



# BULLETIN

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## Controversies of Drone Warfare

Maria Radziejowska

*The U.S. fleet of armed drones grew unprecedentedly over the past decade, meanwhile other countries have come into possession of drones and new drone technologies are being developed. Armed drones are a strategic tool in countering terrorism. Considering that today's practices will set the groundwork for future international standards, it is essential to clarify and disclose the rules of this type of warfare.*

**“Drones Are Here to Stay.”** UN officials, states, and human rights advocates recognise that unmanned aerial vehicles (drones) are now a permanent part of the equation. Among their many applications, including surveillance and reconnaissance, UAVs can carry and fire various armaments. Because of their capacity to loiter over a target for hours and gather information along with the possibility to divert a fired missile almost to the very last moment before hitting a target, the use of drones is not only cost efficient but could reduce civilian casualties in conflicts. The difference that warrants controversy between drones and other means of engaging in warfare is that because they are remotely operated it allows an actor to use lethal force without the need for direct human involvement on the battlefield. As a result, the person who operates an armed drone is separated from its effects on the ground, which raises moral questions regarding their use. However, whether they are used in line with international law is a separate question. Over the past decade, armed drones have become a critical tool in countering terrorism by carrying out targeted attacks on individuals or groups outside areas of “active hostility.”

**Drones and the Use of Force.** Following 9/11, the U.S. declared that it was in armed conflict with Al Qaeda and its associated forces. The Authorization to Use Military Force Act (AUMF) adopted by the U.S. Congress on 18 September 2001 authorises the president to use the necessary and appropriate force in order to prevent acts of international terrorism against U.S. assets or interests. Since 2004, the U.S. has been conducting drone strikes inside of Pakistan, and in June 2012 it officially admitted that it has also carried out drone strikes in Somalia and Yemen. When conducted absent a state's consent or in a case of justified use of self-defence pursuant to the UN Charter, such operations could potentially violate the principle of state sovereignty and the prohibition of the use of force. It is unclear, however, whether all of the targeted killings carried out today may be treated as a lawful response to the attack of 9/11 or as a necessary and proportionate measure to halt other attacks on the U.S. It appears that so far, both Yemeni and Pakistani authorities have given the U.S. consent for the use of force on their territories.

Drone strikes, as with other lethal attacks, must be assessed in light of human rights and international humanitarian law. Arbitrary killing is prohibited under human rights law. The use of lethal force by a state against individuals is permissible in exceptional circumstances and in law enforcement situations when it is necessary to ameliorate a threat to life that cannot be done through means other than the elimination of the person who has created the risk. In armed conflict, the rules of international humanitarian law (IHL) apply. These regulate the means and methods of warfare for combatants and protect persons who are not participating in the hostilities. According to IHL, persons who may be legitimately targeted in an armed conflict are members of the armed forces, organised armed groups or even civilians if they are directly participating in the hostilities.

Whether all of the U.S. targeted killings can be considered in terms of law as occurring in an armed conflict is unclear. The criteria taken into consideration to determine the “belligerent” status of various “Al Qaeda-associated forces” are not apparent. The asymmetrical and transnational character of the “War on Terror” create a challenge for international law. Some, including the U.S. administration, take the stance that nowadays in conflicts with non-state armed groups operating transnationally one cannot speak of a traditionally understood battlefield. It is also

questionable whether the time lapse between the 9/11 attack and today's attacks carried out infrequently by these "associated" groups meet the criteria for armed conflict. Thus, the debate is ongoing.

**Drone Secrecy.** According to data from the Council on Foreign Relations as of Jan 2013, President George W. Bush, when he was in office, had authorised 50 non-battlefield strikes, while President Barack Obama has OK'd 350 since he took office. The practice of employing "signature strikes"—which target groups based on their supposedly militant-like pattern of life, location, or appearance, necessitates an assumption that such strikes are preceded by the collection of extensive intelligence substantiating the legitimacy of the targets. It would be worrisome, however, if the inability to obtain the requisite information about these types of people were what leads to "signature strikes." Targeting based on the selection of individuals from a "high value" target roster is also contentious. The procedure and criteria for listing then selecting those to be targeted is far from apparent to the outside world. More light needs to be shed on the alleged practice of double strikes, in which one drone strike immediately follows another, which aims at ensuring the enemy is killed rather than conducting an assessment of the first strike before deciding the next course of action.

Another outstanding issue is the matter of responsibility and supervision over drone strikes. The U.S., for instance, runs two separate targeted-killing programmes in which it employs UAVs. One is operated by the CIA and the other by the military's Joint Special Operations Command (JSOC). The covert nature of these programmes is not the only problematic issue. Each has been separately authorised and is subject to different review procedures. It is unclear whether the CIA and JSOC apply the same rules and criteria of concern to human rights or IHL in their targeting procedures.

**Forthcoming Changes?** In the context of increasing criticism and demands for greater transparency of drone programmes, and given the prospects of the withdrawal of most of U.S. forces from Afghanistan by the end of 2014, President Obama in May 2013 introduced a new policy directive regarding the use of drones. He announced that the U.S. will gradually scale back the military element of the fight against Al Qaeda in Afghanistan and foresaw that actions there soon may no longer qualify as armed conflict. He also introduced more precise guidance for carrying out strikes outside active conflict zones. The publically available summary shows that such strikes may be conducted only against persons posing a continuing and imminent threat to Americans and when capture is not feasible and no other reasonable alternative exists to address the threat effectively. Moreover, such drone strikes can take place only in instances of near certainty that civilians will not be injured or killed. This guidance is a clear shift towards a human rights standard. At the same time it remains imprecise enough to permit a worrying degree of flexibility in terms of its implementation. However, given the lack of official data on the criteria applied, the number of strikes, or the number of civilian casualties per strike, further investigation is warranted based on estimates by independent reporting initiatives.

**The Need to Clarify the Rules of the Game.** Arguably, drone strikes have assisted in weakening Al Qaeda's leadership through attacks on its senior leaders, as with the attack of 1 November carried out in North Waziristan in Pakistan against Taliban leader Hakimullah Mehsud. This attack, however, was criticized by many, including the Pakistani authorities as untimely and obstructive in peace negotiations with the Taliban. The attacks on suspected terrorists in Yemen have targeted Al Qaeda leaders in the Arabian Peninsula, including the controversial attack of 30 September 2011 carried out in north Yemen against U.S. citizen Anwar al Awlaki. However, the majority of drone strikes reportedly target mostly low- or mid-level insurgents, and some have resulted in what critics call unnecessary civilian casualties. Such attacks have proven to further fuel anti-U.S. sentiments, especially in the region.

The attack on Mehsud in Pakistan demonstrated how politically sensitive some of the drone strikes can be. It is crucial that states and agencies that use drones have clear agreements in place with states where strikes occur and well-informed relationships with relevant local authorities if long-lasting peace-building goals are to be achieved eventually. To this end, host states must take a clear stance regarding the presence and actions of foreign forces on their territories.

Drones seem to be a perfect tool for states to engage in "remote-control interventions", which may contribute not only to the proliferation of low-level intensity conflicts but also to the further use of targeted killings.

States currently using armed UAV's should increase transparency regarding the agencies controlling the drones along with the methodology and criteria applied in targeted-killing operations. Moreover, states should reveal, to the extent feasible, information about the impact of the strikes and the review mechanisms put in place.

The use of drones for targeted killings may be seen as a challenge to existing norms. As drone technology develops and expands to more countries, it is of utmost importance that clear standards are agreed upon. Given President Obama's declarations, the EU Member States should take up the matter. This pertains also to Poland, which is in the group of seven EU states interested in the future production of Medium Altitude Long Endurance (MALE) UAV aircraft. It is necessary to convey the European position on differentiating between armed conflict and law enforcement situations. This is particularly important given the use of force outside of the traditionally understood battlefield context. The EU should elaborate a joint position regarding the current and future use of armed drones, including in post-2014 Afghanistan. This could be an important factor in the process of increasing the transparency regarding the use of armed drones.