Drones - are they ethical?

Bill Frilay

Aspects of the use of drones – those remote-controlled small planes used by the US and the UK to attack targets and for surveillance – have been questioned lately. Drones have been used increasingly by the US to target al-Qaeda in particular as well as the Taliban.

David Bosco, writing in *The Multilateralist* on 20 June 2012, wrote (in the context of UN Human Rights Council enquiries):

Christof Heyns, the UN’s independent investigator on extrajudicial killings, had asked the US to lay out the legal basis and accountability for the use of armed drones...

After a two-day ‘interactive dialogue’ with US officials at the United Nations in Geneva, Heyns says he is still waiting for a satisfactory reply.

“I don’t think we have the full answer to the legal framework, and we certainly don’t have the answer to the accountability issues”, he told reporters on the sidelines of a UN Human Rights Council meeting.

The US statement of 19 June in response to this said little, referring to three speeches already made by senior US defence officials, but providing little else of substance. And freedom of information requests by the *New York Times* and the American Civil Liberties Union for drones strikes to be made public have reportedly been rejected on the grounds that the information is classified.

The Pakistani Government has objected to the use of drones in Pakistan. As a consequence, the United Nations High Commissioner for Human Rights, Navi Pillay, has advised Pakistan to seek an official UN investigation into whether US drone strikes are legal in that location. "Drone attacks do raise serious questions about compliance with international law”, Dr Pillay told a press conference in Islamabad.

Ensuring accountability for any failure to comply with international law is also difficult when drone attacks are conducted outside the military chain of command and beyond... transparent mechanisms of civilian or military control.

The issues raised by the UN and others are canvassed below.

---

1 Bill Frilay is a regular contributor to Social Policy Connections. Bruce Duncan asked him to review the ethics of and debate about US use of drones to attack suspected terrorists. Bill commented, “By chance, I have seen a drone. 3 years ago, my wife and I were passing Creech airbase in the desert of Nevada when we saw this strange aeroplane taking off and landing - it was a drone, and Creech is apparently a key test area for them.”

2 ABC News website 22 June 2012.
Civilian casualties

One of the key elements of the Geneva Convention is the protection – as far as possible – of civilians. This is laid out explicitly and clearly in Articles 51 and 52 of Protocol 1 of the Convention.

Also relevant here is the principle of distinction, ie separating military targets from civilian ones.

Seumus Milne in The Guardian writes that “Since 2004, between 2464 and 3145 people are reported to have been killed by US drone attacks in Pakistan, of whom up to 828 were civilians ...”. The US puts the number of civilian deaths much lower – at 90. Probably, the number lies in between.

The US argues that there is much study before any launch to minimise civilian casualties.

There are civilian casualties in the use of conventional weapons, for the most part unintentional, and due to human error or lack of information. I am not sure that the ratio of civilian casualties is any higher in drone attacks than in other attacks. To that extent, they are probably no worse than conventional weapons.

The role of the CIA and/or the Pentagon

The role of the CIA and/or the Pentagon in the use of drones has been raised by a UN official, ie are they true combatants, as compared to members of the armed forces? The nub of the question is, if they pull the trigger, so to speak, are they unlawful combatants?

The definition of combatants is set out in Article 43 of the First Protocol of the Geneva Convention. There is also an explanation of this in a paper by Vark in the law journal Juridica International, but this tends to focus on such combatants as those who are civilians by day and soldiers by night, rather than on combatants from head office.

Article 43 was written well before the concept of remote-controlled weapons was contemplated, and it is not clear to me whether the CIA/Pentagon would or would not be lawful combatants. To me, the matter is blurred. Washington would decide on a target for attack. Pulling the trigger (so to speak) is the next logical step. Should this be someone in Washington, or someone on the battlefield?

An interesting corollary is that a drone has now been developed which can be launched by a soldier in the field. Ironically, this has led to concerns that civilian casualties would rise, because the soldier will not have access to so much information.

---

**Targeted killings or assassination?**

Drones are commonly used for targeted killings. Is this the same as assassination?

Seumas Milne in *The Guardian* wrote, “These killings are, in reality, summary executions, and widely regarded as potential war crimes by international lawyers, including the UN’s special rapporteur on extrajudicial killings, Philip Alston.”

The rationale for the US actions against, for example, al-Qaeda is that of self-defence. The Charter of the UN precludes the use of force, except when there is a UN Security Council resolution, or, under Article 51, self-defence. This self-defence provision is based on responding to an armed attack. However, in the case of terrorism, can pre-emptive action be taken on the basis of anticipated attacks?

In a statement on National Security Strategy in September 2002, President Bush made it clear that the US would pursue such a course. Do you have to wait to be harmed? According to Peters, “If this interpretation is adopted, any right to self-defence is virtually rendered nugatory if a state must let itself be harmed, perhaps even fatally, before it can respond with force... Such considerations make the arguments supporting a right to anticipatory self-defence both plausible and convincing...”. She concludes, after noting the many difficulties of this, that “the careful and controlled extension of the doctrine of self-defence in the future is inevitable.”

No government could politically or morally await harm to its citizens before taking action to combat potential terrorist activity. A key issue here is how serious is the threat, ie has it been substantiated that the target imposes a real threat?

**Accountability**

This is an interesting point in the US, but it has implications elsewhere. A *Washington Times* article of 17 June 2012 noted that, normally, Congress plays a major role in determining and overseeing armed conflict. But, following 9/11, “lawmakers relinquished their authority by passing a law... that essentially granted the White House open-ended authority for armed action against al-Qaeda.”

P W Singer has written that the drone has seen a huge change in military tactics, and that since 2004 there have been 300 drone strikes in Pakistan alone. He states that the campaign is being conducted not by the USAF, but by the CIA. Yet – his main point – it has not once been debated or voted-on by Congress. He is not against the drone strikes generally, but is concerned “how a new technology is short-circuiting the decision-making process for what used to be the most important choice a democracy could make. Something that previously would have been viewed as a war is simply not being treated like a war”.

He believes “an enormous precedent has been created... blurring civilian and military roles in war, and circumventing the Constitution’s mandate for authorising it”. And he notes that this precedent may be followed by other nations who are developing this technology.

---


7 P W Singer, *The New York Times Sunday Review*, 21 January 2012; Singer is described as a future war expert (not to be confused with Peter Singer the philosopher and ethicist).
Extra-territorial issues

The Pakistani Government has objected to the use of drones in Pakistan. This all impinges on the concept of territorial integrity.

On the one hand, territorial integrity is enshrined in the UN Charter. Chapter 1, Article 2, Paragraph 4, states, “All members shall refrain... from the threat or use of force against the territorial integrity or political independence of another state...”.

On the other hand, it seems clear that al-Qaeda is operating, in part, out of Waziristan in North West Pakistan. Elden points to an argument previously used by the US. It stems from the UN General Assembly Resolution 3314 (XXIX) which contains a definition of aggression. Inter alia, it says:

Any of the following acts... shall... qualify as an act of aggression... the action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that State for perpetrating an act of aggression against a third State... or the sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above...

An issue here is whether al-Qaeda or other terrorist groups can be considered States.

In a statement on National Security Strategy in September 2002, President Bush made it clear

The broader ambit - Realpolitik

The above constitute major legal and international issues on which I am not qualified to comment.

In the broader ambit, one can argue that war itself (including the war on terrorism) is unethical. St Augustine and others since have tried to define what constitutes a just war. But given that war occurs, what is the least worst way of undertaking it? And, within that, where do weapons such as drones sit?

From the US point of view, drones have been very successful. They are a means of combat which involve minimal casualties on their side – a matter very important to the US. The drone can kill the enemy without the obviously very unpopular deaths of US soldiers.

Sadly, in that broad sense, that is the unfortunate aim of war. General Patton once addressed his soldiers thus: “Die for your country? I don’t want you to die for your country. I want you to kill the enemy so they die for their country.”.

Like most forms of combat, the use of drones has ethical flaws and issues. But it seems to be one of those breakthrough weapons – like gunpowder and the musket in earlier times – which give the user a great advantage. And the US will not be walking away from using them.

---

8 Elden, Stuart, Territorial integrity & the war on terror, Environment & Planning A 2005 Volume 37 pp 2083^2104.