whether strikes undertaken in anticipatory self-defence must respond to imminent threats or whether the criterion of imminence has been abandoned.

While those legal issues concern the conduct of the state, which *deploys* a drone, there is the additional issue of how we regulate other states providing assistance to the state *using* drones. Assistance may be rendered by, variously: the provision of locational intelligence on targets; providing access to landing sites and other logistical support for drone sorties; as well as the manufacture, sale and servicing of drone hardware and software. That aspect of the contemporary use of drones is especially pernicious. By involving a multitude of states in the support and facilitation of armed strikes, states that are motivated to increase the use of drones stimulate the development and decentralization of necessary technical and practical skill. The result is the dilution of domestic political and legal control over armed drone programmes, since necessary constituent elements of drone programmes are increasingly matters of diffuse or shared responsibility. But while diffusion of control presents challenges to regulation and oversight, it presents new opportunities for those seeking to take steps to restrict unlawful uses of drones. States assisting in or facilitating unlawful armed drone activities that are carried out by other states may well be subject to liability for complicity – or equivalent modes of responsibility – which may (depending upon domestic constitutional and public law arrangements) be actionable before domestic courts.

This chapter sets out the various modes of liability in international law, which may attach to different types of assistance states may provide to allies with armed drone programmes

## Participation in drone programmes

Allied states may lend assistance and participation in the programmes of states operating armed drones in a variety of ways. First, state security and intelligence services may provide intelligence to drone-operating states, with that intelligence used in the drone programme. Second, allied states may allow their territories to be used by drone-operating states to house command centres or landing/launching facilities. Third, states may manufacture and export drone components and services to allies, which deploy the technology. Obviously, it is lawful for one state to assist another in pursuing a course of action, which is lawful. But where, as set out below, there are serious questions as to the lawfulness of the actions of states operating drones in certain contexts (such as the US using drones outside of Iraq), the states that provide assistance face potential liabilities themselves.

The responsibility of one state for the acts committed by another are not set out in the UN Charter or expressly specified in any other treaty: they are instead matters of customary international law. Much of customary international law in the area of state responsibility is summarized and encapsulated in the International Law Commission's (ILC) Articles on the Responsibility of States for Internationally Wrongful Acts (known universally as the Articles on State Responsibility, or 'ASR').<sup>2</sup> As is obvious from their title, these rules of State responsibility rely, as a condition precedent, on the conduct, which is being

<sup>2</sup> United Nations General Assembly, UNGA Resolution No 56/83 on the Responsibility of States for Internationally Wrongful Acts, 28 January 2002, UN Doc. A/RES/56/83 (ASR).



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assisted being *internationally wrongful* – that is, being in breach of international law. The question as to how the conduct of armed drone strikes programmes may violate international law is beyond the scope of this chapter. Suffice it to say that armed drone programmes operated by the United States to which other countries lend assistance raise a series of concerns with respect to their compliance with the law of self-defence (since strikes occur against targets other than those which currently threaten an imminent armed attack) and their compliance with the conditions of proportionality and discrimination between civilian and military targets (crucial considerations in both IHL and international human rights law).

While not yet formally agreed as a treaty, it is generally agreed that the key provisions of the ASR reflect customary international law binding upon all states. The significant provisions of the

ASR relating to the liability of one state for assisting another are: (a) responsibility for aiding or assisting another state in knowledge of the circumstances of the unlawful act, as set out in Article 16; and (b) responsibility for rendering aid or assistance in maintaining a situation by which another state commits a serious breach and/or failure to cooperate to bring such a breach to an end, as set out in Articles 40 and 41.

#### Article 16 of the ASR provides that:

“A State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if:

- (a) that State does so with knowledge of the circumstances of the internationally wrongful act; and

(b) the act would be internationally wrongful if committed by that State.”

Article 16 enjoys wide acceptance as reflecting customary international law. The International Court of Justice affirmed this in the *Bosnia Genocide* decision.<sup>3</sup> The rule has also been taken to reflect customary international law by the World Trade Organization Panel<sup>4</sup> and the Federal Constitutional Court of Germany.<sup>5</sup> The United Kingdom government has also consistently stated that it considers Article 16 to reflect customary international law binding on the UK.<sup>6</sup>

The rule of responsibility under Article 16 entails three main conditions (drawn from the wording of the Article itself, together with the ILC’s Commentary on it). Those conditions are:

First, that the assisting state, when it provides assistance, has “knowledge of the circumstances of the internationally wrongful act” carried out by the assisted state;<sup>7</sup>

<sup>3</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro)* ICJ Rep (2007) 42 (*‘Bosnia Genocide case’*), p. 420.

<sup>4</sup> World Trade Organization dispute settlement, Turkey-Restrictions on Imports of Textile and Clothing Products, WT/DS34/R, 31 May 1999, [9.42]-[9.43].

<sup>5</sup> Order of the German Second Senate in the constitutional complaint of Mr. Al-M, 5 November 2003, 2 BVerfG 1506/03, [47].

<sup>6</sup> Her Majesty’s Government, “Allegations of UK Complicity in Torture: The Government Reply to the Twenty-Third Report from the Joint Committee on Human Rights,” Cm774, 2; and House of Lords, House of Commons, Joint Committee on Human Rights, “The Government’s policy on the use of drones for targeted killing: Government Response to the Committee’s Second Report of Session 2015-2016,” Fourth Report of Session 2016-17 (HL Paper 49, HC 747) (19 October 2016), 17.

<sup>7</sup> ASR, Article 16(a); and International Law Commission, “Draft Articles on the Responsibility of States for Internationally Wrongful Acts, with commentaries” *Yearbook of the International Law Commission* II(2) [2001] (‘ILC Commentary’), ILC Commentary on Article 16, [4].

Second, that the assistance provided by the state as a matter of fact contributes to the commission of the unlawful act to the requisite degree;<sup>8</sup> and

Third, that the contemplated act “must be such that it would have been wrongful had it been committed by the assisting state itself.”<sup>9</sup>

### Exploring the three conditions: knowledge

The interpretation of the knowledge requirement is not straightforward. The question has been explored by a range of leading international law academics,<sup>10</sup> and recently discussed at length in the November 2016 research paper published by Chatham House.<sup>11</sup> There are three key questions:

- First, what the assisting state must know;
- Second, what the degree of knowledge the assisting state must have; and
- Third, whether there is a separate requirement that the assisting state must have *intended* to facilitate the wrongful act.

<sup>8</sup> This requirement does not appear expressly within the text of Article 16. It is set out within the ILC Commentary on Article 16, [5] and [10].

<sup>9</sup> ASR, Article 16(b); and ILC Commentary on Article 16, [4].

<sup>10</sup> James Crawford, *State Responsibility: The General Part* (Cambridge: Cambridge University Press, 2013); Vaughan Lowe, “Responsibility for the Conduct of Other States” *Kokusaihō gaikō zasshi [Japanese Journal of International Law and Diplomacy]* 101 (2002) 1; Miles Jackson, *State Complicity in International Law* (Oxford: Oxford University Press, 2015); Helmut Aust, *Complicity and the Law of State Responsibility* (Cambridge: Cambridge University Press, 2011); Vladyslav Lanovoy, *Complicity and its Limits in the Law of International Responsibility* (Oxford: Hart Publishing, 2016).

<sup>11</sup> Harriet Moynihan, “Aiding and Assisting: Changes in Armed Conflict and Counterterrorism,” *Chatham House Research Paper*, November 2016.

With regard to the first question, the decision of the International Court of Justice in the Bosnian Genocide case is instructive. In that case, Article 16 was considered and applied to the alleged complicity of the Federal Republic of Yugoslavia (FRY) in the commission of genocide by Republika Srpska forces. The Court applied Article 16 of the Articles on State Responsibility by analogy in order to determine the meaning of “complicity in genocide” under Article III(e) of the Genocide Convention.

The Court considered that liability, on the basis of Article 16, requires that the state providing aid or assistance “acted knowingly, that is to say, in particular, was *aware* of the specific intent (*dolus specialis*) of the principal perpetrator. If that condition is not fulfilled, that is sufficient to exclude categorization as complicity.” (emphasis added).<sup>12</sup> Essentially, the assisting party must have more than a hunch or speculative opinion as to what the assisted party is about to do.

It is important to clarify that the characterisation of the assisted state’s conduct as internationally wrongful is an objective matter: there is neither any requirement of prior determination to that effect by a court, nor any requirement that the assisting state must subjectively appreciate that the conduct of the assisted state is wrongful. What is required is that the assisting state has knowledge, to the required degree, of the facts, which constitute the elements of the assisted state’s wrongful conduct.

Importantly, the pertinent facts will depend upon the nature of the assisted state’s conduct. The *Bosnia Genocide* case is an extreme example, since the underlying wrongful conduct of the Republika Srpska was the war crime of genocide, which is a crime of specific intent. As set out in the Genocide Convention, the commission of

genocide requires *not only* the carrying out of the immediate intentional acts of, *inter alia*, killing, causing serious bodily or mental harm, and/or forced sterilization, *but also* that, in doing so, the perpetrator acts in pursuit of a general objective of intending “to destroy, in whole or in part, a national ethnical, racial, or religious group, as such.”<sup>13</sup> Against that exacting standard, a finding of liability for aiding and assisting will be necessarily difficult to achieve: the majority of the International Court of Justice held that, while the FRY knew that the Republika Srpska intended to carry out massacres, the evidence did not establish that the FRY was aware that the Republika Srpska held the additional *mens rea* condition of intending, by those massacres, to destroy a group “as such.”

But it is crucial to bear in mind that very few internationally wrongful acts require specific intent: the vast majority of breaches of public international law which might be entailed by a state conducting a drone strike do not require proof of the state’s *motivation* as well as their factual conduct.<sup>14</sup> Accordingly, the facts that an assisting state must know in most cases are purely matters of objective circumstance: what the assisted state is doing, or plans to do.

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<sup>13</sup> United Nations General Assembly, Convention on the Prevention and Punishment of the Crime of Genocide (adopted 9 December 1948, entered into force 12 January 1951), 78 UNTS 277, Article II. The definition is rehearsed in Article 2(2) of the Statute of the International Criminal Tribunal for Rwanda. See: United Nations Security Council, Resolution 955, 8 November 1994, UN Doc. S/RES/955, Annex, Article 2(2).

<sup>14</sup> James Crawford, “Second Report on State Responsibility,” 51st Session of the International Law Commission, 1999, UN Doc. A/CN.4/498, p. 50.

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<sup>12</sup> Bosnia Genocide case, [420].

As to the second question, namely, the *degree* of knowledge required, it appears that *constructive* knowledge is not sufficient as a matter of international law. During the negotiations on the text of article 16, the Netherlands specifically suggested that the article should provide for responsibility where a state “knows or should have known the circumstances of the internationally wrongful act,”<sup>15</sup> however that suggestion was not adopted by the members of the ILC. In the absence of custom, specific guidance in the ASR, or relevant case law, the dominant view of eminent academics is that article 16 requires a more stringent degree of knowledge.

Clearly, *actual* knowledge of the relevant facts would be sufficient. In this regard, leading academics argue that “near certainty” or “practical certainty” of the facts is sufficient to determine *actual* knowledge.<sup>16</sup> There is also strong support for a “willful blindness” standard in the absence of *actual* knowledge itself.<sup>17</sup> As the Chatham House research paper argues:

*“(Willful blindness) might be defined as a deliberate effort by the assisting State to avoid knowledge of illegality on the part of the State being assisted, in the face of credible evidence of present or future illegality ...where the evidence stems from credible and readily available sources, such as court judgments, reports from fact-finding commissions, or independent monitors on the ground, it is reasonable to maintain that a state cannot escape responsibility under Article 16 by deliberately avoiding knowledge of such*

<sup>15</sup> Statement of the Netherlands, *Yearbook of the International Law Commission* II(1) [2001] 52; and see Crawford, *State Responsibility*, p. 406.

<sup>16</sup> Moynihan, *Research Paper*, [39]; Jackson, *State Complicity*, pp. 160-162.

<sup>17</sup> See: Lowe, “Responsibility,” 10; and Jackson, *State Complicity*, pp. 60-162.

*evidence ... [I]f a state has not made enquiries in the face of credible evidence of present or future illegality, it may be held to have turned a blind eye.”<sup>18</sup>*

Turning to the third question, the separate criterion of the assisting state’s *intention*, it is worth noting that the text of article 16 itself does not include any explicit requirement of *intention*. However, the ILC Commentary on article 16 states that the aid or assistance must be given “with a view to facilitating the commission of that [wrongful] act, and must actually do so.”<sup>19</sup> The ILC Commentary explains this requirement as limiting the application of the rule “to those cases where the aid or assistance given is clearly linked to the subsequent wrongful conduct” and then notes that a state will not be responsible for aid or assistance “unless the relevant State organ intended, by the aid or assistance given, to facilitate the occurrence of the wrongful conduct.”

The question of what suffices to make out the assisting state’s *intent* in this context must be treated with some care. What is required is that the assisting state intends to provide the means by which the perpetrator may realize its own intent to commit an unlawful act. There is no additional requirement that the assisting state must itself *share the assisted state’s intent*. Were it otherwise, as Judge Bennouna observed in his declaration in dissent in the *Bosnia Genocide* case, that “would be tantamount to equating an accomplice with a co-principal,”<sup>20</sup> an illogical outcome if any distinction between primary liability and assisting liability for an internationally wrongful act is to be observed. The ILC’s reference in the Commentary on

<sup>18</sup> Moynihan, *Research Paper*, p. 14.

<sup>19</sup> ILC Commentary on Article 16, [5].

<sup>20</sup> *Bosnia Genocide*, Declaration of Judge Bennouna, p. 359, p. 361.

article 16 makes it clear that no state may be liable on a strict liability basis purely because assistance rendered to another state has been, for instance, unexpectedly diverted to wrongful or prohibited ends.<sup>21</sup>

Accordingly, the intention requirement chiefly functions to avoid a state being fixed with liability in circumstances where it cannot be held to have consciously supported or facilitated the actions taken by the state to which it provides assistance. But that does *not* mean that the intention requirement may be used by states as a means to shield themselves from liability in circumstances where they are fully aware of the use to which their assistance will be put and of the actions the receiving state will take, but where the assisting state subjectively does not consider that the course of action amounts to an internationally wrongful conduct.

While the specific details of individual drone strikes are typically not released, arguably there is sufficient detail publicly available regarding the general operation of, for instance, the United States' drone programme to fix any state providing assistance to the United States with the requisite level of knowledge of certain key problematic aspects of that programme. From the reports of international non-governmental organisations (NGOs),<sup>22</sup> two separate United Nations Special Rapporteurs,<sup>23</sup> and statements

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<sup>21</sup> See the example given by Bernhard Graefrath of aid being directed towards unlawful ends which, although foreseeable, are specifically prohibited by the aid-providing state as a condition of the grant: Bernhard Graefrath, "Complicity in the Law of International Responsibility", *Revue Belge de Droit International* 2, 1996, p. 371, p. 373; and the discussion of the same in Crawford, *State Responsibility*, pp. 407-408.

<sup>22</sup> Amnesty International, *Will I Be Next? US Drone Strikes in Pakistan*, October 2013.

<sup>23</sup> Ben Emmerson, Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, 10 March 2014, UN Doc. A/HRC/25/59; and Cristof Heyns, Report of the Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions, 1 April 2014, UN Doc. A/HRC/26/36.

made by United States government representatives including Prof Harold Koh (Legal Advisor to the Department of State, 2009-2013) and John Brennan (Deputy National Security Advisor for Homeland Security and Counterterrorism, 2009-2013, subsequently Director of the CIA, 2013-January 2017),<sup>24</sup> a range of key issues affecting lawfulness are clear.

First, the United States remains committed to the "Bush doctrine" of pre-emptive strikes, rather than only strikes against imminent threats. But any use of force purportedly in self-defence must observe the limiting criterion that it be an action that requires, in the long-standing formulation of the agreement between the United States and Great Britain in 1838-1842 as to the legal principles governing the seizure and destruction of the vessel *Caroline*, "necessity of self-defence, instant, overwhelming, leaving no choice of means, and no moment for deliberation."<sup>25</sup> This formulation has traditionally been termed the criterion of imminence, and demands that action in self-defence is lawful only where it responds to pressing temporal necessity in light of an imminent armed attack. A drone strike taken 'pre-emptively' against a suspected terrorist who is involved only in a preliminary planning stage of action violates this principle and will not be lawful under the international legal doctrine of self-defence. The official United States position in favour of pre-emptive action clearly carries with it, therefore, the risk of drones being used in circumstances outside the lawful bounds of self-defence.

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<sup>24</sup> Christine Gray, *International Law and the Use of Force* (Cambridge: Cambridge University Press, 3rd ed, 2008) pp. 7-20.

<sup>25</sup> *British and Foreign State Papers, 1840-1841*, 1857, Vol 29, p. 1129.

In the absence of justification pursuant to the doctrine of self-defence, the use of drones by the United States overseas could be lawful where the states in whose territories they are deployed have provided consent for their use. The governments of Pakistan, Yemen, and Somalia all originally provided consent to the intervention of the United States. But the consent of Pakistan has since been withdrawn, and given the fragility of government control in both Yemen and Somalia, the consent of those regimes does not provide a firm basis for the lawfulness of the United States' intervention there by way of armed drone strikes.<sup>26</sup> States that assist the deployment of drones in Pakistan, Yemen, and Somalia must be taken to know that such strikes are unlikely to be lawful on the basis of international consent.

The final basis upon which the use of armed drones overseas may be rendered lawful is if specific authorization for the use of force has been provided pursuant to Chapter VII of the UN Charter. But UN Security Council Resolution 2249 (2015) on ISIS is not a resolution made pursuant to Chapter VII and does not purport to authorise the use of force in Syria, whether by way of armed drone or otherwise. Accordingly, states assisting the United States must be aware that the United States' deployment of armed drones against ISIS in Syria also lacks specific UN authorization.

Further, the range of reports from NGOs and the UN makes it clear that the United States' programme of drone use carries with it an excessive civilian toll, which calls into question compliance with the key international humanitarian law standards that weapons must distinguish between military and civilian targets,

and that civilian impacts must be proportionate to the military gain of any use of force.

Against this factual backdrop, it is clear that while the use of armed drones by the United States may in theory be lawful, in practice its armed drone programme, especially when justified as a "pre-emptive" strike, or a strike in Pakistan, Yemen, Somalia, or against ISIS in Syria, is very likely unlawful. That information is public, and states providing assistance to the United States where such drone strikes occur must be taken to know the position.

### Considering the three factors: material contribution

The second criterion of a factual contribution to the unlawful act is relatively straightforward. While the ILC Commentary is not uniform in its references to the level of contribution required, most academics agree on a minimum threshold of at least *material* contribution.<sup>27</sup>

Looking at the example of the United Kingdom's involvement in the United States programme, the location intelligence provided by the UK's GCHQ spy agency, and other intelligence provided and relayed from basis located within the UK (but operated by the United States) may well be directly used in United States' drone strikes. That would clearly meet the requisite level of material contribution.

<sup>26</sup> See Max Byrne, "Consent and the Use of Force: An Examination of "Intervention by Invitation" as a Basis for US Drone Strikes in Pakistan, Somalia, and Yemen," *Journal on the Use of Force and International Law*, 2016, p. 97.

<sup>27</sup> James Crawford, "Second Report," [180]-[182] and [188]; and Lowe, "Responsibility," p. 5.

### Considering the three factors: intent

The final element of the test requires that a state providing assistance may only be liable at international law where the wrongful act committed with its assistance is an act, which would have been wrongful if committed by the assisting state directly. Thus if, for example, the United Kingdom assists the United States in breaching an obligation that the United States owes to Canada by virtue of a bilateral treaty between those two countries, the United Kingdom does not incur responsibility pursuant to the Article 16 rule, since the United Kingdom is not itself bound by the provisions of that bilateral treaty. In the context of the provision of assistance for United States drone strikes, the relevant provisions of international law binding upon the United States (namely the prohibition on the use of force exception where justified by consent or self-defence, and the IHL protections on civilians) bind the United Kingdom and other States offering assistance just as directly.

### Responsibility under articles 40 and 41 of the ASR

Article 16 sets out a general rule of responsibility that applies in all circumstances of internationally wrongful conduct, however serious. Articles 40 and 41 of the ASR, on the other hand, provide a more narrowly-focused rule which applies only in circumstances where *jus cogens* (or “preemptory”) norms of international law are concerned. Accordingly, some academics have termed Articles 40 and 41 as providing for “aggravated responsibility” at the international level.<sup>28</sup>

<sup>28</sup> Aust, *Complicity*, Chapter 7, 319-375.

Articles 40 and 41 apply to “the international responsibility that is entailed by a serious breach by a state of an obligation arising under a preemptory norm of general international law.”<sup>29</sup> And article 40(2) establishes that:

*“A breach of [an obligation arising under a preemptory norm] is serious if it involves a gross or systematic failure by the responsible state to fulfil the obligation.”*<sup>30</sup>

Within that defined scope of “serious” – that is to say, “gross or systemic” – breaches of *jus cogens* or preemptory norms, article 41 provides, *inter alia*, that:

*“2. No state shall recognize as lawful a situation created by a serious breach within the meaning of Article 40, nor render aid or assistance in maintaining that situation.”*<sup>31</sup>

As to the status of this rule, like article 16 above, there is considerable support for the conclusion that this rule of international responsibility also reflects customary international law. The International Court of Justice, in its *Palestine Wall* advisory opinion, affirmed the principle that, in light of “the character and the importance of the rights and obligations involved” in that case, “all states are under an obligation not to recognize the illegal situation” and “are also under an obligation not to render aid or assistance in maintaining the situation created by such construction.”<sup>32</sup> While not referring to Articles 40 and 41 by number, the Court’s judgment clearly endorses the rule set out in those articles as the correct statement of international law. The UK House of Lords

<sup>29</sup> ASR, Article 40(1).

<sup>30</sup> ASR, Article 40(2).

<sup>31</sup> ASR, Article 41(1)-(2).

<sup>32</sup> *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion)* ICJ Rep (2004) 136, [159].

referred to article 41 in its decision in *A and others v Secretary of State for the Home Department (No 2)*,<sup>33</sup> while the Italian Corte di Cassazione also relied upon articles 40 and 41, in that case explicitly, in its decision in *Ferrini v Federal Republic of Germany*,<sup>34</sup> as did the Federal Constitution Court of Germany in a decision relating to claims for compensation arising from expropriations in the Soviet zone in 1945-1949.<sup>35</sup>

The rule set out in articles 40 and 41 refers to *jus cogens* or preemptory norms of international law. Those terms denote, as the Vienna Convention on the Law of Treaties sets out, a rule of international law which is “accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.”<sup>36</sup>

A number of features of this rule of state responsibility need to be considered. The first is the range of *jus cogens* or preemptory norms potentially relevant to the actions of the states in conducting drone strikes. The foremost example of such a norm, as the International Court of Justice recognized in the *Nicaragua* case, is the

prohibition on the use of force.<sup>37</sup> The ILC, elsewhere in its Commentary on the ASR,<sup>38</sup> also lists the prohibitions on “genocide, slavery, racial discrimination, crimes against humanity and torture”<sup>39</sup> as *jus cogens* norms, together with the “right to self-determination”<sup>40</sup> to which should be added the basic rules of IHL, which were termed “intransgressible” in character by the International Court of Justice in the *Nuclear Weapons* advisory opinion.<sup>41</sup> Further, as the ILC has observed, that list “may not be exhaustive” and does not prevent the emergence of new rules of international law generally accepted by states as having a *jus cogens* character.<sup>42</sup> At present, the rules relevant to drone strikes are the prohibition on the use of force and the basic rules of IHL.

<sup>33</sup> *A and others v Secretary of State for the Home Department (No 2)* [2006] 2 AC 221 (HL), 263

(Lord Bingham).

<sup>34</sup> English translation available in: *Ferrini v Repubblica Federale di Germania*, Decision No. 5044/04

(2004) 128 ILR 658.

<sup>35</sup> Cases No. 2 BvR 955/00, 1038/01, Decision of 26 October 2004. A partial English translation is available in: United Nations Secretary General, Responsibility of States for Internationally Wrongful Acts: Comments and Information Received from Governments (9 March 2007), UN Doc. A/62/63, [33]-[40].

<sup>36</sup> United Nations, Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331, Article 53.

<sup>37</sup> *Case Concerning Military and Paramilitary Activities In and Against Nicaragua (Nicaragua v United States) (Merits)* ICJ Rep 14 (‘Nicaragua case’), [190]; see also ILC Commentary on Article 40, [4].

<sup>38</sup> ILC Commentary on article 26, [5].

<sup>39</sup> See also the discussion at: ILC Commentary on article 40, [5].

<sup>40</sup> See, for example, the recognition of the right by the International Court of Justice in: *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo (Advisory Opinion)* ICJ Rep (2010) 403, [79] and [82]; and *Case Concerning East Timor (Portugal v Australia)* ICJ Rep (1995) 90, [29].

<sup>41</sup> *Legality of the Threat or Use of Nuclear Weapons (Advisory Opinion)* ICJ Rep (1996) 226, [79].

<sup>42</sup> ILC Commentary on article 40, [6].

The second key consideration in approaching the rule of “aggravated responsibility” under Articles 40 and 41 of the ASR is the meaning of the specific criteria of “systematic” or “gross” breaches. The ILC Commentary provides the following guidance:

*“To be regarded as systematic, a violation would have to be carried out in an organised and deliberate way. In contrast, the term “gross” refers to the intensity of the violation or its effects; it denotes violations of a flagrant nature, amounting to a direct and outright assault on the values protected by the rule. The terms are not of course mutually exclusive; serious breaches will usually be both systematic and gross. Factors which may establish the seriousness of a violation would include the intent to violate the norm; the scope and number of individual violations; and the gravity of their consequences for the victims.”*<sup>43</sup>

Importantly, while the *intent* of a state to violate a preemptory norm is a relevant factor in the assessment of whether a particular violation will be “gross” enlivening the “aggravated responsibility” regime under articles 40 and 41, what is clear is that *intent* is not a necessary precondition to liability in every case. The rationale for this appears to be that, while a limiting factor such as an intention to assist may be acceptable in article 16 where violations other than gross violations are at issue, the more serious subject matter of articles 40 and 41 demands a higher degree of vigilance on the part of all states.<sup>44</sup> Against the background of the subject matter to which articles 40 and 41 are directed, article 41 clarifies the type of conduct which is prohibited. The most relevant aspects are in article 41(2), which prohibits any state

from either “recognis[ing] as lawful a situation created by a serious breach’ or ‘render[ing] aid or assistance in maintaining the situation [of any serious breach].”<sup>45</sup>

With respect to the first circumstance – recognition, the ILC Commentary explains that this “obligation of collective non-recognition by the international community as a whole” not only refers to “formal recognition of these situations, but also prohibits acts which would imply such recognition.”<sup>46</sup> That rule is supported by clear state practice at the international level, such as the non-recognition by states of the Japanese annexation of Manchuria in 1931, the Iraqi annexation of Kuwait in 1990, and the unlawful actions of the racist Rhodesian and South African governments in the 1960s and 1970s.<sup>47</sup>

With respect to the second circumstance – aid or assistance in maintenance – the ILC Commentary explains:

*“This goes beyond the provisions dealing with aid or assistance in the commission of an internationally wrongful act, which are covered by article 16. It deals with conduct “after the fact” which assists the responsible state in maintaining a situation [of serious breach]. It extends beyond the commission of the serious breach itself to the maintenance of the situation created by that breach, and it applies whether or not the breach itself is a continuing one.”*<sup>48</sup>

<sup>43</sup> ILC Commentary on article 40, [8].

<sup>44</sup> See: Aust, above n 86, pp. 341-342.

<sup>45</sup> ASR, article 41(2).

<sup>46</sup> ILC Commentary on article 41, [5].

<sup>47</sup> ILC Commentary on article 41, [6]-[9].

<sup>48</sup> ILC Commentary on article 41, [11].

As the Joint Committee on Human Rights observed in the context of the receipt by the United Kingdom of information gained through torture by other states, “aid or assistance” provided after the fact of a breach may take many forms. In that context, even passive receipt of that information “creates a market for the information produced by torture”, thus encouraging the maintenance of the situation in which other states carry out torture.<sup>49</sup>

On the recognition front, actions by states such as failing to recall, in protest, embedded agents, failing to cut off ongoing co-operation arrangements, and failing to deny landing rights to drone programme air force assets would likely violate the principle of non-recognition. In respect of aid or assistance, a state keeping in place information-sharing or other agreements which mean that another state which uses drones unlawfully is not put to the task of looking elsewhere for co-operation would likely qualify as assistance sufficient to ground liability under articles 40 and 41 ASR.

## Responsibility through complicity in aggression

In addition to the provisions of the ASR, which are of general application to a variety of different violations of international law, there is a specific additional rule of international law which provides that a state *must not* allow its territory to be used as the launching pad for acts of aggression by other states. This rule is codified in article 3(f) of the United Nations General Assembly’s resolution on the Definition of Aggression, which provides that “[t]he action of a state in allowing its territory, which it has placed at the disposal of another state, to be

used by that other state for perpetrating an act of aggression against a third state.”<sup>50</sup> As to the status of the rule, while the fact that it is contained in a resolution of the General Assembly provides a meaningful indication of its international acceptance, that is not conclusive from the perspective of customary international law. Eminent academics have argued that the contents of key aspects of the General Assembly definition of aggression reflect customary law,<sup>51</sup> and the International Court of Justice in the *Nicaragua* case has certainly specifically endorsed another sub-article of the definition (Article 3(g) on what constitutes as “armed attack”) as doing so.<sup>52</sup> Moreover, the full General Assembly definition – including liability for allowing territory to be used by other states for aggressive purposes – has now been adopted as the standard for the crime of aggression for the purposes of the International Criminal Court.<sup>53</sup>

In contrast to the more complex elements of the rules on responsibility set out in the ASR, the principle of liability for complicity in aggression where territory is placed at another state’s disposal is relatively straightforward. The rule is only enlivened where physical territory is provided, and where that territory is at least under the *effective control* of the providing

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<sup>50</sup> United Nations General Assembly, Resolution 3314 (XXIX) on the definition of aggression, 1974, article 3(f).

<sup>51</sup> Jackson, *State Complicity*, p. 143.

<sup>52</sup> *Nicaragua* case, [1951].

<sup>53</sup> The original Rome Statute of the International Criminal Court did not include a definition of aggression. The decision to adopt the General Assembly definition was finally agreed at the 2010 Kampala Review Conference, which provided that the Court would be entitled to exercise jurisdiction over the crime of aggression once thirty States ratified the amended definition, and the Assembly of States Parties to the ICC Statute decided to allow jurisdiction to be exercised. The thirtieth State ratification occurred on 26 June 2016 with the ratification by Palestine of the Kampala amendments, but the Assembly is yet to decide that jurisdiction may be exercised.

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<sup>49</sup> Her Majesty’s Government, “Allegations of UK Complicity,” [42]. See also: Report of the Eminent Jurists Panel on Terrorism, Counter-Terrorism and Human Rights, *Assessing Damage, Urging Action*, 2009, p. 85.

state.<sup>54</sup> Further, as a species of *aggression*, the provision of territory only gives rise to liability under this rule if the other state launches from that territory an act of aggression (that is, an act in violation of the prohibition on the use of force), rather than simply any act which breaches international law.

The other crucial ingredient of liability under this rule is that the complicit state must have “placed” the territory at the disposal of the other state. The territory being “at the disposal” of the other state clearly conveys that the receiving state has the power to act for its own purposes on that section of territory, as is the case with the analogous situation of state organs or officials being temporarily “placed at the disposal” of other states.<sup>55</sup> But the use of construction “which it has placed” demonstrates that the complicit state must have actively decided to afford that assistance: it will not be sufficient if, for instance, a part of a state’s territory is used in a clandestine fashion by another state.<sup>56</sup>

The provision of territory by one state to another in breach of this rule has occurred previously. In 1986, the United Kingdom (in marked contrast to France and Spain) permitted the United States to fly airstrikes against Libya from United Kingdom onshore airbases. The United Nations General Assembly condemned the airstrikes, although the relevant resolution did not explicitly mention the United Kingdom’s role in them.<sup>57</sup>

In the same way, any states providing approval and access for their territory to be placed at the disposal of a drone programme which breaches

international law – be it via landing rights at their airfields or approved access through their airspace – may well be judged complicit in the international crime of aggression

## Conclusion: the implications of state exposure to risk

The scope of legal liability for unlawful actions occurring in the context of armed drone programmes operated by particular states, notably the United States, is thus potentially very wide indeed. States consciously providing intelligence to the United States, for instance, in the knowledge of the legal concerns raised by a large proportion of strikes under the programme (those occurring pre-emptively, or in Pakistan, Yemen, Somalia, and against ISIS); states continuing to co-operate and recognize those programmes even after breaches of international law; and states allowing their territory to be implicated in such drone strikes all face the prospect of being themselves held liable under the international rules of complicity. That greater scope of potential wrongdoing presents real opportunities for those seeking to disrupt such drone programmes to bring strategic litigation, which targets not the states actually launching unlawful strikes, but any of the states, which unlawfully facilitate the same. This approach, of targeting the concerning actions of a particular state indirectly, by focusing on the actions of those that enable that state, has had some support previously. In *R (Zagorski) v Secretary of State for Business, Innovation and Skills*,<sup>58</sup> the UK’s export of an ingredient used in lethal injections overseas was challenged as a means of disrupting capital punishment in the United States; and, in early 2017, Rights Watch (UK), together with Amnesty International and Human

<sup>54</sup> Ian Brownlie, *Principles of Public International Law 8th edition*, ed. James Crawford, (Oxford: Oxford University Press, 2012), p. 105.

<sup>55</sup> See: ASR, article 6; and ILC Commentary to article 6, [11-19].

<sup>56</sup> Jackson, *State Complicity*, p. 141.

<sup>57</sup> United Nations General Assembly, Resolution 41/38 (20 November 1986), UN Doc. A/RES/41/38.

<sup>58</sup> [2011] HRLR 6; *Case of Zagorski and Baze v Secretary of State for Innovation, Business and Skills*, [2010] EWHC 3110 (Admin).

Rights Watch, challenged the UK's complicity, by means of the rules of state responsibility at international law, in the unlawful conduct of Saudi Arabia in the Yemen conflict on the basis of the UK's export of military materiel.<sup>59</sup>

States throughout the world that are not operating armed drone programmes are becoming increasingly drawn into this highly problematic innovation in modern warfare, which raises considerable legal and humanitarian concerns. At the same time that a greater worldwide involvement increases shared expertise and facilitates operations with global reach, it also exposes many more states to potential legal liability for their complicity in the international drone framework. For, it is clear that complicit states may be challenged within their domestic courts for their own breaches of international law as assistants to wrongdoing (subject to domestic legal rules as to the justiciability of international law). Those seeking new means by which to slow the spread of armed drone programmes would be well advised to consider this strategy of targeting complicity as a means of cutting off the effectiveness of current and future drone programmes.

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<sup>59</sup> *R (Campaign Against Arms Trade) v Secretary of State for Business, Innovation, and Skills*.

## Regional case study:

Latin  
America

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## Introduction

While no country in Latin America currently possesses armed unmanned aerial vehicles (UAVs), or armed drones,<sup>1</sup> there are conditions that could hasten their advent in the region. Is the appearance of armed drones desirable? Is it inevitable? How would they be acquired and used? Drone technology is rapidly evolving, leading to increased levels of efficiency, versatility, and affordability.

The region has seen a general expansion in the presence of unarmed drones for private, commercial, and governmental uses.<sup>2</sup> They are deemed legitimate and are widely sought, thus making the region an important market. There are even emerging producers such as Argentina, Brazil, Chile, Colombia, Ecuador,

Mexico, Peru, Uruguay and Venezuela.<sup>3</sup> Latin American military and police institutions are using unarmed drones, especially for surveillance missions in border areas, territorial waters, for crowd control and particularly, in anti-narcotics operations.<sup>4</sup> Israel and United States remain the main suppliers, although there are locally developed military and police drones, like Argentina's Lipán M3 drone; Colombia's Navigator X2; Ecuador's Fenix; Mexico's S4 Ehécatl; or Uruguay's Charrúa UAV.<sup>5</sup>

"Non-lethal" armed drones are in their early stages of development, but following a clear path towards a potential expansion in design for different uses in law-enforcement activities.<sup>6</sup> These are types of UAVs that could easily become attractive for police and military institutions in Latin America, and become the first types of armed UAVs in the region. This could add to the existing global controversy regarding the production, trade and use of "non-lethal" law enforcement equipment and weapons, globally, and in the region, which is already affected by countless of cases of abuse by such devices.<sup>7</sup>

<sup>1</sup> Peter Bergen, David Sterman, Alyssa Sims, Albert Ford, Christopher Mellon, "World of Drones: Examining the Proliferation, Development, and Use of Armed drones," accessed 1 May 2017, <https://www.newamerica.org/in-depth/world-of-drones/>.

<sup>2</sup> W. Alejandro Sanchez, "COHA Report: Drones in Latin America," *Council on Hemispheric Affairs*, 12 January 2014, <http://www.coha.org/coha-report-drones-in-latin-america/>.

<sup>3</sup> Rachel Glickhouse, "Explainer: Drones in Latin America," *Council of the Americas*, 19 April 2017, <https://www.as-coa.org/articles/explainer-drones-latin-america>.

<sup>4</sup> Glickhouse.

<sup>5</sup> Ibid.

<sup>6</sup> Bart Engberts and Edo Gillissen, "Policing from Above: Drone Use by the Police," in *The Future of Drone Use: Opportunities and Threats from Ethical and Legal Perspectives*, ed. Bart Custers. Information and Technologies series, IT & LAW 27 (The Hague: Springer), p. 103.

<sup>7</sup> Amnesty International and Omega Foundation, *The Human Rights Impact of Less Lethal Weapons and other Law Enforcement Equipment*, (London: Amnesty International, 2015), pp. 3-4.

## Factors that could drive proliferation

There are a variety of economic, technical, political, human rights and security factors that could drive the research and development, production, acquisition and use of armed drones in the region.

Governments in countries affected by drug cartels and the so-called “War on Drugs” (such as Mexico), and by civil war (Colombia), have resorted to “high-value targeted killings”.<sup>8</sup> Should this sort of operation persist, be escalated, or replicated by other countries, chances are that military or police organisations could begin calling for the adoption and use of armed drones in targeted killings. If —following the steps of other non-state actors<sup>9</sup>—organized crime and insurgent organizations resorted to armed drones, this would likely prompt states to also acquire them. Countries like Brazil, Chile, Colombia, Ecuador, Mexico and Peru<sup>10</sup> are already using Israeli-made Heron and Hermes drones for surveillance purposes, which are known to have been armed and used in combat operations outside the region.<sup>11</sup> These aircraft could potentially be refurbished as strike-capable UAVs. Even if military institutions choose not to acquire them, there may be interest from police forces to resort to less/non-lethal models. If market opportunities for armed drones’ transfers expand, the possibility would open for Latin American

<sup>8</sup> Andrew Cockburn, *Kill Chain: Drones and the Rise of High-Tech Assassins*, (London: Verso, 2016), pp. 93-108.

<sup>9</sup> Bergen et al.

<sup>10</sup> Ibid.

<sup>11</sup> Human Rights Watch, *Precisely Wrong: Civilians Killed by Israeli Drone-Launched Missiles* (Washington, DC: Human Rights Watch, 2009), p. 11.

producers to design, produce and sell them—perhaps through joint ventures with companies from Israel, United States, Iran, or even China and Russia.

Another accelerating aspect to consider is the deployment of US surveillance drones in joint anti-narcotics operations with the governments of Colombia, Dominican Republic and Mexico.<sup>12</sup> It is possible that such joint operations will be replicated throughout the region or even that US drones in operation over Latin America could become armed.

Security, technical and market conditions thus exist for lethal armed drones to be adopted in Latin America; nonetheless, there are political and financial conditions which could delay such presence.

## Factors constraining proliferation

On the other hand, there are economic, human rights and humanitarian implications that could constrain any immediate drive for armed drones. While surveillance and armed drones have been useful tools,<sup>13</sup> they are far from a “panacea”.<sup>14</sup> They are only as efficient as the intelligence gathered that forms the basis of their deployment.<sup>15</sup> There are many voices questioning their effectiveness in precision strikes.<sup>16</sup> Given the equipment, infrastructure, and labour involved, cost-

<sup>12</sup> Glickhouse.

<sup>13</sup> Kenneth Watkin, *Fighting at the Legal Boundaries: Controlling the Use of Force in Contemporary Conflict* (Oxford: Oxford University Press, 2016), pp. 282-283.

<sup>14</sup> Watkin, *Fighting at the Legal Boundaries*, p. 284.

<sup>15</sup> Wim Zwiijnenburg and Zorah Blok, “Victims of Drone Warfare: Stretching the Boundaries of Conflict; Ethics and Remote Control Warfare,” in ed. Bart Custers, *The Future of Drone Use: Opportunities and Threats from Ethical and Legal Perspectives* (The Hague: Springer, 2016), p. 214.

<sup>16</sup> Ibid, p. 212.

effectiveness is another factor to be considered, vis-à-vis conventional alternatives. Do the Latin American security institutions have the necessary financial resources to embark on armed drone operations?

Another factor is the recognition of the human cost of armed drones. Latin American media and governments<sup>17</sup> have reacted to the use of armed drones in targeted killings since the start of these operations in Asia and Africa in 2002. There has been awareness about their human rights and humanitarian consequences, and on the need to address this matter to prevent further use in extrajudicial executions.<sup>18</sup>

The current public security situation is complex as it is, in a context of growing armed violence related to the militarization of law enforcement and a wave of human rights violations by the police and the military—including torture, forced disappearances and extrajudicial executions.<sup>19</sup>

**17** Bolivia, <http://www.embajadadebolivia.eu/es/noticias/la-embajada-de-bolivia-en-ba-lgica-expresa-su-solidaridad-con-el-pueblo-hermano-de-cuba> ; Costa Rica, <http://presidencia.go.cr/blog-presidencia/2015/10/discursoonu2015/> ; Cuba, <http://www.minrex.gob.cu/es/intervencion-del-delegado-de-cuba-juan-antonio-quintanilla-roman-durante-el-debate-general-del-tema> ; Ecuador, <http://www.cancilleria.gob.ec/ecuador-participa-en-segundo-ciclo-de-examen-periodico-universal-de-estados-unidos-de-america/>; Venezuela, <http://www.eltiempo.com.ec/noticias/mundo/5/316809/venezuela-vuelve-a-suspender-el-dialogo-con-estados-unidos>.

**18** On 9 November 2013, the Inter-American Commission on Human Rights organized a thematic hearing on use of drones and its impact on human rights in the Americas, at the request of the Torcuato di Tella University; the International Human Rights and Conflict Resolution Clinic at Stanford Law School; and the Robert F. Kennedy Center for Justice & Human Rights (RFK Center), <http://hrbrief.org/hearings/use-of-drones-and-its-impact-on-human-rights-in-the-americas/>, accessed 7 August 2017.

**19** Jonathan D. Rosen and Hanna S. Kassab, "Introduction" in *Fragile States in the Americas*, ed. Jonathan D. Rosen and Hanna S. Kassab (Lanham, Maryland: Lexington Books, 2017), pp. xi-xvi.

## Conditions for regulation and normative development

Given the potential for the proliferation of armed drones in Latin America, this is the moment to establish and consolidate legal and institutional controls; deepen research on risks and advantages; build capacity alongside and intra- and extra-regional cooperation, with a robust participation of civil society. Indeed, this must occur at the moment when the debate remains open regarding the appropriate legal framework to govern drone use.<sup>20</sup>

Generally, national UAV laws are still lagging.<sup>21</sup> Exceptions exist, notably Argentina, Brazil, Chile and Mexico, where regulations focus on the right to privacy and air-traffic security.<sup>22</sup> However, there are no references to armed drones in these laws.

It is worth noting that the countries, whose police and military institutions are using drones, have as a minimum, sets of laws, rules or protocols on the use of force by law

**20** Watkin, *Fighting at the Legal Boundaries*, p. 281.

**21** Marguerite Cawley, "Drone Use in Latin America. Dangers and Opportunities", InSight Crime, 2014, accessed 1 May 2017. <https://www.insightcrime.org/news-analysis/drone-use-in-latin-america-dangers-and-opportunities>.

**22** Timothy Ravich, "A Comparative Global Analysis of Drone Laws: Best Practices and Policies", in *The Future of Drone Use: Opportunities and Threats from Ethical and Legal Perspectives*, ed. Bart Custers. Information and Technologies series, IT & LAW 27 (The Hague: Springer, 2016), pp. 312, 313, 316.

enforcement agents.<sup>23</sup> In close connection to this, is a prohibition on torture. All the countries from the region are states parties to the Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment.<sup>24</sup>

**23** Examples of these laws, protocols and regulations are: Argentina, "Regulación y Control del Uso Policial de la Coerción y la Fuerza en Argentina", accessed 1 May 2017, [http://escuelasuperior.com.ar/instituto/wp-content/uploads/2015/06/Regulacion\\_y\\_control.pdf](http://escuelasuperior.com.ar/instituto/wp-content/uploads/2015/06/Regulacion_y_control.pdf); Brazil, "Diretrizes sobre o Uso da Força pelos Agentes de Segurança Pública", accessed 1 May 2017, <http://download.rj.gov.br/documentos/10112/1188889/DLFE-54510.pdf/portaria4226usodaforca.pdf>; Chile, "Protocolos para el Mantenimiento del Orden Público", accessed 1 May 2017, [http://deptodhh.carabineros.cl/assets/protocolos\\_mantenimiento\\_del\\_ordn\\_publico.pdf](http://deptodhh.carabineros.cl/assets/protocolos_mantenimiento_del_ordn_publico.pdf); Colombia, "Reglamento del uso de la fuerza y el empleo de elementos, dispositivos, municiones y armas no letales, en la Policía Nacional" accessed 1 May 2017, [http://www.policia.edu.co/documentos/normatividad\\_2016/reglamentos/Reglamento%20para%20el%20uso%20de%20la%20fuerza%20y%20el%20empleo%20de%20elementos%20dispositivos,%20municiones%20y%20armas.pdf](http://www.policia.edu.co/documentos/normatividad_2016/reglamentos/Reglamento%20para%20el%20uso%20de%20la%20fuerza%20y%20el%20empleo%20de%20elementos%20dispositivos,%20municiones%20y%20armas.pdf); Ecuador, "Reglamento de uso legal, adecuado y proporcional de la fuerza para la policía nacional", accessed 1 May 2017, [https://www.eempn.gob.ec/documentos\\_2014/reglamusofuerza.pdf](https://www.eempn.gob.ec/documentos_2014/reglamusofuerza.pdf); Mexico, "Manual del uso de la fuerza, de aplicación común a las tres fuerzas armadas", accessed 1 May 2017 [https://www.dof.gob.mx/nota\\_detalle.php?codigo=5346857&fecha=30/05/2014](https://www.dof.gob.mx/nota_detalle.php?codigo=5346857&fecha=30/05/2014); Paraguay, "Manual del uso de la fuerza de la policía nacional", <https://www.scribd.com/doc/56475126/Manual-de-Uso-de-la-Fuerza-de-la-Policia-Nacional-del-Paraguay>; Peru, "Decreto legislativo que regula el uso de la fuerza por parte de la policía nacional", <https://www.slideshare.net/armandoreyesmendoza/decreto-legislativo-que-regula-el-uso-de-la-fuerza-por-parte-de-lapolicia-nacional-del-perd-1186>; Uruguay, "Ley de procedimiento policial", [http://unasev.gub.uy/wps/wcm/connect/unasev/7f1623a5-6da6-492f-b4f1-86679c330808Normativa+de+Tr%C3%A1nsito+y+Seguridad+Vial\\_Compilado2016.pdf?MOD=AJPERES&CONVERT\\_TO=url&CACHEID=7f1623a5-6da6-492f-b4f1-86679c330808](http://unasev.gub.uy/wps/wcm/connect/unasev/7f1623a5-6da6-492f-b4f1-86679c330808Normativa+de+Tr%C3%A1nsito+y+Seguridad+Vial_Compilado2016.pdf?MOD=AJPERES&CONVERT_TO=url&CACHEID=7f1623a5-6da6-492f-b4f1-86679c330808); Venezuela, "Normas y Principios para el Uso Progresivo y Diferenciado de la Fuerza Policial por parte de los funcionarios y las funcionarias de los Cuerpos de Policía en sus diversos ámbitos político territoriales". Accessed 1 May 2017 <https://aldiavenezuela.microjuris.com/2010/03/22/normas-y-principios-para-el-uso-progresivo-y-diferenciado-de-la-fuerza-policial-por-parte-de-los-funcionarios-y-las-funcionarias-de-los-cuerpos-de-policia-en-sus-diversos-ambitos-politico-territoriale/>.

**24** "Committee Against Torture", accessed 1 May 2017, <https://www.ohchr.org/en/hrbodies/cat/pages/catindex.aspx>.

All the countries of the region are also states parties to all Geneva Conventions and at least to its Protocol I,<sup>25</sup> whose Article 36 regulates the acquisition and new use of means or methods of warfare. This means that in considering the integration of armed drones into their arsenals, these countries must make sure the legal means and methods of warfare are respected. This will come at a moment when there are serious doubts as to the legality of the use of armed drones.<sup>26</sup>

The membership of the Latin American States in the Arms Trade Treaty (ATT) is paramount in regulating eventual armed drone transfers—including transit and transshipment. Only 11 countries of the region are states parties to the ATT, which include drone producers Argentina, Mexico, Paraguay, Peru and Uruguay, as well as Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Panama.<sup>27</sup>

Development of and compliance with the discussed legal regulations should serve as an initial framework—along with progress in international aviation law—to prevent eventual armed drones from being used in violation of IHL and IHRL standards and principles, or from falling in the hands of end users, in or outside the region, involved in crimes against humanity, genocide or war crimes.

**25** International Committee of the Red Cross, *Annual Report 2013*. (Geneva: International Committee of the Red Cross, 2013), pp. 610-611.

**26** Laurie Calhoun, *We Kill Because We Can. From Soldiering to Assassination in the Drone Age*, (London: Zed Books, 2015), pp. 306-307.

**27** United Nations Office of Disarmament Affairs, "Table of States Parties of the ATT", last updated 1 May 2017. <https://s3.amazonaws.com/unoda-web/wp-content/uploads/2017/04/Table-of-States-parties-April-10-2017.pdf>.

Any development on disarmament, non-proliferation, and arms control does not come in isolation. Latin America will be a sounding board and actor in any multilateral process to control or regulate drones, especially if any initiatives come from the United States.

What will be the effect of Washington's call for a global control on international transfers of armed drones to start a multilateral process resulting in a Code of Conduct?<sup>28</sup>

This initiative was launched in 2016 through the Joint Declaration for the Export and Subsequent Use of Armed or Strike-Enabled UAVs and was endorsed by Argentina, Chile, Colombia, Mexico, Paraguay, and Uruguay.<sup>29</sup>

It is left to be seen what will be the continuity given to the Global Control, an Obama initiative, by the new US Administration under President Trump, and as a consequence, whether there will be continuous and additional support by the Latin American nations.

This requires due consideration at a time when the Trump Administration will not pay more attention to Latin America than the Obama presidency.<sup>30</sup>

It has shown less than a friendly approach towards its southern neighbour<sup>31</sup> and chances are that Washington's attention will remain an extension of its wars on terror and on drugs.<sup>32</sup> There is also the possibility of an extension of a global geopolitical confrontation with China, Iran, and Russia if these countries escalate their presence in the Caribbean basin.

The Latin American region has shown leadership and norm entrepreneurship in previous disarmament and arms control processes on nuclear weapons, landmines, cluster munitions, and the arms trade. Perhaps that pool of expertise and commitment could serve as a resource to drive the control of armed drones in the region and beyond. But Latin American states, civil society, academia, and media must take this window of opportunity to discuss and act on a regulation or ban of armed drones before use of the weapons is entrenched by military and police, and export by arms manufacturers.

<sup>28</sup> Chris Cole, "A New International Control Regime on Armed Drones Led by the US? What is Going on?", Drone Wars UK, accessed 1 May 2017, <https://www.dronewars.net/2016/09/02/a-new-international-control-regime-on-armed-drones-led-by-the-us-what-is-going-on/>.

<sup>29</sup> US Department of State, "Joint Declaration for the Export and Subsequent Use of Armed or Strike-Enabled Unmanned Aerial Vehicles (UAVs)", accessed 19 April 2017 <https://2009-2017.state.gov/r/pa/prs/ps/2016/10/262811.htm>.

<sup>30</sup> Ted Galen Carpenter, "The Obama Administration's Foreign Policy Challenges in the Americas" in *Fragile States in the Americas*, ed. Jonathan D. Rosen and Hanna S. Kassab (Lanham, Maryland: Lexington Books, 2017), p. 274, p. 279.

<sup>31</sup> Alexander Main, "Ce qui attend l'Amérique latine", *Le Monde Diplomatique*, No 754, January 2017, pp 8-9.

<sup>32</sup> Eric L. Golnick, "United States Defense Policy in Latin America and the Caribbean", in *Fragile States in the Americas*, ed. Jonathan D. Rosen and Hanna S. Kassab (Lanham, Maryland: Lexington Books, 2017), p. 317.

## Regional case study: Europe

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As the contributions in this publication articulate, recent years have seen a steep increase in the use of extraterritorial force coupled with a large number of civilians having been killed, seriously injured or traumatized by drone strikes within and outside of recognized areas of armed conflict.<sup>1</sup> Much critique is (rightly) aimed at the United States (US) as the de facto leader in carrying out drone strikes all over the world. However, the US is not the only active drone user. Worryingly, several European countries may not be far behind the US in terms of the acquisition of drones and drone-related technology—and may not be far from the US in their application of standards for the use of drones.

Compared to other weapons systems, advocates consider drones to have inherent advantages, such as the perceived lower

<sup>1</sup> *Resolution of 27 February 2014 on the use of armed drones*, (2014/2567 (RSP), European Parliament, 2014, accessed on 26 May 2017, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P7-TA-2014-0172+0+DOC+PDF+V0//EN>.

overall cost in comparison to other platforms, the ability to loiter over targets for long periods of time, to strike particular targets and to not place service members in harm's way. As Chris Cole notes in Chapter 4 on 'Harm to global peace and security' these perceptions and factors are harmful in that they contribute to lowering the threshold for policymakers to approve the use of force.<sup>2</sup>

In a 2015 publication, the United Kingdom's Ministry of Defense acknowledged that the "increased use [of remote and automated systems] in combat and support functions will reduce the risk to military personnel and thereby potentially change the threshold for the use of force. Fewer casualties may lower political risk and any public reticence for a military response."<sup>3</sup> It is this impact on decisions regarding the use of lethal force, especially outside of armed conflict, and the current use of armed drones in a way that challenges relevant legal standards,<sup>4</sup> that make the use of these technologies problematic.

<sup>2</sup> Micah Zenko, 'Meet the Press Transcript', NBC News, 26 April 2015, accessed on 26 May 2017 <http://www.nbcnews.com/meet-the-press/meet-press-transcript-april-26-2015-n350661>.

<sup>3</sup> UK Ministry of Defence, *Strategic Trends Programme: Future Operating Environment 2035*, 15 December 2015, 31-2, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/607612/20150731-FOE\\_35\\_Final\\_v29-VH.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/607612/20150731-FOE_35_Final_v29-VH.pdf).

<sup>4</sup> James Igoe Walsh and Marcus Schulzke, *The Ethics of Drone Strikes: Does Reducing the Cost of Conflict Encourage War?*, Strategic Studies Institute, Army War College, 2015, <https://ssi.armywarcollege.edu/pdffiles/PUB1289.pdf>; Christof Heyns, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions*, A/68/382, 13 September 2013, para 17, <https://www.justsecurity.org/wp-content/uploads/2013/10/UN-Special-Rapporteur-Extrajudicial-Christof-Heyns-Report-Drones.pdf>; Chris Cole, "Drones do 'lower threshold for use of lethal force' academic study finds," *DroneWars UK*, 12 February 2016, <https://dronewars.net/2016/02/12/drones-do-lower-threshold-for-use-of-lethal-force-academic-study-finds/>; Jelena Pejic, "Extraterritorial targeting by means of armed drones: Some legal implications," *International Review of the Red Cross*, 96(893), 3, 7 May 2015, <https://www.icrc.org/en/document/jelena-pejic-extraterritorial-targeting-means-armed-drones-some-legal-implications>.

Additionally, there are concerns that drone strikes increase recruitment for terrorist organisations,<sup>5</sup> concerns about related effects that the use of armed drones has on long-term military strategy, and the continued risk and reality of the proliferation of armed drones.<sup>6</sup>

These issues make this ever more urgent a topic demanding comprehensive address by states around the world. Because of the existence of counterproductive consequences that may arise from misusing armed drones or

related technology, a strict interpretation of and adherence to the relevant legal framework for the context of any particular use of armed drones is in the strategic interest of all states. It is especially so for those states touting the importance of relevant international legal principles and their unbridled commitment to the rule of law and fundamental freedoms, such as Member States of the European Union.

This case study briefly outlines the state of affairs in European countries with regard to the acquisition and use of armed drones, highlights recent efforts made by European institutions to discuss their regulation, and finally describes the work of civil society organizations in the European Forum on Armed Drones (EFAD), to contribute a perspective on engagement in Europe with respect to armed drones.

## State of affairs on drones in European countries <sup>7</sup>

At the time of writing, the United Kingdom (UK) is the only European country to have and use armed drones. However, many questions remain about how these drones are being deployed, against whom, and the legal

<sup>5</sup> Hassan Abbas, "How Drones Create More Terrorists," *The Atlantic*, 23 August 2013, <https://www.theatlantic.com/international/archive/2013/08/how-drones-create-more-terrorists/278743/>; Ed Picklington and Ewen MacAskill, "Obama's drone war a 'recruitment tool' for Isis, say US Air Force whistleblowers," *The Guardian*, 18 November 2015, <https://www.theguardian.com/world/2015/nov/18/obama-drone-war-isis-recruitment-tool-air-force-whistleblowers>.

<sup>6</sup> Wim Zwijnenburg and Cor Oudes., *Does Unmanned Make Unacceptable?*, PAX Report, 2015, 18-22, [http://www.ikvpaxchristi.nl/media/files/does-u-make-ulowsreads\\_0.pdf](http://www.ikvpaxchristi.nl/media/files/does-u-make-ulowsreads_0.pdf); *Report on Government's policy on use of drones for targeted killing*, UK Parliament Joint Committee on Human Rights, 2016, paragraph 1.36, accessed on 10 February 2017, <https://www.publications.parliament.uk/pa/jt201516/jtselect/jtrights/574/574.pdf>; *Drones and targeted killings: the need to uphold human rights and international law, Reply to REC 2069* (2015), Council of Europe, Committee of Ministers, 8 December 2015, <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=22301&lang=en>; Anthony Dworkin, *Europe's New Counter-Terror Wars*, *European Council on Foreign Relations* 2016, [http://www.ecfr.eu/page/-/ECFR192\\_-\\_EUROPES\\_NEW\\_COUNTER-TERROR\\_WARS\\_FINAL.pdf](http://www.ecfr.eu/page/-/ECFR192_-_EUROPES_NEW_COUNTER-TERROR_WARS_FINAL.pdf); Larry Friese., Nic Jenzen-Jones and Michael Smallwood, *Emerging Unmanned Threats: The use of commercially-available armed UAVs by non-state actors*, Armament Research Services, February 2016, <http://www.paxvoorvrede.nl/media/files/pax-ares-special-report-no-2-emerging-unmanned-threats.pdf>; Nils Melzer, *Human Rights Implications of the Usage of Drones and Unmanned Robots in Warfare*, European Parliament Directorate-General for External Policies of the Union, Directorate B, Policy Department, 2013, [http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/410220/EXPO-DROI\\_ET\(2013\)410220\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/410220/EXPO-DROI_ET(2013)410220_EN.pdf); Thomas Gibbons-Neff, "ISIS used an armed drone to kill two Kurdish fighters and wound French troops, report says," *Washington Post*, 11 October 2016, [https://www.washingtonpost.com/news/checkpoint/wp/2016/10/11/isis-used-an-armed-drone-to-kill-two-kurdish-fighters-and-wound-french-troops-report-says/?utm\\_term=.6eb5349a7a7a](https://www.washingtonpost.com/news/checkpoint/wp/2016/10/11/isis-used-an-armed-drone-to-kill-two-kurdish-fighters-and-wound-french-troops-report-says/?utm_term=.6eb5349a7a7a); Eric Schmitt, "Papers Offer a Peek at ISIS' Drones, Lethal and Largely Off-the-Shelf," *New York Times*, 31 January 2017, [https://www.nytimes.com/2017/01/31/world/middleeast/isis-drone-documents.html?\\_r=0](https://www.nytimes.com/2017/01/31/world/middleeast/isis-drone-documents.html?_r=0).

<sup>7</sup> For more, see, Srdjan Cvijic and Lisa Klingenberg, "Armed drones policy in the EU: the growing need for clarity," in *Litigating Drone Strikes: Challenging the Global Network of Remote Killing*, European Center for Constitutional and Human Rights, May 2017, pp. 28-55, <https://www.ecchr.eu/en/documents/publications/articles/litigating-drone-strikes-eng-neu.html>; Chris Cole, "European use of military drones expanding," *DroneWars UK*, 19 July 2016, <https://dronewars.net/2016/07/19/european-use-of-military-drones-expanding/>; and Jessica Dorsey and Christophe Paulussen, *Towards a European Position on Armed Drones and Targeted Killing: Surveying EU Counter-Terrorism Perspectives*, International Centre for Counter Terrorism – The Hague Research paper, April 2015, <https://www.icct.nl/download/file/ICCT-Dorsey-Paulussen-Towards-A-European-Position-On-Armed-Drones-And-Targeted-Killing-Surveying-EU-Counterterrorism-Perspectives.pdf>.

framework governing their use, given that integral issues such as invoking self-defence as a justification, using a similar standard to the US' expansive notion of imminence, and the expansive geographical interpretation about where force could be used sparked public debate in the UK. Several attempts by civil society to obtain more clarity on the policy and framework have been met with less than satisfactory answers.<sup>8</sup> At the time of writing, litigation against the UK is ongoing in order to obtain more clarification on the UK's perspective, with civil society actors seeking to keep the UK from hiding behind a national-security rationale in order to shroud its drone programme in secrecy.<sup>9</sup>

France currently has a fleet of Reaper and Harfang drones that are being deployed for ground troop support and surveillance purposes in certain operations in Africa, and is slated to receive additions to its fleet in 2019. At the time of writing, France is only using its drone fleet in a surveillance capacity.<sup>10</sup> However, reports as recent as January 2017 show that the French government has performed targeted killings—though not using drones—via the operation “homo” (short for homicide), some of which were carried out through French special forces and some reportedly outsourced to the

<sup>8</sup> See, for example, *Report on Government's policy on use of drones for targeted killing*, UK Parliament Joint Committee on Human Rights, accessed 1 August 2017, <https://publications.parliament.uk/pa/jt201516/jtselect/jtrights/574/574.pdf>.

<sup>9</sup> See, e.g., “Rights Watch (UK) taking UK to court over refusal to disclose legal basis for targeted killings,” Rights Watch UK, 20 July 2017, <http://www.rwuk.org/rights-watch-uk-taking-uk-government-to-court-over-refusal-to-disclose-legal-basis-for-targeted-killings>.

<sup>10</sup> Jean-Baptiste Jeangène Vilmer, “A Perspective on France,” Center for a New American Security, 2016, <http://drones.cnas.org/reports/a-perspective-on-france>.

United States and its drone programme.<sup>11</sup> This sheds light on how France interprets its legal authority when it comes to using lethal force, including with armed drones, and is a major cause for concern.

Italy also possesses Reaper and Predator drones, but they are unarmed pending budgetary confirmation to allow for them to be equipped with Hellfire missiles. Currently, Italy uses the drones it has in surveillance missions. Italy also hosts US drone operations led out of Sigonella Air Force Base in Sicily, which has given rise to controversy over the past year. Litigation efforts are underway to elucidate more information about this agreement.<sup>12</sup>

Germany has been using unarmed Heron surveillance drones in operations in Afghanistan, and has recently ordered a new fleet that will reportedly “be ordered directly with ammunition.”<sup>13</sup> Additionally, Germany is

<sup>11</sup> See Srdjan Cvijic and Lisa Klingenberg, “Armed drones policy in the EU: the growing need for clarity,” in European Center for Constitutional and Human Rights, *Litigating Drone Strikes: Challenging the Global Network of Remote Killing*, May 2017, <https://www.ecchr.eu/en/documents/publications/articles/litigating-drone-strikes-eng-neu.html>, footnotes 36-39, specifically, cf “Comment Hollande autorise ‘l'exécution ciblée’ de terroristes”, *Le Monde*, 4 January 2017, [http://www.lemonde.fr/societe/article/2017/01/04/comment-hollande-autorise-l-execution-ciblee-de-terroristes\\_5057421\\_3224.html](http://www.lemonde.fr/societe/article/2017/01/04/comment-hollande-autorise-l-execution-ciblee-de-terroristes_5057421_3224.html).

<sup>12</sup> Adam Entous and Missy Ryan, “U.S. has secretly expanded its secret global network of drone bases to North Africa,” *The Washington Post*, 26 October 2016, [https://www.washingtonpost.com/world/national-security/us-has-secretly-expanded-its-global-network-of-drone-bases-to-north-africa/2016/10/26/ff19633c-9b7d-11e6-9980-50913d68each\\_story.html?utm\\_term=.e52535705f75](https://www.washingtonpost.com/world/national-security/us-has-secretly-expanded-its-global-network-of-drone-bases-to-north-africa/2016/10/26/ff19633c-9b7d-11e6-9980-50913d68each_story.html?utm_term=.e52535705f75).

<sup>13</sup> Srdjan Cvijic and Lisa Klingenberg, “Armed drones policy in the EU: the growing need for clarity,” in European Center for Constitutional and Human Rights, *Litigating Drone Strikes: Challenging the Global Network of Remote Killing*, May 2017, <https://www.ecchr.eu/en/documents/publications/articles/litigating-drone-strikes-eng-neu.html>, footnote 52, cf “Die bewaffneten Drohnen kommen”, *Spiegel Online*, 31 March 2015, <http://www.spiegel.de/politik/deutschland/bundeswehr-ursula-von-der-leyen-laesst-kampfdrohnen-entwickeln-a-1026373.html>.



European Parliament discusses drone policy.

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leading on the process to build a European drone (medium altitude long endurance remotely piloted system, MALE RPS), joined by Italy, Spain, and France, planned to be operational by 2025.<sup>14</sup> It also hosts US drone operations out of Ramstein Air Force Base, the subject of ongoing litigation.<sup>15</sup>

The Netherlands received the green light from the US to purchase four Reaper drones, but has yet to go through with the next steps of the acquisition phase due to budgetary

constraints. At the time of writing, the Dutch government has yet to be formed after March 2017 elections but it is likely that when that happens in late 2017, the Dutch will likely move to acquire and arm the Reapers, according to statements from a number of politicians as well as the armed forces.<sup>16</sup> Civil society has voiced concern about the lack of clarity regarding the legal framework, whether drones will be armed and where and how the drones will be used in Dutch operations,<sup>17</sup> and will continue to monitor the situation as necessary.

<sup>14</sup> See Dassault Aviation, "European MALE RPAS (medium altitude long endurance remotely piloted system) Programme takes off," accessed on 1 August 2017, <https://www.dassault-aviation.com/en/group/press/press-kits/european-male-rpas-medium-altitude-long-endurance-remotely-piloted-aircraft-system-programme-takes-off>.

<sup>15</sup> European *Litigating Drone Strikes: Challenging the Global Network of Remote Killing*, Center for Constitutional and Human Rights, May 2017, <https://www.ecchr.eu/en/documents/publications/articles/litigating-drone-strikes-eng-neu.html>.

<sup>16</sup> Jessica Dorsey, "Wat wil Hennis echt met de Reaper drone?" *NRC Handelsblad*, 9 May 2017, <https://www.nrc.nl/nieuws/2017/05/09/wat-wil-hennis-nu-echt-met-de-reaper-8754175-a1557852>.

<sup>17</sup> Jessica Dorsey, "Wat wil Hennis echt met de Reaper-drone?" *NRC Handelsblad*, 9 May 2017, <https://www.nrc.nl/nieuws/2017/05/09/wat-wil-hennis-nu-echt-met-de-reaper-8754175-a1557852>.

It has been reported that Spain will acquire four Reaper drones from the US, with two arriving as soon as 2017, and all acquisitions to be in place before January 2019.

Switzerland is also awaiting delivery of six Hermes 900 drones to be delivered by 2020 and Poland has plans to acquire approximately 60 drones to be stationed at a dedicated base in the northwest of the country. So far, plans for these countries' drone fleets only include surveillance and reconnaissance missions.<sup>18</sup>

## Recent initiatives by European institutions

### European Parliament

In 2014, the European Parliament (EP) passed a resolution on the use of armed drones, expressing concern over the use of such technology outside the applicable legal framework.<sup>19</sup> It called for a common European position on using of armed drones, for European Union (EU) member states to oppose extrajudicial targeted killings, and for more transparency and accountability in the use of armed drones. Following the 2014 resolution, in April 2016, the EP adopted another resolution that reiterated its grave concern over the use of armed drones "outside the international legal framework" and insisted on the adoption of an EU common position.<sup>20</sup> Additionally, the two

<sup>18</sup> Chris Cole, "European use of military drones expanding," *DroneWars UK*, 19 July 2016, <https://dronewars.net/2016/07/19/european-use-of-military-drones-expanding>.

<sup>19</sup> *Resolution of 27 February 2014 on the use of armed drones, (2014/2567 (RSP))*, European Parliament, 2014, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P7-TA-2014-0172+0+DOC+PDF+V0//EN>.

<sup>20</sup> *Resolution of 28 April 2016 on attacks on hospitals and schools as violations of international humanitarian law, (2016/2662 RSP)*, European Parliament, 2016, <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P8-TA-2016-0201>.

foreign policy subcommittees of the EP (Human Rights and Security and Defense) held a hearing on the use of drones and the fight against terrorism in June 2016, focusing on the grave impact that drones have on human rights.<sup>21</sup> In September 2016, all 28 national parliaments of the EU called upon the EU High Representative Federica Mogherini and EU member states to "work towards common guidelines for the use of armed drones."<sup>22</sup>

In June 2017, the Human Rights subcommittee of the EP published "Towards an EU Common position on the use of armed drones,"<sup>23</sup> written by the present author. This publication proposes relevant elements for a legal and policy framework outlining the contours of a common position on the use of armed drones. The main principles of the document elucidate principles on requirements for member states with respect to transparency, accountability mechanisms and processes, export controls and restrictions on assistance provided to other states, and urges member states to take up such proposals at national levels for inclusion in relevant policy and legislation in order to reflect the EU's commitment to the

<sup>21</sup> "Joint SEDE/DROI public hearing on 'The use of drones and the fight against terrorism - the impact on human rights'," European Parliament, 2016, <http://www.europarl.europa.eu/committees/en/droi/events-hearings.html?id=20160623CHE00021>.

<sup>22</sup> "Interparliamentary Conference for the Common Foreign and Security Policy and the Common Security and Defence Policy, 2-4 September 2016, Bratislava, Final Conclusions," European Council, 2016, <http://www.nrsr.sk/web/Dynamic/Download.aspx?DocID=429373>.

<sup>23</sup> Jessica Dorsey, "Towards an EU common position on the use of armed drones," European Parliament Directorate-General for External Policies, June 2017, [http://www.europarl.europa.eu/RegData/etudes/STUD/2017/578032/EXPO\\_STU\(2017\)578032\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2017/578032/EXPO_STU(2017)578032_EN.pdf). See also "Subcommittee on Human Rights Workshop: Towards a European common position on the use of armed drones?" European Parliament, 22 March 2017, <http://www.europarl.europa.eu/ep-live/en/committees/video?event=20170322-1500-COMMITTEE-DROI>.

rule of law, human rights, and fundamental freedoms. The proposed elements are in line with objectives advanced by the 2016 EU Global Strategy and are largely based on elements found in the 2014 resolution in addition to existing international standards and recommendations at the EU and United Nations (UN) levels

### Council of Europe

In 2015, after several debates on the matter, the Parliamentary Assembly of the Council of Europe unanimously adopted a resolution on 27 January 2015 recognising several legal issues that member and observer states still needed to address with respect to the use of armed drones. These included national sovereignty, human rights concerns, and the problematic broadening of international humanitarian law principles. The resolution called for member and observer states to establish clear procedures that respected the limits under international law on targeted killing, including investigating deaths caused by drones and openly publishing procedures related to targeting.<sup>24</sup> The Committee on Legal Affairs and Human Rights remains seized of the matter.

### European civil society engagement

There is a robust network of civil society actors within Europe and beyond working on several issues related to armed drones.

One such network is the European Forum on

Armed Drones (EFAD). As stated in its Call to Action, EFAD “is a civil society network of organisations working to promote human rights, respect for the rule of law, disarmament and conflict prevention.” The Forum was “formed to challenge the growing global use of armed drones and to address key concerns regarding their deployment and proliferation, through engaging with governments, European institutions and civil society, and by promoting political and public debate.”<sup>25</sup> The five areas EFAD focuses its advocacy on are as follows: articulate clear policies on the use of armed and surveillance drones that echo standards already prescribed by international law; prevent complicity in unlawful drone strikes; ensure transparency through information sharing and providing timely public information; establish accountability, ensuring the rights of drone strike victims are upheld; and finally, control proliferation by strengthening arms exports regimes and encouraging more open discussion about stricter control of transfers of drones and drone-related technology.

EFAD member organisations undertake this work in several ways, including through lobbying and advocacy efforts pertaining to the five action points outlined above, carrying out research, engaging with relevant states and non-state actors, undertaking strategic litigation efforts, and hosting workshops and conferences to provide more opportunities for dialogue with policy makers and legislators at the national, European, and UN levels. EFAD also engages with transatlantic and global partner organisations on related initiatives.

<sup>24</sup> *Resolution 2051 (2015): Drones and targeted killings: the need to uphold human rights and international law*, Council of Europe, Parliamentary Assembly, 2015, <http://semantic-pace.net/tools/pdf.aspx?doc=aHR0cDovL2Fzc2VtYmx5LmNvZS5pbmQvbnNvZS5uZXQvWHNsdC9QZGZvWFJiZi1XRC1BVC1YTUwyUERG LnhzbA==&xsltparams=ZmlsZWlkPTIxNzQ2>.

<sup>25</sup> “Call to Action,” European Forum on Armed Drones, 2016, <https://www.paxvoorrrede.nl/media/files/efad-call-to-action.pdf>.

Civil society engagement on armed drones is more vital now than ever—both in Europe and beyond. European countries are generally more opaque in many respects than even the US.<sup>26</sup> Calls by civil society organizations for more transparency are largely met with a resounding silence. This is particularly concerning as reticence with respect to these issues can give the impression of European states' implicit consent to controversial uses of armed drones. This may in turn lend such activities more legitimacy.<sup>27</sup> As the author Paulussen point out: "In theory, this lack of public discourse even could lead to the formation of customary norms, 'as evidence of a general practice accepted as law'...[and] abstention of protest could also assist in the process of law-making."<sup>28</sup>

## Conclusion

Fundamental rights are at the very core of the European identity. The EU's 2016 Global Strategy serves as a reminder that the EU is tasked with "promot[ing] a rules-based global order with multilateralism as its key principle and the United Nations at its core."<sup>29</sup> This echoes the objectives of the EU's Common Foreign and Security Policy, which include adhering to values

such as liberty, democracy, the universality and indivisibility of human rights and fundamental freedoms, the rule of law, preserving peace and strengthening international security in accordance with the UN Charter, and respect for principles of international law.<sup>30</sup>

Recent developments that have seen shifting geopolitical dynamics due to the posturing of the US and Russia, alongside the changing undercurrents within NATO and other alliances, offer European countries and institutions a chance to take a stand and recommit to the fundamental freedoms that form the basis of the European identity. One way this could be done is through mechanisms that regulate the use of armed drones. However, time is running out to take any kind of leading role or moral high-ground that stays true to the fundamental rights Europe purports to uphold, before drone technology has proliferated and the standards of use are far afield from the notions of international law we know today. If various European countries continue their general silence with respect to armed drones, or if they begin to follow the controversial lead of the US, they risk being complicit actors in the erosion of the international legal principles and fundamental rights and freedoms upon which the European identity is built. Civil society engagement, through the EFAD network and beyond, is a crucial element in engaging governments on these issues in order to reiterate their commitment to the rule of law and to lessen the human impact of drone strikes.

<sup>26</sup> Jessica Dorsey and Christophe Paulussen, *Towards a European Position on Armed Drones and Targeted Killing: Surveying EU Counter-Terrorism Perspectives*, International Centre for Counter Terrorism – The Hague Research paper, April 2015, <https://www.icct.nl/download/file/ICCT-Dorsey-Paulussen-Towards-A-European-Position-On-Armed-Drones-And-Targeted-Killing-Surveying-EU-Counterterrorism-Perspectives.pdf>.

<sup>27</sup> Anthony Dworkin, "Drones and Targeted Killing: Defining a European Position," European Council on Foreign Relations Policy Brief, July 2013, 2, [http://www.ecfr.eu/page/-/ECFR84\\_DRONES\\_BRIEF.pdf](http://www.ecfr.eu/page/-/ECFR84_DRONES_BRIEF.pdf); Art. 38, para. 1 (b) of the Statute of the International Court of Justice.

<sup>28</sup> Jessica Dorsey and Christophe Paulussen, above note 7.

<sup>29</sup> "Shared Vision, Common Action: A Stronger Europe - A Global Strategy for the European Union's Foreign And Security Policy," European Union, 2016, [https://europa.eu/globalstrategy/sites/globalstrategy/files/regions/files/eugs\\_review\\_web.pdf](https://europa.eu/globalstrategy/sites/globalstrategy/files/regions/files/eugs_review_web.pdf).

<sup>30</sup> Ramses Wessels, *The European Union's Foreign and Security Policy: A Legal Institutional Perspective* (Leiden: Martinus Nijhoff Publishers, 1999), p. 59 et seq.

# 8. Gendered Perspectives

## Ray Acheson

**Ray Acheson** is the Director of Reaching Critical Will, the disarmament programme of the Women's International League for Peace and Freedom (WILPF). She leads WILPF's advocacy and research on weapons and militarism, which always includes a gender perspective. Her work also includes monitoring and analysing international processes and forums related to disarmament.

Writing in the mid-20th century, the philosopher Simone Weil encouraged the examination of technology and means of warfare, rather than the ends pursued by armed violence. She argued that to understand the consequences of war one needs to take apart the mechanism of the military struggle and analyse the social relations it implies under given technical, economic, and social conditions.<sup>1</sup>

One consistently underexplored aspect of social relations in the context of weapons and war is gender. This chapter, building on the work undertaken by feminist activists and scholars in the context of the women, peace, and security field as well as those looking at gender and militarism and gender and technology more broadly, seeks to examine the gendered implications of the use of armed drones. How do armed drones, as a specific technology, perpetuate gender essentialisms, including violent, militarised masculinities? How, in turn, does the development of this form of mechanised violence affect masculinities? How are drones used to commit acts of gender-based violence?

This chapter first discusses how genders, in particular hegemonic norms of "militarised masculinity," are constructed. It then briefly examines the relationship between gender and military technology, turning to armed drones as a particularly poignant study in how weapons can both reinforce and simultaneously undermine hegemonic gender norms, and what implications

<sup>1</sup> Simone Weil, *Formative Writings, 1929–1941* (Amherst: University of Massachusetts Press, 1987): 174.

this has for gender-based violence, gender essentialisms, and gender equality.

It is important to examine drones through a gendered lens not merely as an academic exercise but as a means to making specific policy recommendations. Understanding the gendered context and implications of drones is useful for developing more cogent, comprehensive responses to their use and development—just as a gendered lens is useful for understanding militarism more broadly.

An examination of the gendered aspects of armed drones does not imply that other means of warfare are more acceptable, or that policies such as targeted killings are acceptable by other means. Instead, an investigation of the ways in which gender constructions motivate or are in turn impacted by the use of armed drones can help policymakers, military operators, and activists confront the unique challenges that armed drones pose to peace, security, and gender equality as well as the relationship between these challenges and militarism more broadly. Gender analysis should not be a footnote. It offers specific tools that can help unpack or understand more fully the ways drones are perceived by users and victims; the physical and psychological responses to the use of armed drones; and the situational context of drones in terms of military technology as well as gender relations.

## The construction of gender

Gender does not refer to biological sex, but rather to socially constructed ideas that attribute meaning to and differentiate between sexes. Questions of gender do not exclusively concern women, but all sexes and sexual and gender identities. It is also important to recognise that individuals within a certain sexed or gendered group are not homogeneous. Women, men,

transgendered, transsexual, and other sexed people are different ages, races, ethnicities, religions, and sexualities; are differently abled; have different political views and socioeconomic statuses; and have vastly different experiences in the world, in societies, communities, and at home. Yet this is rarely recognised by gender stereotypes, expectations, and norms.<sup>2</sup>

Gender is a process constructed by human societies. Ideas about gender can change over time. Socially constructed understandings of gender affect perceptions of social roles, behaviour, and identity, and have implications for relations between people. Gender is, in principle, about social organisation. It “structures social relationships and upholds and reproduces rules and patterns of expectation.”<sup>3</sup> As individuals act out gender norms and fulfill expectations with these actions, they not only reinforce the gender essentialisms built up by societies and cultures, but they also contribute to the establishment and reinforcement of power relations between gender categories.<sup>4</sup>

Power relations, as Michel Foucault explained in 1977, are embedded in processes of categorisation and differentiation.<sup>5</sup> In terms of gender, these processes produce a hierarchy

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<sup>2</sup> The fact that there are differences of class, race, culture, ability, etc. between women and between men and between others adds complexity to this analysis, but it does not make a gender perspective theoretically unimportant or politically irrelevant. “In virtually every culture,” notes Sandra Harding, “gender difference is a pivotal way in which humans identify themselves as persons, organize social relations, and symbolize meaningful natural and social events and processes.” See Sandra Harding, *The Science Question in Feminism* (Ithaca and London: Cornell University Press, 1986): 18.

<sup>3</sup> Franck Barrett, “The Organizational Construction of Hegemonic Masculinity: The Case of the US Navy,” *Gender, Work and Organization* 3, no. 3 (1996): 130.

<sup>4</sup> Judith Lorberg, *Paradoxes of Gender* (New Haven, CT: Yale University Press, 1994): 6.

<sup>5</sup> Michel Foucault, *Discipline and Punish: The Birth of the Prison* (New York, Vintage Books, 1977).

between gender identities and hegemonic norms within and between genders. “Hegemonic masculinity” is a “particular idealized image of masculinity in relation to which images of femininity and other masculinities are marginalized and subordinated.” In many cultures today, hegemonic masculinity is represented by a heterosexual man who is independent, risk-taking, aggressive, rational, physically tough, courageous, and unemotional.<sup>6</sup>

As the process of constructing gender is based on differentiation, people other than heterosexual men are considered to be dependent, risk-averse, passive, irrational, weak, timid, and emotional.

## Violent and militarised masculinities

This “hegemonic masculinity” is also associated with the capacity, willingness, and propensity for violence. Boys come to learn—through parenting, media, and schooling—to define themselves as men through violence.<sup>7</sup> The norms of hegemonic masculinities—toughness, strength, bravado—teach boys to exercise dominance through violent acts and rely upon violence as a form of communication.

Boys and men are in particular socialised into militarised gender identities—and women and girls and others are socialised to support such identities. Militarised masculinities are produced in various sites, including through the policies of states, security discourses, education, media

debates, popular culture, and family relations.<sup>8</sup> This process also takes place through the marketing of war and weapons culture through toys, stories, films, and social norms. In the United States, for example, “video game and film industries both take money from companies that make firearms to feature their products” and then the military uses these games and films for recruitment. “These extreme examples intersect with the everyday, mundane lessons about the importance of being ‘real men’ that boys and men receive from the media and their peers, parents, coaches, and more.”<sup>9</sup>

The military, scholars have argued, plays a primary role in shaping images of masculinity in the larger society,<sup>10</sup> to the point where “the dominant adult male role model could largely be the product of the military.”<sup>11</sup> Some historians have linked the development of militarised masculinities with the development of the nation-state, arguing that the survival of the state relies on its ability to consolidate the men, money, and machines required for war. “Citizenship rights, most notably the right to political participation,” became linked with bearing arms and violent masculinity. “In the nineteenth century, the conscript military became the central state institution establishing and sustaining militaristic gender ideologies, that is, ideals of women as weak, in need of protection, passive and peaceful, and men as rational, war prone and

<sup>6</sup> Franck Barrett, “The Organizational Construction of Hegemonic Masculinity”; Maya Eichler, “Militarized Masculinities in International Relations,” *Brown Journal of World Affairs*, Volume XXI, Issue I (Fall/Winter 2014); R.W. Connell, *Masculinities* (Berkeley: University of California Press, 1995).

<sup>7</sup> Soraya Chemaly, “Why Won’t We Talk About Violence and Masculinity in America?”, *Ms. Magazine*, 17 December 2012, <http://msmagazine.com/blog/2012/12/17/why-wont-we-talk-about-violence-and-masculinity-in-america>.

<sup>8</sup> Eichler, “Militarized Masculinities in International Relations”, op. cit.

<sup>9</sup> Lisa Wade, “Tough Guise 2: The ongoing crisis of violent masculinity,” *The Society Pages*, 15 October 2013, <http://thesocietypages.org/socimages/2013/10/15/tough-guise-2-a-new-film-on-the-ongoing-crisis-of-violent-masculinity>.

<sup>10</sup> Michael S. Kimmel and Michael A. Messner, *Men’s Lives* (New York: Macmillan, 1989): 176-83; David H. J. Morgan, “Theater of War: Combat, the Military, and Masculinities,” in Harry Brod and Michael Kaufman (eds.) *Theorizing Masculinities* (Thousand Oaks, CA: Sage, 1994).

<sup>11</sup> William Arkin and Lynne Dobrofsky, “Military socialization and masculinity,” *Journal of Social Issues*, 34,1 (1978): 151–168.

No drones protest in San Diego, organized by Code Pink.



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aggressive.”<sup>12</sup> Primacy in the military was, and still is, awarded to “toughness, skilled use of violence, presumption of an enemy, male camaraderie, submerging one’s emotions, and discipline (being disciplined and demanding it of others).”<sup>13</sup>

The dominant form of militarised masculinity is not universal—it can be crafted to serve peacekeeping, humanitarian missions, or combat roles; it can vary based on nationality; and it can vary when wielded in domestic and foreign operations.<sup>14</sup> But these militarised masculinities are embedded within the institutions of violence and perpetuate that culture beyond these

institutions. The practices of military institutions engage actively in the processes of differentiating and “othering” that reinforces the ideal of masculinity and gendered hierarchies. For example, there is a tradition in the military of reserving the labels associated with femininity for the “other”. Many militaries insult a potential or defeated army by calling him a woman; recruits in training that do not keep up are subject to gendered insults: they are called girls and pussies by their instructors.<sup>15</sup>

The ideals of the hegemonic masculinity “provide a framework through which war can be rendered both intelligible and acceptable as a social

<sup>12</sup> Saskia Stachowitsch, “Military Privatization and the Remasculinization of the State: Making the Link Between the Outsourcing of Military Security and Gendered State Transformations,” *International Relations*, 27(1) 74–94: 78.

<sup>13</sup> Cynthia Enloe, *Bananas, Beaches, and Bases* (Berkeley: University of California Press, 1990): 150.

<sup>14</sup> *Ibid.*

<sup>15</sup> *Ibid.*; Penny Strange, *It’ll Make a Man of You: Feminist View of the Arms Race* (Nottingham: Five Leaves Publications, 1983). As Barrett, “The Organizational Construction of Hegemonic Masculinity,” p. 134, argues, integrating women in military isn’t going to “dilute the tough image associated with the ideology of masculinity.” They are often seen as having been cut a break by being “allowed” in without having to go through the same rigorous training as men.

practice and institution,” argues Kimberly Hutchings.<sup>16</sup> At the same time, “war plays a special role in anchoring the concept of masculinity, providing a fixed reference point for any negotiation or renegotiation of what ... hegemonic masculinity may mean.”<sup>17</sup>

The standards of conduct or ways of being that are adopted by men that value and conform to the hegemonic masculinity are consistent with the standards and ways of those engaged in war.

## Gender and military technology

They are also consistent with the technological means created to conduct warfare. Gender relations are “materialised in technology”, through which the meaning and character of masculinity and femininity are further developed “through their enrolment and embeddedness in working machines,” argues scholar Judy Wajcman.<sup>18</sup> Wajcman argues that the very definition of technology is cast in terms of “male activities”—activities associated with the hegemonic masculinity. The traditional conception of technology, in this regard, is industrial machinery and military weapons—tools of work and war.

Because of this, technology and gender have become interlinked in terms of the process of their development and their use. Technological products bear their creators’ mark, argues Sandra Harding. If technology is developed and utilised primarily by men operating within a framework of militarised masculinity, their creations will be instilled with their framework of thought, knowledge, language, and interpretation.<sup>19</sup>

<sup>16</sup> Kimberly Hutchings, “Making Sense of Masculinities and War,” *Men and Masculinities*, vol. 10, no. 4, June 2008, 389–404, p. 389.

<sup>17</sup> *Ibid.*, p. 390.

<sup>18</sup> Judy Wajcman, “Feminist theories of technologies,” *Cambridge Journal of Economics* 2009, p. 2.

<sup>19</sup> Sandra Harding, *op. cit.*

This brings us to armed drones. These weapons are literally gendered by their fuller name, “unmanned aerial vehicles”. In the context of a culture of militarised masculinities and masculinised technological development, these tools of violence and of war have specific characteristics that simultaneously reinforce and undermine hegemonic gender norms. This in turn has implications for the notion of men as expendable and vulnerable, as predators and protectors, and poses serious challenges for breaking down gender essentialisms or achieving gender equality in a broader context.

## “Projecting power without vulnerability”

The ability to project “distance influence without projecting vulnerability in the same ratio has favoured the development of aerospace capabilities resting firmly in the ever-evolving foundation of modern technology,” wrote Major General Charles D. Link of the US Air Force in 2001.<sup>20</sup> The quest for “deploying military force regardless of frontiers” and “extending imperial power from the center over the world that constitutions its periphery”<sup>21</sup> long precedes the armed drone. But the military seems to believe it has found a solution to this challenge in the armed drone. As US Air Force official David Deptula stated, “The real advantage of unmanned aerial systems is that they allow you to project power without projecting vulnerability.”

Drones have an ethos of invulnerability to them. They enable their operators to strike targets far away at a moment’s notice without any warning. In the 1980s, Donna Haraway described what she called the “god-trick” of Western scientific epistemologies—the illusion of the panopticon,

<sup>20</sup> Charles D. Link, “Maturing Aerospace Power,” *Air and Space Power Journal*, 4 September 2001.

<sup>21</sup> Chamayou, p. 12.

the ability “to see everywhere from a disembodied position of ‘nowhere’ as an integral component of histories of militarism, capitalism, colonialism, and male supremacy.”<sup>22</sup> More recently, Lauren Wilcox has described how this “is seemingly perfected in the weaponized drone, with its global surveillance capacities and purported efficiency and accuracy in targeting weapons.”<sup>23</sup>

In reality, drones have proven to be neither as efficient or accurate as their users may like their publics to believe. The tools and procedures used for determining targets for “signature strikes”—attacks based on “producing packages of information that become icons for killable bodies on the basis of behavior analysis and a logic of preemption”—have resulted in hundreds of civilian casualties in drone strikes. Documents leaked to *The Intercept* in 2015 show how “signature strikes” are conducted on the basis of “intelligence” collected from video feeds, email, social media, spy planes, and mobile phones. The “intelligence” is analysed for patterns through the use of algorithms. This process is unique to drone strikes.<sup>24</sup> (Part of this process, as will be seen below, is gendered.)

This process is not immune to interpretation, bias, or mistakes by those using the information to determine targets for drone strikes. As Kyle Grayson explains, targeted killings, including with drones, depend on the identification and surveillance of a target, but these processes are

underpinned with cultural dispositions that determine what is seen and how it is seen.<sup>25</sup>

Despite this, the US military and others using drones continue to project the god-like qualities of drones—including their invulnerability and omnipotence. “Everywhere and nowhere,” Ian Shaw warns, “drones have become sovereign tools of life and death, and are coming to a sky near you.”<sup>26</sup> Armed drones “have become so prolific that they are now a standard part of U.S. military culture,” write investigative journalists Jeremy Scahill and Glenn Greenwald.<sup>27</sup> One sign of this is that they are often given nicknames. One of these, according to a former Joint Strike Operating Command (JSOC) drone operator interviewed by *The Intercept*, is “Sky Raper”. He said it is called this “because it killed a lot of people.”<sup>28</sup> The nickname goes beyond that given to a tool for killing, however. It perpetuates the culture of domination that, as argued earlier, is a key component of the development of militarised masculinities. It also reinforces the institutionalisation of rape as a tool of war. “By nicknaming a drone ‘Sky Raper’ operators—who are actors of the State—own the use of rape for domination and to defeat a target, while simultaneously participating in the normalization of rape as a larger systemic issue,” argues researcher Erin Corbett. “Not only are operators suggesting that it is appropriate to use rape as a weapon against individuals in a time of war, they are also making light of sexual violence more

<sup>22</sup> Lauren Wilcox, “Embodying algorithmic war: Gender, race, and the posthuman in drone warfare.” *Security Dialogue*, 48, no. 1, p. 13, describing Donna Haraway, “Situated knowledges: The science question in feminism and the privilege of partial perspective,” *Feminist Studies* 14(3): 575–599.

<sup>23</sup> Lauren Wilcox, op. cit. p. 13.

<sup>24</sup> For details of these processes, see Cora Currier, “The kill chain: the lethal bureaucracy behind Obama’s drone war,” *The Intercept*, 15 October 2015, <https://theintercept.com/drone-papers/the-kill-chain>.

<sup>25</sup> Kyle Grayson, “Six These on Targeted Killings,” *Politics* 32(2): 120–128.

<sup>26</sup> Ian Shaw, “Intervention – From Baseworld to Droneworld,” AntipodeFoundation.org, 14 August 2012, <https://antipodefoundation.org/2012/08/14/intervention-from-baseworld-to-droneworld>.

<sup>27</sup> Jeremy Scahill and Glenn Greenwald, “The NSA’s secret role in the U.S. assassination program,” *The Intercept*, 10 February 2014, <https://theintercept.com/2014/02/10/the-nsas-secret-role/>.

<sup>28</sup> Ibid.

generally.”<sup>29</sup> Furthermore, they are seeking to “emasculate” those they have determined are “enemies” in a racist, sexist, and sexualised approach to armed violence. The “Sky Raper” represents the “white Western phallic power” enforcing power and masculinity over “the other”.<sup>30</sup>

This can perhaps become particularly true in relation to the use of armed drones in countries without the “host” government’s consent. A 2013 US Justice Department white paper declared that a drone strike can proceed “with the consent of the host nation’s government or after a determination that the host nation is unable or unwilling to suppress the threat.” Academic Lorraine Bayard de Volo argues that this “demasculizes” the governments of host nations, which are “unable to protect their own borders against penetration by U.S. drones.”<sup>31</sup> She also says it suggests the United States is the “self-appointed patriarch” and that “nations that do not consent are rendered, in effect, legally incapable of consent.”<sup>32</sup> It would also seem to suggest that the US government could decide to bomb in such countries without their government’s—which sounds very much like an allegory for rape.

Of course such actions are not necessarily unique to armed drones. Other weapons can and have been used to “penetrate” borders without consent. However, such practices seem to have reached the level of official policy with the use of armed drones.

The imagery of rape and nonconsensual activities is not an aberration. A culture of sexual violence—and subsequent immunity—is part of the culture of dominance and invulnerability that is ingrained within the military’s purposeful development of violent masculinities and a “warrior ethos,” as described above. One immediate consequence of this culture is that female soldiers are often subject to sexual assault. In 2012, an estimated 26,000 US military personnel were sexually assaulted by their colleagues. Women, at the time making up 15 percent of US active-duty forces, were disproportionately attacked. The 2013 documentary film *The Invisible War* revealed that a female soldier in a combat zone is more likely to be raped by a fellow soldier than killed by enemy fire.<sup>33</sup> In 2015, the UN Human Rights Council’s Universal Periodic Review panel urged the US military to take action to prevent sexual violence, ensure prosecution of offenders, and offer redress for victims.<sup>34</sup> However, as the most recent Department of Defense report has shown, 75 per cent of those who have been sexually assaulted in the military lack the confidence in the military justice system to even report the crimes against them.<sup>35</sup>

Cynthia Enloe connects this violence by male soldiers toward women inside the military to “the masculinized idea that women are property to be used by men in ways that allegedly confirm their own manhood and simultaneously preserve the masculinized atmosphere in certain institutional spaces.”<sup>36</sup>

<sup>29</sup> Erin Corbett, “On Nicknaming Predators,” *The Feminist Wire*, 22 June 2015, <http://www.thefeministwire.com/2015/06/on-nicknaming-predators/>.

<sup>30</sup> Jasbir K. Puar and Amit Rai, “Monster, Terrorist, Fag: The War on Terrorism and the Production of Docile Patriots,” *Social Text* 20, no. 3 (2002): 137.

<sup>31</sup> Lorraine Bayard de Volo, op. cit., p. 63.

<sup>32</sup> Ibid.

<sup>33</sup> See <http://www.pbs.org/independentlens/films/invisible-war>.

<sup>34</sup> Jenna McLaughlin, “The US Military’s Sexual-Assault Problem Is So Bad the UN Is Getting Involved,” *Mother Jones*, 14 May 2015, <http://www.motherjones.com/politics/2015/05/un-human-rights-council-us-military-do-better-victims-sexual-violence>.

<sup>35</sup> *Department of Defense Annual Report on Sexual Assault in the Military, Fiscal Year 2015*, Department of Defense, 2 May 2016, [http://sapr.mil/public/docs/reports/FY15\\_Annual/FY15\\_Annual\\_Report\\_on\\_Sexual\\_Assault\\_in\\_the\\_Military.pdf](http://sapr.mil/public/docs/reports/FY15_Annual/FY15_Annual_Report_on_Sexual_Assault_in_the_Military.pdf).

<sup>36</sup> Enloe, *Bananas, Beaches, and Bases*: 156.

There is a direct relationship between sexual violence in the military and nicknaming a drone “Sky Raper”: this is about violent masculinities dominating and directing the conduct of soldiers—invulnerable warriors, immune from prosecution for rape and war crimes—on and off the battlefield.

### “Emasculating” the warrior

However, the projection that drones are invulnerable does not necessarily imply that those who operate them are. In contrast, the supposed invulnerability of drones is based on the dislocation of their operators from danger. The user is protected by distance from the subjects it is targeting with the drone. This separates the “warrior” from war, the body from the battlefield. This has important implications for militarised masculinities.

Mechanising warfare and protecting the soldier from risk of bodily harm seems to be in contradiction to the ethos of militarised masculinity. Engaging an “enemy” from a distance to which he or she cannot respond is like shooting someone in the back. It is the antithesis of methods of warfare that celebrate bravery, courage, and sacrifice.

“The attempt to eradicate all direct reciprocity in any exposure to hostile violence transforms not only the material conduct of armed violence technically, tactically, and psychically, but also the traditional principles of a military ethos officially based on bravery and a sense of sacrifice,” argues Chamayou. “Judged by the yardstick of such classical categories, a drone *looks like* the weapon of cowards.”<sup>37</sup>

The tension between the preservation of militarised masculinities and the development of

technologies of war that undermine the ethos that sustains such masculinities raises significant questions for the gendered hierarchies upon which the military relies. If machines come to undermine the masculinity of its operator, is the operator being “feminised”?

Undertaking a gendered discourse analysis of interviews with drone pilots, PhD candidate Lindsay Murch found that one drone pilot’s claim to “emotional disturbance”—which ran counter to the expected narrative for him as a man operating in a military capacity—was causing him to consider “getting out of” the role. He claimed, “he just wanted to be a ‘hero’ and that the role of drone pilot was not enabling him to reach this goal.” Murch suggests this could be construed as a sense that he was being “feminised”.<sup>38</sup>

“One of the troubles with unmanned aerial vehicles is literally the peril of becoming ‘unmanned’ in every sense of the term,” argues Chamayou. “That also is why those Air Force officers initially put up such resistance to the general adoption of the drones. Obviously the drones threatened their own employment, their professional qualifications, and their institutional position, but the threat was also to their own virility, which was largely associated with the taking of risks.”<sup>39</sup> Mary Manjikian suggests that “media portrayals of the new ‘technogeek warrior’ have noted that the men who command systems like Israel’s Iron Dome mobile anti-rocket

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<sup>38</sup> Lindsay Murch, “Sex and gender in drone pilot interviews,” *Security Dilemmas*, 27 January 2015, <https://securitydilemmas.wordpress.com/2015/01/27/sex-and-gender-in-drone-pilot-interviews>.

<sup>39</sup> Chamayou, *op. cit.*, p. 100. Also see Frank Sauer and Niklas Schörnig, “Killer drones: The ‘silver bullet’ of democratic warfare?” *Security Dialogue* 43 (4): 363–380 and Mary Manjikian, “Becoming Unmanned: The gendering of lethal autonomous warfare technology,” *International Feminist Journal of Politics* 16 (1): 48–65.

<sup>37</sup> Chamayou, p. 88.

interception system are not stereotypically male leaders.”<sup>40</sup>

The alternative to accepting “feminization” is to change the goal posts altogether. Some media reports, based on the language of military officials, have come to laud technical proficiency as a warrior skill. In terms of cyber security, soldiers are described as “cyberwarriors” by their commander; technical prowess is elevated to a militaristic skill. Meanwhile, “Profiles in sources like *Wired* reinforce the connection between technical prowess and masculinity through featuring pictures of the new ‘geek warriors’ in military gear, posing next to the weapons which they pilot remotely, along with statistics about their kill ratios.”<sup>41</sup>

This requires a switch in ethic—from one of self-sacrifice to one of self-preservation. What was once considered cowardice must now be seen as courage.<sup>42</sup> The notion that killing someone remotely involves a kind of bravery, even without any risk to oneself, requires this switch. It requires an argument that this act itself has a cost. “One has to make an effort to force oneself to overcome one’s original repugnance at doing it and seeing it and, perhaps above all, seeing oneself do it,” explains Chamayou.<sup>43</sup>

This appears to lend to the psychological strain on drone operators now being seen amongst US military personnel. “These seemingly omnipotent killers who cannot be killed are vulnerable to psychological injury,” writes Bayard de Volo.<sup>44</sup>

<sup>40</sup> Mary Manjikian, op. cit., pp. 52–53.

<sup>41</sup> Mary Manjikian, op. cit., p. 53.

<sup>42</sup> Chamayou, op. cit., p. 101.

<sup>43</sup> Chamayou, op. cit., p. 102.

<sup>44</sup> Lorraine Bayard de Volo, “Unmanned? Gender Recalibrations and the Rise of Drone Warfare,” *Politics & Gender*, 12 (2016), p. 52.

There are reports of high levels of stress and even post-traumatic stress disorder amongst drone pilots. The psychological injuries suffered by drone operators “often revolve around gendered and raced associations of guilt and innocence of drone victims,” argues Bayard de Volo.<sup>45</sup> Killing “women and children” is ostensibly avoided and, as some operator transcripts demonstrated, acknowledgement of such deaths is also avoided.<sup>46</sup>

However, such psychological harms may now be seen as a “badge of honour” and a mark of masculine courage: while drone pilots are not risking their physical bodies in combat, they are risking their mental health. “This would be a specific form of bravery,” writes Chamayou, “defined no longer by the exposure of one’s physical vulnerability to enemy violence, but exposure of one’s psychic vulnerability to the effects created by one’s own destructiveness.”<sup>47</sup>

In World War I, both physical and psychic vulnerabilities played a role in anti-war activism. Jane Addams, founder of the Women’s International League for Peace and Freedom, spoke about the nightmares of soldiers in which they relived killing on the battlefield, or acts of resistance against “the horror of killing”. But as Chamayou remarks, “this theme of soldiers as victims of the violence they were forced to commit,” which was once a criticism of the institutions that made them do so, “is now being recycled, in a modified form, in order to promote the legitimization of dronized homicide.” Rather than drawing attention to soldiers’ “psychic wounds” in order to critique the military, “nowadays it serves to bestow upon this

<sup>45</sup> Lorraine Bayard de Volo, op. cit., p. 52.

<sup>46</sup> Lauren Wilcox, op. cit.; Lorraine Bayard de Volo, op. cit., pp. 67–69.

<sup>47</sup> Chamayou, op. cit., p. 103.

unilateral form of violence an ethico-heroic aura that could not otherwise be procured.”<sup>48</sup>

But while this emerging form of “bravery” reinforces traditional masculinities, it is also directed and guided by the norms of masculinity that are already embedded in the culture. Lindsay Murch’s analysis of drone pilot interviews found that showing emotion in the face of these “psychic wounds” was, not surprisingly, coded as feminine and associated with instability. “No one talked about it. No one talked about how they felt after anything. It was like an unspoken agreement that you wouldn’t talk about your experiences,” said one pilot. Another interviewee denied any emotional response but referred to “seriousness” in undertaking any lethal action. “The tone of the interviewee is staunchly masculine,” writes Murch, “relying heavily on the rational (there are no emotional calls for revenge against targets or tenderness in reflecting on the target’s children), referring to the rules of engagement and laws of armed conflict as a means of justifying killing (masculine both on the basis of being active and acting as a warrior/soldier in killing).”<sup>49</sup>

This aspect of the warrior ethos of hegemonic masculinity—unemotional, detached, serious, rational—is protected. Furthermore, at the same time that operators seem to struggle with the “cowardice” of hiding behind a machine to kill, armed drones can also “project a predatory masculinity, a powerful and abusive machine that emasculates targeted men.”<sup>50</sup> To some extent, this goes against the masculine “protector” role the US military in particular has projected throughout history. However, in the case of armed drones, the association of the technology with predators and grim reapers may be what is necessary to maintain the violent, militarised masculinities that are relied upon to conduct war. It also, as Bayard de Volo points out, “invites and legitimates a masculine response.”<sup>51</sup> Affected populations, viewing the perpetrators of drone strikes as a predatory male, are incentivized to adopt the masculine protector role in their communities, to fight back against the aggressor.

## Subordination and expendability

The maintenance and perpetuation of militarised masculinities is key to the maintenance of militarism. “The ideology of hegemonic masculinity (and the various hierarchical discriminations it permits) is presented as underpinning the kinds of value systems, divisions of labor, institutions, and subjectivities that sustain war as a practice,” writes Kimberly Hutchings.<sup>52</sup> But part of what is necessary to sustain war as a practice is the killing of human beings. Turning men into warfighters requires breaking down their sense of ethics and morals and building up a violent masculinity that is lacking in empathy and glorifies strength as

<sup>48</sup> Chamayou, op. cit., pp. 104–105.

<sup>49</sup> Murch, “Sex and gender in drone pilot interviews,” op. cit.

<sup>50</sup> Lorraine Bayard de Volo, op. cit., p. 65.

<sup>51</sup> Ibid.

<sup>52</sup> Kimberly Hutchings, “Making Sense of Masculinities and War,” op. cit., p. 393.

violence and physical domination over others portrayed as weaker.

Hierarchy is fundamental to military training. Teaching human beings to kill other human beings “requires dehumanizing others by promoting the belief that another human is somehow a ‘lesser’ creature,” Cynthia Enloe explains. “One of the central forms of dehumanization promoted by military training and the culture of daily life in the military has been the supposed inferiority of women—that women are less than men.”<sup>53</sup>

This leads not only to violence against women in the military, as described above, but also to gender-based violence more broadly, targeting women but also men or others who do not properly exhibit hegemonic masculinity. Of interest to this study on the gendered impacts of armed drones, however, is that militarised masculinities also lead to acts of gender-based violence in which men are targeted in so-called signature strikes just for being men.

While drone strikes are not necessarily targeting individuals solely *because* they are men of a certain age, those executing the strikes appear to be using sex as a signifier of identity for the purpose of assessing whether or not a subject is targeted, and/or whether a strike is allowed (i.e. taking into account the sex of others in the vicinity of the strike), and/or to determine the impact of a strike subsequently. The sex of the subject is not the motivation for the attack, but it is being used as one proxy for another identity—militant—which in turn provides the motivation. If people are targeted, or considered to be militants when proximate to other targets, on the

basis of their sex then this constitutes a form of gender based violence (GBV).<sup>54</sup>

Beyond the immediate moral and legal problems of such an approach, the use of sex as a signifier of identity in targeting or analysing strikes contributes problematically to reinforcing gender essentialisms, in particular notions of women as passive and weak. The construction of a “weaker sex” in “need” of protection is not just about women being physically weaker but also socially weaker—it suggests that it is worse if women are killed than men. This in turn produces a widespread acceptance of relative expendability of men.<sup>55</sup>

The idea that women are weaker and thus deserving of special protection in wartime due to “inherent vulnerabilities”<sup>56</sup> is to an extent embedded within international humanitarian law (IHL). The Geneva Conventions evidence an androcentric approach such that where they address women specifically they tend to frame them as objects needing “protection,” rather than as actors.<sup>57</sup> For example, the Conventions note that in all circumstances “women shall be treated with all the regard due to their sex”<sup>58</sup> and state that women should “be especially protected against any attack on their honour, in particular against rape, enforced prostitution or

<sup>54</sup> For more on the relationship between drones and gender-based violence, see Ray Acheson and Richard Moyes, *Sex and drone strikes: gender and identity in targeting and casualty recording*, Reaching Critical Will of the Women’s International League for Peace and Freedom and Article 36, October 2014.

<sup>55</sup> Acheson and Moyes, *Sex and drone strikes*, op. cit.

<sup>56</sup> R. Charli Carpenter, “Women, Children and Other Vulnerable Groups: Gender, Strategic Frames and the Protection of Civilians as a Transnational Issue,” *International Studies Quarterly*, Vol. 49, No. 2, June 2005, p. 308.

<sup>57</sup> *Women and explosive weapons*, Reaching Critical Will of the Women’s International League for Peace and Freedom, February 2014.

<sup>58</sup> Article 12, C.I and C.II, Article 14, C.III; F. Krill, *The Protection of Women in International Humanitarian Law* (1985), International Review of the Red Cross, No. 249, <http://www.icrc.org/eng/resources/documents/misc/57jmfj.htm>

<sup>53</sup> Cynthia Enloe, “Beyond ‘Rambo’: Women and the Varieties of Militarized Masculinity,” *Women and the Military System*, edited by Eva Isaakson (New York: St. Martin’s Press, 1988), pp. 71–93.

any form of indecent assault.”<sup>59</sup> Pregnant women also receive particular protection, wherein “maternity cases and pregnant women, who refrain from any act of hostility, shall enjoy the same general protection as that accorded to the sick and wounded.”<sup>60</sup> Judith Gardam and Michelle Jarvis note in their publication *Women, Armed Conflict and International Law* that nearly half of the 42 specific provisions relating to women in the Geneva Convention and the Additional Protocols deal with women only as expectant or nursing mothers.<sup>61</sup>

The framing of women in IHL as vulnerable and in need of protection reproduces the idea that “women and children” are “innocent” while adult men are not. It runs the risk of turning “women and children” into a proxy for “civilian” and “obfuscating the existence of men in the civilian population,” notes Charli Carpenter.<sup>62</sup> Even where women constitute a high ratio of combatants, sex is used “as a shortcut to distinction” between civilians and combatants.<sup>63</sup> This serves to reinforce men’s expendability and makes them more vulnerable to attack.

Thus the establishment and reinforcement of violent masculinities is really in no one’s interest. Associating maleness with violence increases

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<sup>59</sup> Art. 27; C. IV; Art. 75 and 76, P.I.; F. Krill, *Ibid.* Describing rape and enforced prostitution as attacks on women’s honour, rather than on their physical integrity or freedom or agency, is extremely problematic. The perception of women’s sexuality as a symbol of honour belongs to patriarchal cultures and is the very reason why rape and enforced prostitution are so common during armed conflict.

<sup>60</sup> Art. 8; AP. I ; F. Krill, *Ibid.*

<sup>61</sup> H. Durham & K. O’Byrne, “The dialogue of difference: gender perspective on international humanitarian law,” *International Review of the Red Cross*, Volume 92 Number 877, March 2010.

<sup>62</sup> R. Charli Carpenter, 2005, *op. cit.*, pp. 303–304. Carpenter cites examples from literature and photographs of the UN Office for the Coordination of Humanitarian Affairs and humanitarian aid organisations to demonstrate the ubiquitous nature of gendered references to civilians.

<sup>63</sup> R. Charli Carpenter, “Recognizing Gender-Based Violence Against Civilian Men and Boys in Conflict Situations,” *Security Dialogue* vol. 37, no. 1, March 2006, pp. 89–90.

the vulnerability of men in the immediate term, exacerbating other “gender-based vulnerabilities that adult civilian males face, including risks of forced recruitment, arbitrary detention, and summary execution.”<sup>64</sup> It also reinforces notions of violent masculinities—men are treated as expendable by an opposing force and by their own societies, which can lead to increased militarisation of men in affected populations on the understanding that they need to “protect” their communities by engaging in violence.

The phenomenon also reproduces the power asymmetries and gendered hierarchies that underpin many acts of gender-based violence against women and others. More broadly, it reinforces established gender hierarchies that are recognised to work against the establishment and sustainment of a more equitable society. Framing women as weak and in need of protection continues to enable their exclusion from authoritative social and political roles.

Furthermore, marking certain populations as threats simply because they are men of a certain age in a certain location or exhibiting behaviour deemed by algorithms to be suspicious has implications for the normalisation and abstraction of violence. As Thomas Gregory explores, it ignores the people that are affected—their bodies and their embodied experiences. He asks, “What happens to the bodies of those who are targeted by drones? What do their experiences tell us about the limitations of language for thinking about the pain and suffering caused in war? What does it mean when violence overshoots the more elementary goal of taking a life, dedicating itself to destroying the body as body, so that the remains of the victims are no

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<sup>64</sup> R. Charli Carpenter, 2005, *op. cit.*, p. 296.

longer recognizable as human remains?"<sup>65</sup>

While this may be true of any act of war, with any weapon or technology, the unique ways in which signals intelligence is used to disembody the target before that person is physically disembodied by the strike is significant. It points to an increasing remoteness and abstraction of violence, an execution of human beings by machines that, as autonomy and the use of algorithms are increased in the development and operation of weapons, is likely to lead to increasing civilian casualties and also to the further erosion of the sense of value of human life when it pertains to "the other".

The "erasure of human suffering in war," as Gregory puts it, which is an element throughout history in official accounts of conflict, is arguably enhanced with the violence perpetrated with armed drones. Drawing on the work of Cavarero, he suggests that the destruction of the body caused by armed drones "is morally significant because it targets the very individuality of the human being, reducing them—quite literally—to mounds of flesh and bone." Of course, other airstrikes or missile strikes can cause the same devastation. But when coupled with the remoteness of the operator, the "cowardly" method of warfare described above, a moral or ethical perspective on armed drones may suggest a particularly repugnant character of this violence.<sup>66</sup>

## Conclusion

Men at war need to forge for themselves a special moral world in which, unlike in the civilian world, killing is a virtue, not something prohibited. There is always a latent contradiction between these normative regimes, but in the

case of drone operators it is rendered manifest and permanent as a result of the superimposition of two worlds separated at every count. The drone operators are in a sense both in the rear and at the front, caught up in two very different moral worlds that pull their lives this way and that. They epitomize the contradiction of societies at war outside by living inside as though they are at peace. Only they are in both worlds, exactly at the hinge of the contradiction, pulled asunder between the two poles. They live out the duplicity of the moral regime of so-called democratic states that are also imperial military powers.<sup>67</sup>

This contradiction described by Chamayou in relation to drone operators is significant—but when gender is taken into account, it is only one of the contradictions armed drones create. The contradiction between drone operators as "warriors" and as "cowards" is another; there is also a contradiction between drones as tools that "emasculate" their users whilst reinforcing the militarised masculinity of their victims, or as tools that project a "predatory" masculinity whilst triggering a local "protectorate" masculinity. Either way, armed drones victimise and make vulnerable men and hegemonic masculinities. All of this has practical implications for war and peace, for violence and security, and for gender equality. The culture of armed drones, embedded within the technology and its use, and within the broader norms of militarism and military practice, creates new challenges for preventing violence, protecting civilians, and breaking down gender essentialisms or discrimination.

<sup>65</sup> Thomas Gregory, "Drones, Targeted Killings, and the Limitations of International Law," *International Political Sociology* 2015, Vol. 9, No. 3, p. 207.

<sup>66</sup> *Ibid.*, p. 208.

<sup>67</sup> Chamayou, *op. cit.*, p. 121.

These problems are not insignificant or inconsequential. The gendered tensions, contradictions, and oppressions that manifest through the use of armed drones need to be part of the core understandings and considerations in determining policies and practices for arms control and disarmament in relation to these weapons. Understanding how drones are perceived in a gendered way by their operators and their victims is crucial to developing policies that can help break the cycle of violence. For example, acknowledging that current policies—which enable the use of armed drones without consent in host countries or in ways that undermine the dignity and value of human lives—have gendered motivations as well as impacts on gender equality and on peace and security suggests that a more holistic approach to the legal, political, operational, and moral questions around drones is necessary. This could include investigations into the psychological harm of operators that contains an assessment of whether these harms are produced by the conflict between the “emasculatation” caused by “cowardice” or the inflation of a “predatory masculinity”—which may have serious implications, among other things, for interpersonal relations when the operator leaves the base.

It could also include an understanding that the predatory, aggressive nature of armed drones operated without consent and resulting in civilian casualties, psychological harm, and destruction of civilian infrastructure will result in a militarised masculine response from affected communities. Such an understanding should have significant implications for curtailing at least some policies around the use of armed drones that exacerbate this response, such as using armed drones outside of armed conflict or not sufficiently protecting against civilian casualties or of the open-ended overhead surveillance. Similarly, understanding how “signature” strikes can be acts of gender-based violence, and the reverberating effects this has on gender equality in other areas, could help change policies around targeted killings with the use of armed drones or other weapon systems.

These are some of policy implications that could come from a systematic gender assessment of armed drones; there are more possibilities. Such work is important from a legal, political, and operational standpoint, for those that want to continue to use armed drones to achieve military objectives. It is also important for those that want to end the use of armed drones or that want to address the problems of militarism and violent masculinities more broadly.

# 9. Moral and Ethical Perspectives

Peter Asaro

**Dr. Peter Asaro** is a philosopher of science, technology and media. His work examines artificial intelligence and robotics as a form of digital media, and the ways in which technology mediates social relations and shapes our experience of the world. His current research focuses on the social, cultural, political, legal and ethical dimensions of military robotics and UAV drones, from a perspective that combines media theory with science and technology studies. He has written widely-cited papers on lethal robotics from the perspective of just war theory and human rights.

In general, morality does not have much to say about new technologies, unless their use impinges upon principles that have a long held importance. This appears to be the case with drones. Armed drones share similarities to guided missiles and torpedoes, which have been used in warfare for more than a century. Armed remote control planes have been in use since World War II. However, the use of armed drones in recent armed conflicts, particularly in the Middle East and Central Asia, have cast these technologies in a new light. In part this is tied to the complex moral facets of the armed conflicts in Palestine, Afghanistan, Iraq, Pakistan, Syria, Somalia, and Yemen. It is also tied to the changing nature of warfare, particularly in occupied territories and against non-state actors.

In the context of this recent history, much of the focus on the use of drones stems from the policies and tactics developed by both Israel and the United States for “targeted killing”. Targeted killing involves seeking out specific individuals for their role in military or terrorist operations and launching a “precision” military attack on that person, often (but not always) from a drone.<sup>1</sup> Targeted killing raises numerous issues on its own, and while drones enable this strategy, the final attack could also come from a traditional plane or other source. Still, the novelty of this practice, its technological complexity, and the powerful cultural image of the drone itself, has led to a great deal of public attention and concern other the use of drones in recent years. But targeted killing is not identical

<sup>1</sup> Gregoire Chamayou, *A Theory of the Drone* (New York: The New Press, 2015).

to drones, nor is it only the application of them that raises moral concerns.

This chapter will consider the main moral responses to armed drones, particularly from scholarly publications. While the article cannot speak for all ethicists, it provides some of the prominent moral and ethical concerns that have been raised. Given the magnitude and scope of concerns over drones, and the sheer amount written about them, no comprehensive review is feasible. Instead, this assessment focuses on the main themes, perspectives, and arguments presented to date. The research has been confined to materials written in English.

## The morality of warfare and weapons

The use of any weapon, or the use of any object as a weapon, raises moral considerations. In general, morality prohibits causing harm to others, and even threatening such harm. When discussing morality, it is necessary to reflect upon the question of *what* moral theory and *whose* morality should be considered. While philosophers usually restrict their considerations to a preferred moral theory, there are serious disputes about which theory should be preferred. We will not attempt to resolve such issues here, but rather will address the main moral theories that have the greatest influence in shaping law and policy. In addition to moral philosophy, we will also consider moral psychology. Morality shapes human judgment and behaviour in powerful ways that are only approximated by formal moral theories. Yet, we can study such moral behaviour and its psychological consequences empirically. The impact of psychological states such as sympathy, empathy, and guilt can thus be considered through this lens, without assuming the primacy of any particular moral theory.

The morality of warfare is challenging to most moral theories. According to most moral theories, the use of violent and lethal force is permissible (if at all) only under certain exceptional circumstances, such as in self-defence, the defence of another person, or, more debatably, in order to achieve a higher moral good or humanitarian benefit. Most moral theory considers the moral judgement and actions of individuals, while warfare is often viewed as a collective action, or individual actions towards the common defence of a society. Most moral traditions have their roots in religion and theology while modern moral theories generally seek to reach the same moral conclusions on purely rational arguments that do not depend on religious belief or faith. In European philosophy there is a long tradition of considering the morality of warfare initiated by St. Augustine and St. Thomas Aquinas, which is based in Christian theological justification of warfare and called just war theory. (See Chapter 10 for further investigation of religious perspectives on drones.) Asian philosophers have also considered the morality of warfare (such as in the *Mahabharata*), but primarily in terms of warrior duty (such as in the *Bhagavad Gita*) or leadership (such as in the writings of Confucius) and strategy (such as in *The Methods of the Sima* and Sun Tzu's *Art of War*).

This chapter will focus on the Western moral tradition of just war theory, and how it views drones and remote operated weapons. Much of the international humanitarian law (IHL) framework that came into effect after the Second World War—including the United Nations, the Geneva Conventions, and the legal precedents of the Nuremberg tribunals—have their conceptual roots in just war theory. This is the underlying moral basis of the legal framework that governs international armed conflict and that informs the training of what is

deemed acceptable in warfare for military professionals. The modern restatement of just war theory was written by Michael Walzer in 1977,<sup>2</sup> and while the finer points of the theory are still debated by philosophers, the general principles are well established.

Just war theory divides war into three temporal stages named in Latin terms, and considers each morally independent (though this is also debated).<sup>3</sup> *Jus ad bellum* concerns whether it is just or moral to go to war, *jus in bello* concerns the morality of how war is fought, while *jus post bellum* concerns the morality of how a war is ended (including terms of surrender, armistice, reparations, and reconciliation). Most of the just war theory literature focuses on *jus in bello*, but there are important debates on when humanitarian concerns, rather than strict self-defence, justify military intervention, as well as a growing literature on just resolutions of violent conflicts and ensuring long-term peace. The moral consideration of *jus in bello* relies on two fundamental moral principles: the principle of distinction and the principle of proportionality. The principle of distinction holds that enemy combatants are morally liable to be killed, while civilians and non-combatants are not liable to be intentionally killed, and there is a moral duty to make this distinction and to avoid harming non-combatants. It is morally permissible in some cases to kill civilians and non-combatants, but only unintentionally or as an undesired (even if foreseeable) consequence of attacking a legitimate military target. This is the long debated Doctrine of Double-Effect (wherein the intended effect is on enemy combatants, and the undesired effect is on civilians). The principle of proportionality considers the magnitude of an

attack, and whether it is justified given the purpose of the attack, and whether it presents a disproportionate risk of harm to non-combatants.

In general, just war theory does not really consider the morality of any particular weapon. Morality concerns the decision to use the weapon (is the target of an attack justified?), and the expected effects of the use of the weapon (does it pose disproportionate risks to non-combatants?). The use of certain weapons has been deemed immoral, and in some cases also illegal, because their use necessarily fails to conform to the principles of distinction and proportionality. Thus, because landmines and cluster munitions have uncontrolled and deadly effects on civilians during and long after conflicts, they have been deemed indiscriminate by nature. Similarly, the effects of fragmentary and incendiary bullets, and permanently blinding lasers are disproportionate to their military advantages (in legal terms they cause “unnecessary suffering and superfluous injury to combatants”), while chemical, biological, and nuclear weapons are both indiscriminate and disproportionate. All of these weapons have been prohibited through international agreements.

It is important to note the different notions of “weapon” in discussions about drones. They have been developed and used in recent years, particularly by the Israeli and US militaries, as remotely operated weapons platforms. That is to say, militaries view the “weapon” as a system that can include not just the final projectile, munition, or energy release, but also the launching system, the transport and delivery platform, and even the maintenance, logistical, and intelligence support networks necessary to execute an attack with the system. Accordingly, it is best to consider all weapons as “weapons systems,” and to also consider the human

<sup>2</sup> Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (New York: Basic Books, 1977).

<sup>3</sup> Jeff McMahan, “The Sources and Status of Just War Principles,” *Journal of Military Ethics* 6(2), 2007, pp. 91–106.

operators, their training, their situational awareness, and the larger command and control structure around them as significant elements of the weapons system. Thus, a weapons system might be as simple as soldier and gun, within a traditional military command and control hierarchy. Or a weapons system might be far more complex, such as a remotely operated drone firing a steerable missile, launched from a remote logistical support base, monitored and controlled from thousands of miles away by a small team of operators, through a network of satellite, ground and radio communications networks, supported by remote intelligence analysts and databases, operating within command structures that may switch between major military commands, joint force structures, covert and traditional military operations, or even between command hierarchies of coalition and treaty partner nations.

The armed drones of most moral concern have been those operating towards the more complex end of this spectrum. As we will see below, the complexity of the weapon system itself, and its distributed, compartmentalised, and mediated structure, lends itself to a set of moral concerns that cannot be easily reduced to a single element of the larger whole.

Given this overview of the morality of weapons and warfare, and just war theory, we turn to the question of whether the use of drones as a weapon, or as a weapons platform, raises any unique moral questions, or challenges our standard understanding of the justified use of weapons. That is, what special moral considerations are raised by the use of armed drones?

## Drones and just war theory

When we look at drones through the lens of just war theory, we can consider a variety of moral questions. In terms of *jus ad bellum*, the justification of going to war, the use of drones raises the question of whether they lower the thresholds of going to war.<sup>4</sup> That is, if we accept the view that remotely operated weapons greatly reduce the physical risks to the combatants who operate them, then this should reduce the political risks for leaders to start a war. If true, this is what philosophers and economists call a “moral hazard”—a situation in which one can systematically avoid negative consequences for one’s actions, thus eliminating the normal disincentives for taking those actions. The argument is that drones provide a “risk free” form of warfare, or military intervention, and as such make warfare more likely. Assuming that making warfare more likely is bad, then one could argue that drones have a negative effect on the moral reasoning and actions of political leaders by making it easier for them to go to war.

There are several problems with this line of argument, however. First, this argument depends on two significant empirical claims, which may or may not be true. The first empirical claim is that drones reduce the physical risks to combatants in warfare. While this seems easy to argue for the remote operators of drones, it is not necessarily true. Remote operators could still be attacked at their remote locations, by traditional military means or by guerilla or terrorist tactics. Moreover, once a war is started, it may escalate or expand, and it may not be easily contained to a single means of warfare, or a constrained geographic area. As such, it quickly becomes

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<sup>4</sup> Peter Asaro, “How Just Could a Robot War Be?” in Adam Briggles, Katinka Waelbers and Philip A. E. Brey (eds.), *Current Issues in Computing And Philosophy* (Amsterdam, The Netherlands: IOS Press, 2008), pp. 50–64.

likely that other types of forces and weapons will become involved in the conflict, thus putting combatants at risk.

The second empirical claim is that lowering the risk to combatants makes war more likely, or might make it easier for political leaders to choose military action over other diplomatic options. This claim appears to have significant evidential support from the United States' use of drones for targeted killings, particularly in Pakistan and Yemen. Because Pakistan and Yemen are allies of the United States, and do not wish to have a large US military presence in their territory, it is politically difficult to launch a full-scale military operation in these areas. While suspected enemies could be attacked with traditional aircraft or special forces operations, those carry significant risks of pilots or commandos being killed or captured. In this case, drones provide a means for military attacks with reduced risks, and so we have seen their increased use in this manner. Such considerations may or may not weigh on the politicians who actually make the decisions to use military force.

The other assumption behind the argument that drones make armed conflict more likely is that such conflicts are morally wrong, or that the use of armed force should be an option of last resort. But according to *jus ad bellum* there are morally justifiable reasons to become involved in armed conflict, namely self-defence, defence of an ally, or to intervene to avert a humanitarian crisis, genocide, or crimes against humanity. If a government is deciding whether to intervene to aid an ally who is under attack, or to intervene for humanitarian reasons, then the reduced risks of that intervention would be good. Arguably, the ability of North Atlantic Treaty Organisation (NATO) forces to intervene on behalf of Libyan rebels using remote operated and long range

weapons, rather than the much riskier use of ground forces, may be such a case. Of course, drones are not unique in offering reduced risks. Many weapons that give a decisive military advantage could be argued to reduce such risks, along with military superiority in general. Moreover, just war theory does not require combatants to put themselves at risk in order to be morally justified in killing enemy combatants, nor is there any requirement to avoid radical asymmetries in military strength. So while it may be true that armed drones and other remote-operated weapons make it easier for politicians to go to war, it still matters whether or not those wars are moral.

### ***Jus in bello* and the moral predators debate**

Once at war, there are various questions to ask regarding the *jus in bello* morality of the use of drones and remotely operated weapons. One way of approaching the question of the morality of a particular weapon or means and method of warfare is to consider whether its use is in principle better or worse than other weapons, or means and methods of warfare. If we start from an assumption that an attack is morally justifiable, and that the target of the attack is morally and legally justified, we can greatly constrain the number of moral factors involved in choosing one weapon over another with which to attack the target.

Assuming that the war is justified, and the attack is made by one combatant against a legitimate enemy combatant, the main moral criteria to targeting and attack are discrimination, proportionality, and military necessity. Discrimination concerns whether the attack will discriminate between combatants and non-combatants. Proportionality concerns whether the nature and magnitude of the attack is

justified, as well as the magnitude of risk posed to non-combatants and civilian infrastructures is warranted. Military necessity concerns the strategic value of a target, the risks of failing to attack it, and figures into the proportionality calculation that weighs the value of eliminating a target against the risks to non-combatants.

When military commanders and their subordinates are selecting military objectives and strategies, the choice of a particular weapon features as only one element of the overall determination. While certain weapons may be unilaterally forbidden on legal or moral grounds, such as chemical or biological weapons, there is great discretion in the selection of the best tactics and weapons to achieve an effect or objective. Within the military, there will be strategic decisions as to which weapons platforms and assets are available and capable of achieving the desired results—such as whether to launch a long-range guided missile, or use a “manned” or “unmanned” platform to deliver a munition. At a tactical level there is *weaponneering*—the job of selecting an appropriate weapon or munition to achieve the desired effect—determining the size of the bomb to drop from an aircraft to destroy a target, or how to steer a missile to direct its blast effects away from vulnerable civilians. There are explicit and implicit moral elements to all of these strategic and tactical decisions insofar as they all involve questions of discrimination, proportionality, and military necessity.

Remotely operated drones are not themselves forbidden under any such moral or legal rules—they are not intrinsically or by their nature indiscriminate or disproportionate, while like many weapons they could be used indiscriminately or disproportionately. Insofar as they deploy weapons or munitions that are considered morally and legally legitimate in other contexts, there is no *prima facie* reason to think that this might be problematic.<sup>5</sup>

Insofar as drones and remote operated weapons enhance the discrimination and proportionality of attacks compared to other weapons platforms, it could even be argued that they are morally superior or desirable weapons. Indeed, it has been argued that remotely operated drones permit both the use of smaller and more precisely-guided munitions (thus reducing unintended civilian harms and collateral damage) and permit more information gathering and longer deliberation on whether to attack a given target. Strawser argues that these two factors makes the use of drones morally superior to other weapon systems, and even argues that if so we may have a moral obligation to use such weapons.<sup>6</sup>

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<sup>5</sup> Indeed, the U.S. military determined that no additional Article 36 review of armed Predator drones was necessary as the both the unarmed versions of the Predator and the Hellfire missiles with which it was being armed had already been reviewed and approved. See Noel Sharkey, “Killing Made Easy: From Joysticks to Politics,” In Sibylle Scheipers and Hew Strachan (eds.), *The Changing Character of War*, (Oxford: Oxford University Press, 2011).

<sup>6</sup> B. J. Stawser, “Moral Predators: The Duty to Employ Uninhabited Aerial Vehicles,” *Journal of Military Ethics* 9 (4), 2010.

It would seem at first look that any weapon system that improved decision making and precision in attack would be morally preferable, in general. Presumably fostering better informed and considered decisions leads to better decisions. Allowing more time for determining when to strike a target also presumably allows for choosing times that reduce the risks of civilian impacts. Using smaller munitions with more accurate targeting ought to reduce civilian impacts compared to larger munitions with less control.

As with other empirical claims, whether the use of drones actually provides more time for deliberation processes in practice depends on how they are actually used—it is not a necessary feature of their use. Insofar as they are actually used in a manner that provides this additional time for deliberation, there are further empirical questions of whether that time is actually used and used effectively, and if it actually results in improved targeting decisions that reduce the impacts of attacks on civilians overall. It has been argued that the use of precision guided-munitions has actually resulted in longer targeting lists because they greatly reduce the cost of bombing any given target. So while the risks to civilians from any particular attack might be reduced, the total number of attacks might increase enough to result in a greater overall risk to civilians.

There are also significant concerns over whether the kind of aerial surveillance offered by drones is appropriate or sufficient to accurately identify legitimate targets. Traditionally, the selection of bombing targets rests on a variety of intelligence sources. Because drones are essentially surveillance platforms carrying weapons, there may be a tendency to rely solely upon the drone's sensors to determine targets, which may result in distortion or bias in targeting.

Within US use of drones for targeted killing, there are two types of targeting: personality strikes against a known person and signature strikes targeting people or groups based on behaviour observed through the sensors of the drone as hostile or suspicious. Determining which behaviours seen on aerial video constitute hostile activities can be challenging, particularly in cases where the targets are not actively engaged in fighting or clearly conducting military operations. Similarly, there are various cases where farmers working their land, or fixing a ditch, have appeared to drone operators as combatants planting a roadside bomb. The “soda straw effect” of looking at a zoomed in image can cause operators to misunderstand a larger overall scene. This phenomenon has been blamed to some mistaken “friendly-fire” incidents with drones.

Related to the limits of drone surveillance for making moral decisions, it has been argued that the extreme remoteness of drone operators, and the consequent moral and emotional distance from their targets poses its own kind of moral problem. It is to this we now turn.

## Drones and moral psychology

Beyond the morality of using a drone, one can ask how the use of drones and remotely operated weapons impacts the psychology of drone operators, and what moral consequences this might have. The literature on drones has focused on two key issues of the psychological impacts on a drone operator. One issue is whether the physical distance of drone operators from their targets implies a moral and psychological distance. Closely related to this is whether the videogame-like nature of drone operations leads operators to treat drone operations like a game, or whether the mediation of observing people through the cameras of a drone tends to dehumanise the people observed. The other issue concerns the psychological health of drone operators themselves, and whether they can experience combat trauma remotely, and whether they are susceptible to post-traumatic stress and moral injuries.

Military psychologist Lt. Col. Dave Grossman spent many years studying new recruits in basic training and their willingness to kill the enemy in combat. Grossman published an often reproduced graph of the willingness of combatants to kill based on physical distance.<sup>7</sup> According to this graph, it is psychologically easier to kill from great distances, such as with long-range missiles or artillery, somewhat more difficult with mid-range weapons such as guns, and hardest to kill in close range with knives or in hand-to-hand combat. The empirical data to back up this graph is lacking, but it carries a powerful intuitive force as it seems to most people to be much easier to “pull the trigger” of a weapon if one cannot directly see the potential victims of one’s attack.

According to moral psychology, our reluctance to cause pain and suffering to others is related to our ability to sympathise and empathise with others. To the extent that we distance ourselves physically and emotionally from people, the easier it is for us to take actions that harm them. As drones allow a vast physical distance between operators and victims, it has been argued that there must be a similar moral distance.

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<sup>7</sup> Dave Grossman, *On Killing: The Psychological Cost of Learning to Kill in War and Society* (Boston, MA: Little, Brown and Company, 1995).

Some have argued that drone operators might become “playstation warriors”. This implies on the one hand that drone operators are not true warriors, located so far away from the battlefield and not taking the risks of those on the ground. And on the other hand this implies that drone operators engage in warfare through a videogame-like interface, and as such treat their work as they would a videogame—trivializing the killing and destruction they might do as if it were merely a game. Studies of the effects of engaging in videogame violence on real world aggression and violence have shown only weak effects on behaviour.<sup>8</sup> Moreover, most people are quite capable of distinguishing reality from a game, and disciplined professional drone operators do not take their combat duties lightly.

Recent studies of drone operators have found evidence of post-traumatic stress disorder (PTSD).<sup>9</sup> While at slightly lower levels than most combat military personnel, they are somewhat higher than non-combat military personnel. This suggests that drone operators do experience combat trauma despite their physical distance from the battlefield, and despite not being subject to personal bodily risk themselves. This also suggests that the technological mediation of drones is sufficient to communicate the trauma of combat.

In addition to PTSD, there is growing interest in the related, though distinct, phenomena of moral injury. While the psychological diagnosis of PTSD is generally framed in terms of the direct experience of a significant bodily trauma, moral injury focuses on the psychological impacts on soldiers who violate their own morality.<sup>10</sup> While a soldier might experience PTSD after seeing their best friend killed beside them, another soldier might experience a moral injury from mistakenly killing a civilian. The realization of one’s own morally wrongful actions can carry a heavy psychological weight beyond simple guilt, and can undermine one’s sense of identity, of self-worth, and disrupt personal and professional relationships. While psychologists debate the appropriate diagnostic criteria for both PTSD and moral injury, it is clear that drone operators along with other combatants, experience psychological effects from the morality of their choices and actions—effects that can remain for a lifetime and sometimes require professional treatment.

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<sup>8</sup> Craig A. Anderson, “Violent Video Games: Myths, Facts, and Unanswered Questions,” *American Psychological Association Science Briefs*, 2003.

<sup>9</sup> Wayne Chapelle et al., “Symptoms of Psychological Distress and Post-Traumatic Stress Disorder in United States Air Force ‘Drone’ Operators,” *Military Medicine* 179, 63 (8), pp. 63-70; Wayne Chapelle et al., “An Analysis of Post-Traumatic Stress Symptoms in United States Air Force Drone Operators,” *Journal of Anxiety Disorders* 28, 2014, pp. 480-487.

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<sup>10</sup> Maguen, Shira, and Brett Litz, “Moral Injury in Veterans of War,” *PTSD Research Quarterly*, Vol 23 (1), 2012, pp. 1-6; The Moral Injury Project. (n.d.) “What Is Moral Injury,” <http://moralinjuryproject.syr.edu/about-moral-injury/>.

# 10. Religious Perspectives

Emily Welty

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Religious actors, both as individuals and in an organisational capacity, have been important voices in the emerging critique of drone warfare. These voices are not always respected in policy debates, especially in those spheres dominated by military and political elites. In broadening the discourse on armed drones, the moral and ethical questions of religious communities has the potential to enrich an often narrow discussion which tends to focus on the strategic value of remote warfare. Religious traditions have a long history of advocating for the dignity of the human being and valuing the precious worth of each individual life even in the face of utilitarian arguments. This chapter examines the responses of religious communities to the increasing use of armed drones in conflict and analyses the objections that have been raised in Christianity, Judaism, Islam, Hinduism, and Buddhism. Ongoing discernment about the morality of armed drones have taken place in interfaith as well as ecumenical settings and have been the subject of position papers and policy recommendations at the national/denominational level.

No drones protest at General Atomic CEO Neal Blue's house in San Diego, organized by Code Pink.



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## Methodology

This chapter contains an overview of the particular objections of religious individuals, bodies, and organisations to the use of drones in armed conflict. Not all individuals within any one of these faith traditions would claim to share these objections to armed drones and many individuals or organisations may even support their use. However, I was unable to find any religious organisation that had issued a statement supporting the use of armed drones, so this review necessarily contrasts the more subtle differences within the objections to drone warfare.

The Pew Research Center, which has conducted some of the most comprehensive polling about US demographics and opinions about drone strikes, has not used religion or religiosity as

one of their demographic markers.<sup>1</sup> This chapter therefore has used statements by religious groups as its primary analytical focus. This research has been confined to materials written in English, which means that most of the organisational responses come from religious constituencies responding to drone use by the United States and the United Kingdom.

## “Just war” or “just peace” frameworks

Traditionally, religious responses to the ethics of war and limiting the use of violence have been framed by the just war tradition, a theoretical framework that suggests that killing in the context of war may be ethically permissible if

<sup>1</sup> “Public Continues to Back US Drone Attacks” Pew Research Center, February 2015, <http://assets.pewresearch.org/wp-content/uploads/sites/5/2015/05/5-28-15-Foreign-Policy-release.pdf>

certain conditions have been met, including legitimacy of the target, proportionality of the response, legitimacy of the body using force, morality of the objective, and limitations on the harm to innocent life. This tradition is rooted in the early religious writings of Saint Augustine and Thomas Aquinas and in the more recent reflections of theologians like Paul Tillich and Reinhold Niebuhr. For many years, this represented the official position of the Catholic Church. When surveying the plethora of responses on armed drone warfare, this is one of the predominant frameworks employed. In this context, drone warfare as currently carried out is viewed as immoral because of the lack of transparency in selecting targets and the number of innocent people who have been executed by drone strikes. Drones do not represent a last resort and in the case of usage in Somalia and Yemen, for example, are being used in places where war has not been formally declared. Just war theory might also suggest that the likelihood for success is low given that many people believe the use of armed drones is actually serving as a recruitment strategy for terrorism in communities that feel terrorised by drones.

The “just peace” paradigm moves from focusing on exclusive concepts of national security to an understanding of shared human security, which includes economic security, ecological security, social justice, and human rights. As conceptualised by the *Ecumenical Call to Just Peace*:

*Just Peace might be comprehended as a collective and dynamic yet grounded process of freeing human beings from fear and want, of overcoming enmity, discrimination and oppression, and of establishing conditions for just relationships that privilege the experience of the most vulnerable and respect the integrity of creation.<sup>2</sup>*

This framework is rooted in the Jewish concept of shalom, a conception of peace that goes beyond the absence of war and defines peace as including a broad sense of welfare and well-being of individuals, communities, creation, and G-d. Theologian Fernando Enns writes,

*The simultaneous reality of being safe and experiencing an open space for self-development within a community are the preconditions for building cultures of peace.... Just peace cannot be established or experienced apart from people of other faiths. Today all theological reflection and concrete action takes place in the context of plural societies and increasing globalization of all areas of life.<sup>3</sup>*

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<sup>2</sup> “An Ecumenical Call to Just Peace,” World Council of Churches, 2011.

<sup>3</sup> Fernando Enns, “Towards an Ecumenical Theology of Just Peace,” in *Just Peace: ecumenical, intercultural and interdisciplinary perspectives* edited by Fernando Enns and Annette Mosher (Eugene, Oregon: Wipf and Stock Publishers, 2013).

Applying the just peace framework to the issue of armed drones means understanding that drones not only fail to resolve root causes of conflict but also destroy the planet, erode trust between communities, and create both irreparable physical and moral harm in individuals. This framework insists that only approaches that further the requirements of justice are capable of creating true peace.

## Ecumenical and interfaith responses to armed drones

The World Council of Churches (WCC) issued an Executive Committee statement on armed drones in 2014, denouncing drone strikes as “counter-productive,” causing the “loss of innocent civilian lives” and having “human rights and humanitarian implications”.<sup>4</sup> The WCC statement centered its critique of armed drones around the fact that they deny human beings the basic right to life. The statement notes,

*The right to life is a moral principle based on the belief that a human being has the right to live and, in particular, should not to be unjustly killed by another human being. It is also our firm belief that the measures taken by any State threatening the life and dignity of the human person cannot be justified. In this context, the use of extraterritorial force within another State’s territory and sovereignty cannot be justified when it threatens the life of innocent people. We believe the sanctity of life and the biblical message call us to protect the right to life; deliver those who are drawn toward death, and hold back those stumbling to the slaughter (Proverbs 24:11).*<sup>5</sup>

<sup>4</sup> “Statement on the use of drones and denial of the right to life,” World Council of Churches Executive Committee, 12 February 2014, <https://www.oikoumene.org/en/resources/documents/executive-committee/geneva-february-2014/statement-on-the-use-of-drones-and-denial-of-the-right-to-life>.

<sup>5</sup> Ibid.

The statement calls on all governments to be transparent about their participation in the development, acquisition, and use of armed drones, while highlighting the particular responsibility that the US government should have to the innocent civilian victims of armed drone strikes in Pakistan.

Within the US context, there is an Interfaith Working Group on Drone Warfare, which meets regularly in Washington, DC and highlights the moral and religious concerns of people of faith about armed drones. The central moral and religious impetus that forms the basis of their work together is the idea that people of faith should respond to the increasing use of drones in war.

In 2015, the Working Group hosted an Interfaith Conference on Drone Warfare at Princeton Theological Seminary, which was attended by 150 faith leaders from a range of religious traditions. The outcome document of the conference calls on the United States to immediately halt all targeted drone strikes as well as to acknowledge and take responsibility for previous strikes and their impacts on civilian victims. The statement specifically calls for the repeal of the 2001 Authorization for the Use of Military Force and limitations on the authority of the Central Intelligence Agency, Joint Special Operations Command, and all other government contractors that might authorise the use of armed drones. The group authored a letter to President Obama emphasising the opposition of faith leaders and in early 2017, the group published a joint letter to the Trump transition team outlining the concerns and opposition of 21 different religious groups to the use of armed drones.

Materials produced by the group for study and reflection draw on the just peace tradition as their primary moral framework. While the groups shares some of the same objections to drone usage as many human rights groups (e.g. extrajudicial killings authorised in non-transparent processes, civilian deaths, covert operations), they also have an objection not as frequently voiced by other sectors, but which reflects their shared moral values. They frame their concern in this way:

*As faith leaders, we are deeply concerned that by distancing people from kill decisions, drones lower the political and psychological costs of killing.... As drone technology advances and drones (and other pieces of military hardware) become increasingly autonomous, humans, even at the operator level, may end up largely removed from what becomes a mechanized process of killing. We believe strongly that while drones lower the political and psychological costs of killing, they do not lower the moral costs. We believe that those who order, authorize, or operate the remote killing of targeted people in a far off land ought to wrestle with the moral consequences of that decision every bit as much as a commander who has just ordered his or her troops into battle. Killing should not be an abstraction to those who are ultimately responsible for it.<sup>6</sup>*

This objection reflects the human-centered orientation of all religious traditions—the insistence that human life is precious and that the decision to end human life should only be undertaken with gravity and deep deliberation. This statement is striking because it also represents common ground between radically different orientations to violence from different faith communities, as the statement does not

denounce all forms of violence—a position that several of the signatories, particularly the historic peace church traditions would prefer.

One of the religious questions that drives the group's common vision is whether acceptance of drones represents a problematic contortion of what it means to be human. The recognition that many of the same people who authorised the use of torture have also authorised the use of drones represents a worrying trend in the erosion of respect for human dignity. In a document outlining the group's common vision, they agree to be guided by the question, "what kind of people are we becoming as a society?"—a query that reflects their religious concerns. They note,

*The question helps us to focus in on the kinds of habits we are perpetuating and developing, as well as relates to the deeper issue of spiritual formation. Examples given were moral injury, lowering participatory process, increasing fear in communities, increasing the automatization (de-humanization) in engaging conflict, lowering empathy, lowering sense of dignity in the other, lowers key virtues, increases vice of arrogance....<sup>7</sup>*

When one compares the interfaith and ecumenical statements to denominational statements, it becomes clear that stronger approaches rooted in the just peace tradition are more likely to be adopted when religious groups come together to speak with one voice rather than speaking individually.

<sup>6</sup> "Recommendations for the Next Administration," Interfaith Working Group on Drone Warfare, January 2017, <https://www.interfaithdronenetwork.org/action/public-policy.html>.

<sup>7</sup> Interfaith Working Group on Drone Warfare, "Leading with a JustPeace Approach" July 2015, Available: <https://www.interfaithdronenetwork.org/images/docs/DronesWorkingGroupJPAgreements4web.pdf>

## Christian responses to drone warfare

Drawing on the just war tradition, the Catholic Church, while not calling for a cessation of their use, often raises questions about armed drone use. Archbishop Silvano Tomasi, the Holy See's permanent representative to the United Nations in Geneva, in testimony before the UN in 2014 noted:

*Decisions over life and death are uniquely difficult decisions, a heavy responsibility for a human being, and one fraught with challenges. Yet it is a decision for which a person, capable of moral reasoning, is uniquely suited. An automated system, pre-programmed to respond to given data inputs, ultimately relies on its programming rather than on an innate capacity to tell right from wrong. Thus any trend toward greater automation of warfare should be treated with great caution...In this context of dehumanised warfare with remotely-operated weapons and low risk on one side, a key ethical question thus is whether this lowers the threshold of conflict, making it seem more attractive to enter into war. Considering this question with the near inevitability in modern warfare of massive civilian casualties should give pause.<sup>8</sup>*

<sup>8</sup> Statement by H.E. Archbishop Silvano M. Tomasi, Permanent Representative of the Holy See to the United Nations and Other International Organizations in Geneva at the Annual Meeting of the High Contracting Parties to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects (CCW), 14 November 2013, [http://reachingcriticalwill.org/images/documents/Disarmament-fora/ccw/MSP-2013/Statements/14Nov\\_HolySee.pdf](http://reachingcriticalwill.org/images/documents/Disarmament-fora/ccw/MSP-2013/Statements/14Nov_HolySee.pdf).

Also in 2014, the US Conference of Catholic Bishops presented a range of religious and moral reservations about drone warfare to national security advisors and members of Congress about “imminence of the threat, discrimination, proportionality and probability of success.”<sup>9</sup>

The United Methodist Church adopted a resolution in 2012 calling for “an immediate end to drone strikes in Afghanistan and Pakistan” and “independent investigations into all such bombings to account for civilian casualties.”<sup>10</sup>

In 2014, the Advisory Committee on Social Witness Policy of the Presbyterian Church, USA issued a report entitled *Drones, War and Surveillance*, which assessed the ethical implications of military drones and reflected an ongoing debate in the Presbyterian Church. The report identifies seven different key ethical issues that should influence Christian reflection on armed drones: just cause, last resort, legitimate authority, intent and likelihood of success, conduct of war, protection of civilians, and moral harm to soldiers.<sup>11</sup> These themes largely echo traditional debate about just war criteria within Christian ethics.

<sup>9</sup> “Background on Armed Drones,” Office of International Justice and Peace- US Conference of Catholic Bishops, January 2014, <http://www.usccb.org/issues-and-action/human-life-and-dignity/war-and-peace/upload/background-on-armed-drones-2014-01.pdf>.

<sup>10</sup> “Seeking Peace in Afghanistan.” Resolution 6128, *UMC Book of Resolutions*, 2012.

<sup>11</sup> *Drones, War and Surveillance*, The Advisory Committee on Social Witness Policy, 2014, [https://www.interfaithdronenetwork.org/images/docs/drones,\\_war\\_and\\_surveillance.pdf](https://www.interfaithdronenetwork.org/images/docs/drones,_war_and_surveillance.pdf).

A resolution adopted by the Presbyterian General Assembly in 2014 does not outright condemn armed drones but rather urges further study by the Church, further legislation governing the oversight of drones by Congress, further evaluation of international law limiting the use of drones by the legal community, and further judicial review of targeted killings of suspected terrorists. There is a call for the outright prohibition of the use of fully autonomous drones but not for armed drone use generally. The statement does not concentrate on the civilian casualties or psychological trauma caused by drone strikes except to say that the Church “opposes in principle the targeted killing or assassination of suspects these weapons facilitate and grieves the deaths these weapons facilitate.”<sup>12</sup>

The General Assembly’s 2014 Peace Breakfast featured a speech by Medea Benjamin, who had addressed the topic of armed drones as part of a “military-industrial-congressional-security complex”.<sup>13</sup> During the debate on the resolution, one person paraphrased Luke 9, asking, “Do you want us to send killer drones from heaven to destroy them?” However, another delegate and former Air Force member dismissed the statement as “naïve” and observed, “for the church to say ‘no’ to drones shows that civilians don’t understand how the military works.”<sup>14</sup>

When this resolution was discussed by delegates later, it was usually described as calling for more transparency regarding drone use and criticising secrecy in the US military’s use of armed drones, not calling for the outright ban on their use or denouncing the civilian deaths they cause. The official Presbyterian News Service and Office of the General Assembly said that the Assembly “declared its opposition to targeted killings by drones *unless due process is followed*” (emphasis added).<sup>15</sup> This reinforces the just war framework that suggests that it is not the drone usage per se that presents a moral/religious problem for the Church, but rather the procedure by which they are being deployed.

However, the statement also identifies the ways that drone operators suffer from post-traumatic stress disorder (PTSD) and indicates that this represents a form of “moral harm” that stems from their awareness that “they have done something immoral and violated something sacred,” which results in a “sense of moral discontinuity”.<sup>16</sup> This objection is rooted in a just peace rather than the just war framework that seems most regularly employed by the Presbyterian Church, USA.

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<sup>12</sup> Pat Cole, “Assembly asks government to follow due process when drones are used,” Presbyterian Church USA, 21 June 2014, <http://www.pcusa.org/news/2014/6/21/assembly-asks-government-follow-due-process-when-d>.

<sup>13</sup> “Excerpt from Medea Benjamin’s Speech at the 2014 Peace Breakfast,” Presbyterian Peace Fellowship, 15 September 2014, <http://presbypeacefellowship.org/content/excerpt-medea-benjamins-speech-2014-peace-breakfast#.WJz4E1fbc28>.

<sup>14</sup> Jana Blazek, “Assembly passes resolutions on Cuba and drones,” Presbyterian Outlook, 21 June 2014. <https://pres-outlook.org/2014/06/assembly-passes-resolutions-cuba-drones>.

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<sup>15</sup> Jerry Van Marter, *The Assembly in Brief*, General Assembly of the Presbyterian Church (USA), 2014, <http://images.acswebnetworks.com/1/2494/PCUSAassemblyinbrief.pdf>.

<sup>16</sup> Advisory Committee on the Social Witness Policy of the General Assembly Mission Council of the Presbyterian Church, USA, *Drones, War and Surveillance*. Louisville, KY: Office of the General Assembly, 2014.

Other organisations such as Pax Christi International have taken a more clearly just peace approach to armed drones. The organisation's statement on armed drones highlights the ongoing terror that hovering drones have caused communities, resulting in "tremendous anxiety and psychological trauma among civilian communities" as well as "disrupted essential community activities such as school and tribal dispute-resolution efforts."<sup>17</sup> Pax Christi's opposition to armed drones is based in its concern about the rule of law as well as its fundamental faith commitments to preserving human life. The statement highlights the way that remote killings "lower the threshold for resorting to violent force to resolve complex conflicts" and emphasises that "killing by remote control is deeply offensive to Pax Christi's belief in active nonviolence that is committed to taking on violence rather than inflicting it on others." Pax Christi International also expresses concerns about "the invasion of privacy using drone technology for human surveillance, including civilian purposes such as law enforcement or border control".<sup>18</sup>

The 2013 Annual Conference of the Church of the Brethren, one of the historic peace churches, issued a resolution against drone warfare. The statement frames opposition to drones against the church's larger opposition to all forms of lethal force and violence however, it specifically identifies the evil of "covert warfare" as particularly problematic in this case:

*Drone warfare embodies the fundamental problems that covert warfare entails. The process for determining who is targeted by drones, and why, is decided by a small group of government officials who are not accountable to Congress or the American people for their actions... Concealment of covert activities generates confusion, results in the deaths of countless targeted people and bystanders, and undermines international law and cooperation.*<sup>19</sup>

In addition to calling for more careful study of the issue and continual prayers for peace, the Brethren statement asks that members call upon both the US President and Congress to immediately cease all use of armed drones both domestically and abroad as well as commit to greater transparency and accountability about secret kill lists and the decision-making processes around drone deployment.

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<sup>17</sup> "Military Applications of Remotely Piloted Aircraft Systems (RPAS): Statement of Pax Christi International on Drones," Pax Christi International, 28 November 2012, <http://interfaithdronenetwork.org/images/docs/PCI%20on%20drones.pdf>.

<sup>18</sup> *Ibid.*

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<sup>19</sup> "Resolution Against Drone Warfare," Church of the Brethren Resolution, 2013, <http://www.brethren.org/ac/statements/2013resolutionagainstdronewarfare.html>.

## Jewish responses to drone warfare

Some of the Jewish response has been shaped by the role drone warfare has played in the state of Israel. Drones were used as early as the 1982 Lebanon War and continue to be a part of Israel's approach to security. To that end, the ethics of drone use have been debated at the highest level of government. A landmark Israeli Supreme Court decision on targeted killing provided ethical foundation for Israeli Defense Forces (IDF) drone operators, which allowed usage if three ethical markers were met: legitimate target, based on verifiable evidence, with independent oversight.<sup>20</sup>

Debate in the Jewish community about armed drones has often referenced larger debates about limitations on the use of force generally as well as the interface between Judaism and international law. However, in the absence of clear international law on drone use, much of the debate has relied on arguments about the practicality and ethics of drone deployment as harm mitigation (e.g. preventing terrorism or reducing combat fatalities).

Professor of rabbinics and bioethics Rabbi Aryeh Klapper examined the Jewish response to armed drones in the context of existing *halakha* (Jewish law) while observing, "so long as a plausible argument exists for the legality of drone warfare, Jewish law would avoid ruling on it so as to avoid an excessive entanglement of religion with politics." Ultimately, Klapper argues,

*I see no Jewish reason to object intrinsically to warfare by remotely piloted vehicle. However, I see reasonable arguments for believing that the availability of drones makes certain forms of problematic policy choices more likely, and that in the absence of proactive regulation, drone warfare will have more pernicious consequences as the technology becomes more widely available.*<sup>21</sup>

Rabbi Shmuly Yanklowitz writes about the role of privacy in Jewish law and its relationship to surveillance drones by observing that there are relevant pieces of *halakha* that prohibit damage caused by watching someone else and damage caused by listening. He references *hezek re'iah* as a prohibition against visual surveillance and *hezek shemiyah* as a prohibition against aural surveillance.<sup>22</sup>

While individual Jewish leaders have come out strongly against the use of armed drones or signed interfaith statements against drone attacks, there do not seem to be institutional responses to armed drones from Jewish organisations or communities.

<sup>20</sup> Rob Eshman, "The Torah of Drones: examining the complex morality of drone warfare," *Jewish Journal*, 6 November 2013, <http://jewishjournal.com/news/nation/123974>.

<sup>21</sup> Rabbi Aryeh Klapper, "What Judaism Says About Drones," 5 March 2013, <http://www.tabletmag.com/jewish-news-and-politics/125905/what-judaism-says-about-drones>.

<sup>22</sup> Rabbi Shmuly Yanklowitz, *The Soul of Jewish Social Justice* (Jerusalem: Urim Publications, 2014).

## Muslim responses to armed drones

One of the most complicated aspects to examining armed drones from a distinctively religious framework is that drone strikes themselves have been used in a way that forefronts religion. For example, the US use of armed drones has largely targeted Muslim people. The literature responding to these attacks does not take drone strikes as their own entity but rather as one part in a much more troubling overall pattern of Islamophobia in the so-called War on Terror. There are not many Muslim scholars or Muslim organisations writing in a way that chiefly connects Islam and a prohibition against the use of armed drones. Instead, the broader argument that Islamophobia shapes the entire context of the conflict and response is more common. Scholars weighing in on the use of armed drones and using religion as a framework scaffold their research in one of two ways: either examining the roots of Islamophobia in the United States and Europe or as positioning themselves as experts on religious militancy. There is a need for more scholars to examine how Muslims are responding theologically and sociologically from a position of faith beyond the obvious impacts of trauma and loss in affected communities.

In a time of increased Islamophobia, Muslim communities are under increasing pressure to speak out against terrorism and acts of violence by fellow Muslims. This untenable position of shifting the burden of denouncement onto these communities places them in a difficult position to denounce or even publicly debate the ethics of drone use as to do so places them in an even more charged position of critiquing what the US has used as a central tactic in the War on Terror. To publicly criticise drone use is to risk being framed at best as unpatriotic and at worst as dangerous or sympathetic to terrorism.

Therefore, there are Muslim leaders who have signed interfaith declarations against drone usage but there is little public work in the form of statements or publications by Muslim organisations independently of such group proclamations. For example, while Dr. Sayyid Syeed of the Islamic Society of North America (ISNA) signed the 2017 statement to the Trump transition team and a 2016 letter to President Obama urging the cessation of armed drone use, ISNA as an organization has not issued a policy statement on the issue.

## Buddhist and Hindu responses to armed drones

There are very few published reflections on armed drones from a Buddhist or Hindu perspective and no formal statements by organisations either denouncing or supporting them. From a Buddhist standpoint, all killing represents an infraction of the religious code against taking life so perhaps it is not surprising that Buddhists may not feel a need to take particular stands on every form of lethal technology. However, since some people take the position that armed drones reduce casualties in war (at least from the side of those operating the drones) it does seem that more religious reflection is warranted here.

Zen Roshi Norman Fischer opens up this line of inquiry asking,

*Are they good or evil? Do they kill innocent civilians? Yes they do. But even when they don't, are they targeting the right people? Who are the "right people"? If someone is forced, by social pressure and the threat of murder, to harbor a so-called terrorist, or even to commit so-called terrorist acts, is such a person worthy of being targeted? Is anyone? And who decides? On what basis? <sup>23</sup>*

These questions seem to reflect the questions raised above about the morality of drones.

## Conclusion

Beyond the pragmatic calculations of the efficiency, cost effectiveness, or efficacy of drones from a military or political standpoint, this chapter has reviewed how drones might be evaluated from a religious standpoint. While it is possible to engage different moral frameworks to reflect on the inherent right or wrong of drone usage, it seems that most religious traditions that have taken a position on armed drones have opposed them. However, there has also been silence from many religious sectors and groups on this issue. It is likely that as drone usage increases, discussions in sectors outside of military circles will also increase, which will likely spur increased discernment and reflection among religious thinkers and theologians. Such deep mindfulness and moral reckoning about these weapons should be a hallmark of our times.

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<sup>23</sup> Norman Fischer, "The Problem of Evil," *Lion's Roar*, 17 April 2017, <https://www.lionsroar.com/the-problem-of-evil>.



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## Article36

