



On the use of drones in military operations in Libya: ethical, legal, and social issues

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Abstract

The marked increase in the use of drones against hostile targets since the beginning of the Obama Administration has brought up a number of ethical, legal, and social issues. This paper explores those issues. Both eastern and western moral/ethical codes are delineated with respect to the use of drones, with specific references to Just War. Legal issues with respect to drone strikes are concerned with United Nations Security Council Resolutions 1373 and 1973; the former being focal to post September 11th counter-terrorism operations, and the latter focused upon military intervention and operations in Libya in support of those opposed to the Gaddafi government. The legal issues are centered on the degree to which drone strikes are authorized by these two resolutions – if at all. Social issues surrounding the use of drones include the effects that drones have on both subjects (operators, institutions, and targets), and objects of US national security, and the way the US organizes military and intelligence agencies to participate in the process of conflict.

Key words: drones, ethics, law, counter-terrorism, technology, Just War, Pakistan, Libya

Introduction

Before 9/11, George Tenet, Director of the Central Intelligence Agency, said it would be a “terrible mistake for the Director of the CIA to fire a weapon like this” (1). The weapon Director Tenet was referring to was a Hellfire missile launched from a drone. This position on the use of such weaponry changed after the attacks of 9/11, when the US Congress invoked the War Powers Resolution and passed the Authorization on the Use of Military Force, which states:

“...the President is authorized to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons.” (2)

This authorized the President to conduct drone strikes in Afghanistan. Contrary to Tenet’s pre-9/11 position on drones, President Bush’s battleplan included using drones on targets in Afghanistan. It is unknown how many drone

strikes were actually launched in Afghanistan, as public accountability of drone missions did not begin until 2004. Under the Bush Administration, from 2004-2008, there were 42 drone strikes conducted, killing 241 militants and 153 “unknown”ⁱ others (3). Under the Obama Administration, from 2009-present, there have been 180 strikes killing 1,131 militants and 209 unknown others (3).

In his campaign for the presidency, Barack Obama was viewed as being rather hawkish in his position as regards the use of force, saying, (in reference to Pakistan) “If we have actionable intelligence about high-value terrorist targets and President Musharraf won’t act, we will” (4). During his campaign, Obama chided George Bush for not being sufficiently aggressive toward Pakistan, asserting that:

“The Bush administration has not acted aggressively enough to go after al Qaeda’s leadership. I would be clear that if Pakistan cannot or will not take out al Qaeda leadership when we have actionable intelligence about their whereabouts, we will act to protect the American people. There can be no safe haven for al Qaeda terrorists who killed thousands of Americans and threaten our homeland today.” (5)

President Obama has been true to the letter of this position, and drones have been increasingly employed as a weapon of choice. As previously stated, prior to the Obama administration, there were a total of 42 drone strikes in Pakistan, roughly five a year. In the two years since the Obama Administration has been in office there have been 180 drone strikes, 90 per year. That represents a 1700% increase in drone strikes, and there is no indication that the trend will stop. Former CIA Director Leon Panetta has called drones “the only game in town in terms of disrupting al-Qaeda’s leadership” (6). Most recently, President Obama has authorized the use of drones for the protection of civilians in the Libyan conflict. All signs point to continuation of the use of drones in US military operations.

However, there are controversies as regards the US’ use of drones. These controversies can be characterized as ethical, legal, and/or social in nature. Public interest groups such as the International Committee for Robotic Arms Control believe that it is “...unacceptable for machines to control, determine, or decide upon the application of force or violence in conflict or war” (7). Other groups, such as The Fellowship of Reconciliation believe that the use of drones cultivates a “Playstation mentality” (8), in which operators indiscriminately kill adversaries as if in a video game. This group believes that drones could lead to the deterioration of decision making in the use of forceⁱⁱ, ultimately resulting in violation(s) of International Humanitarian Law. On the legal front, some critics believe that the US has no right to use drones outside of Afghanistan, at all. For instance, in response to the US’ use of drones in Pakistan, Amnesty International issued the statement that “the US has carried out an extrajudicial execution, in violation of international law” (9). Regardless of the legality of the use of drones, drone strikes represent a paradigm shift in the way that the US identifies, processes, and eliminates threats. Considering the persistence and spread of terrorist activities around the world, in combination with the recent rise of political protests against dictatorships, particularly in the Middle East and Africa, there is every indication that counterterrorism and humanitarian assistance operations will be at the forefront of future strategic planning. As well, there are indications that drones will be a part of such future military plans, and that drones will continue to impact the strategic relationships between states (if not more broad aspects of the functioning of society).

Ethical issues

The use of drones as tools of military force poses certain moral dilemmas. For instance, is it ethically permissible for machines to decide upon the application of force? Is it ethically permissible to use remotely controlled machines to kill the enemy? If remote controlled machines are acceptable, then how (well) should they be able to discriminate between combatants and non-combatants? The way that such questions are answered depends upon one’s moral code and compass. The diversity of moral codes is important to understanding the origins of ethical controversy surrounding the use of drones as tools of military force.

“Moral code” is a useful term for describing the doctrinal nature of ethics. The sources of ethics may be implicit, as in the opinions of persons or groups, or explicit, for example, as dependent upon religious traditions. In either case, ethical opinions often possess an aura of dogma. This is because such opinions of right and wrong are based upon beliefs that serve as core components of the individual personality. Opinions about the use of force, whether in military or other contexts, are aspects of the moral compass that are often personally resonant and/or relatively indefensible.

Since the dawn of civilization, secular and religious traditions have provided guidance about those conditions under which the use of force is considered to be acceptable. There are pacifist ethics, which are strongly opposed to conflict; examples of pacifistic religious traditions are the teachings of Buddhism. There are militaristic ethics, which view violence as a means to an end that, for instance, instruct followers to kill in the name of certain traditions; in this camp are radical interpretations of Salafi Islam (and historically, the campaigns of the religious crusades). Between pacifism and militarism, are relativistic ethics, which identify conflict as unfortunate but real, and cite conditions under which the use of force is acceptable; among relativistic religious camps are Confucianism and moderate Catholicism.

For example, the 1992 Catechism of the Catholic Church confirms as authoritative church teaching the following conditions under which the use of military force is morally permissible:

“The damage inflicted by the aggressor on the nation or community of nations must be lasting, grave, and certain... All other means of putting an end to it [conflict] must have been shown to be impractical or ineffective; There must be serious prospects of success [of the use of force]... and the use of arms must not produce evils and disorders graver than the evil to be eliminated” (10).

This tradition observes that the use of force is morally atrocious yet sometimes necessary. The criteria of Just War attempts to solidify conditions under which the use of force is ethically permissible. The Just War tradition conceives of the ethics of force in two parts: when it is right to use force (“*jus ad bellum*”), and what type of force is acceptable (“*jus in bello*”) (11).

Within *jus ad bellum*, are seven criteria governing when it is right to use force; these are: just causeⁱⁱⁱ, comparative justice^{iv}, legitimate authority^v, right intention^{vi}, probability of success^{vii}, last resort^{viii}, and proportionality^{ix}. The idea is that the use of force must be justifiable under all seven of these criteria in order to be ethical. Additionally, there are three criteria governing the extent of the use of force (*jus in bello*), these are: distinction^x, proportionality^{xi}, and military necessity^{xii}. The use of force must adhere to all of these criteria in order to be ethically tolerable.

The Just War tradition provides a useful example of a religion-based ethical system that provides guidance on the conditions under which the use of force is acceptable.^{xiii} Yet, different religious traditions have different recommendations. For instance, in fundamental Buddhism, the four prohibitions in the *vinaya* scriptures are killing, stealing, lying about spiritual attainments, and sexual misconduct (12). In Hinduism, there is a distinct difference between just and unjust war; a Just War is in tune with ethics — *dharma*, and sensitive to repercussions — *karma*. The ethical guidelines for Just War in the Hindu tradition include: legitimate reasons, clarity (non-secrecy about the methods of war), discrimination, containment, prudence, fairness and equality, reciprocity, self-defense, and reconciliation after victory (12). Within Islamist traditions of warfighting, there are jihadist and terrorist camps — both of which have different interpretations of Islamist law (*sharia*) (12). Fundamentally, the goal of religious war (*jihad*) against unbelievers is to incorporate them into *dar al-Islam*, not to annihilate them. Thus, the rules of war should be designed so as to maximize the absorption of non-Muslims into the Islamic state once fighting ends. Within this construct, the capacity to fight, not belief in,

or rejection of Islam, is the criterion for determining liability to damage in war. However, for radical groups (e.g., terrorists), all non-Muslims — and Muslims who choose to live among non-Muslims — are legitimate targets for the enactment of violence.

Given the diversity of moral codes that have a basis in religious traditions, one can understand the difficulty inherent to reaching consensus on any of the ethical issues as concerns the use of drones as tools of military force. Opposition to the use of drones from a pacifist orientation has little to do with the particular weapons platform, and more to do with inherent opposition to conflict of any kind. On the other hand, the resolute militarist perspective may unconditionally accept drones and advocate their employment regardless of relativistic considerations. Conditions such as distinction, proportionality, and military necessity are items for discussion that only factor for the moral relativist.^{xiv} On matters of whether or not it is ethically permissible for machines to decide upon the application of force, resolution depends upon the moral code subscribed; thus in light of a relativist stance, there is no right or wrong, only (individual and/or group) delineations and differences in instrumental rationality.

Legal issues

The relativism of moral perspectives on drones is also found in legal positions, albeit to a lesser extent. For example, there is not a general consensus as to whether or not the US has legal right to independently conduct counterterrorism operations in Pakistan (9). US policy maintains that counterterrorism operations against al Qaeda operatives in Pakistan are an extension of the armed conflict in Afghanistan, legitimized by the US Authorization of Use of Military Force, and UN Security Resolution 1973 authorizes the use of force in Libya to protect civilians and civilian areas (15). In this context, the US justifies the use of drones as a tool of humanitarian assistance (16). However, it is likely that public interest groups will inevitably condemn such use of drones.

The Charter of the United Nations notes that “Members shall refrain from the threat or use of force against the territorial integrity or political independence of any state” (17), with three exceptions. 1) The United Nations can pass a resolution that authorizes the use of force in certain situations, such as UN Security Resolutions 1373 and 1973. 2) The Charter of the United Nations does not limit a state’s inherent right to “individual or collective self-

defense...if an armed attack occurs” (17). 3) States have a responsibility to their constituents — as well as to the international community — to criminalize certain activities, implement criminalization through law enforcement, and ask for assistance in the event that domestic law enforcement methods are ineffective in curbing criminal conduct. States have a responsibility to protect other states from their own internal turmoil, and any lack thereof constitutes negligence (18). If a state is negligent with respect to international responsibilities, then other members of the international community have the right to restore order (18). Unilateral use of force as intervention against states perpetuating grave human rights abuses against its own nationals is characteristic of this last exception (18).

The US claims legal justification for the use of force in Pakistan and Libya. US policy has framed drone strikes in Pakistan as an extension of the conflict against al Qaeda, which is a response to armed attacks against the US (e.g., 9/11). The conflict against al Qaeda is justifiable primarily by UN Security Resolution 1373, and secondarily according to the inherent right of self-defense as a response to an armed attack. US involvement in Libya is justifiable as a response to UN Security Resolution 1973, which authorizes use of force to protect civilians.

The use of drones in Pakistan and Libya can be seen as legally defensible as well. Provided that drones have a human-in-the-loop^{xv} (19, 20), there can never be a question of the legality of drones, per se, because drones are merely a vehicle of munitions, which in practice are often precision guided missiles.^{xvi} The drone is not a weapon; rather, it is only a delivery mechanism. The only appropriate assessment of the legality of drones concerns an analysis of the discrimination, proportionality, and military necessity of the drone’s munitions.

US policy maintains that drone strikes are observant of discrimination and proportionality. Commanders are required to consult with a Judge Advocate General prior to weapons’ release authority. In addressing questionable targeting scenarios, US Central Command Commander General Tommy Franks has stated, “[if] My Judge Advocate General doesn’t like it, we’re not going to fire” (21). To re-iterate, under the Obama Administration, drone strikes in Pakistan have resulted in the death of 1131 confirmed militants and 209 “unknown”^{xvii} others (3). This is a proportion of approximately five confirmed militants for every one unknown other. Speaking on behalf of the accuracy of the Hellfire munitions deployed by Predator drones,

Former CIA Director Leon Panetta has said “I can assure you that in terms of that particular area, it is very precise and is very limited in terms of collateral damage” (22). The use of drone strikes in Pakistan is thus mindful of International Humanitarian Law, and only limited in observation of proportionality and discrimination by the quality of targeting intelligence.^{xviii} The military necessity of drone strikes can be justified given that Pakistani and Libyan militants are inapprehensible using conventional military tactics, and/or the use of conventional tactics would cause more harm (e.g., collateral damage and overall casualties inclusive of US forces) than good. The use of precision munitions against militant targets thereby serves as an alternative to utilization of ground forces, which may well result in escalation of conflict and additional casualties.

At present, the US military use of drones is sustained by the US’ right to engage in self-defense against identified perpetrators of attack, and, as per UN Security Resolution 1973, the right to use force to protect civilians and civilian areas in Libya. This right to use force remains within legal bounds so long as the US observes International Humanitarian Law, which appears to be the case to date. Indeed, drones and precision guided munitions enable the direct minimization of civilian casualties and maximization of enemy casualties provided the quality of targeting intelligence. If there is legal question about the use of drones in Pakistan and Libya, it is not a matter of the legality of the use of force, the legality of the weapons, and/or the legality of the delivery platforms. Rather, it is a matter of appropriate quality control mechanisms in targeting intelligence, and the accountability of decision-makers and institutions responsible for authorizing weapons’ release.

Social issues

The social issues surrounding the use of drones can be fit into one of three categories: 1) the effects that drones have on *subjects* (i.e., the operators of drones, the institutions that use drones, and the targets of drone missions), 2) the effects that drones have on the objects of US national security (i.e., whether or not, and to what extent the US is involved in foreign affairs), and 3) the way the US organizes the armed forces and intelligence agencies to participate in the process of conflict.

By day, drone operators fly combat missions in Pakistan or Libya, encounter novel battlefield stressors^{xix}, and return home to their families in Nevada or Virginia at night (23). Such remote action is unprecedented in the history of conflict.

The Air Force (24), Army (25), Navy (26), and Department of Homeland Security (27) are each calling for increasing the number of drones at their disposal. President Obama has given authorization for 194 CIA drone strikes in Pakistan since assuming office in 2009 (3). High demand for drones from the armed services and direct orders from the Commander-in-Chief to use drones has inevitably led to an increase in the resources allocated to drone programs, which then impacts the institutions running such programs. One such impact may be the increasing militarization of the Central Intelligence Agency, as further evidenced by President Obama's recent nomination of General David Petraeus, commanding general of the International Security Assistance Force in Afghanistan, to serve as the Agency's director (28). Militants and civilians in Pakistan report fear of drones, (29) so much so that analysts have called drone strikes "counterproductive" in terms of winning the hearts and minds of the Pakistani population (29). Although this charge is candid, it may also be reductionist in that drones are not the reason why the Pakistani population has not warmed to US presence in their country; rather it is that Pakistanis do not want US involvement in their internal affairs (30). Actually, the use of drones may be a very viable and valuable way for the US to directly participate in Pakistani security affairs without upsetting the delicate political balance (30). Drones might thus serve Pakistani politicians to both accommodate the US' (31) security presence, while minimizing negative public opinion.^{xx}

Experience in Pakistan has shown, the ability to apply swift force at a stand-off distance is advantageous (for the US) because the US can now effectively be involved in global security affairs while maintaining a minimal military footprint, and minimum financial commitment. The use of drones in Libya further supports this idea. If this is so, then there is little to stop the US from using drones in Syria, Egypt, Tunisia, or anyplace where there is cause for intervention as so defined (32).^{xxi} There is also the possibility that the US may employ drones in extremist Islamic hotspots, such as the Philippines and elsewhere in Southeast Asia. The only thing stopping the US from such geographic involvement is a foreign policy that respects the letter of United Nations' dictates sufficiently to refrain until the UN Security Council warrants action. As proven by the Bush Administration's decision to invade Iraq without the sanction of the UN Security Council, such respect for decisions of United Nations is not guaranteed.

The type of conflicts that the US encounters in Pakistan and Libya require a newfound emphasis on intelligence about individual persons of interest, non-state actors, and covert state actors. Terrorists do not wear military uniforms or drive in military vehicles. Neither do militants in Libya, who blend into the urban population (32). Drones and precision strikes may be the only way (for the US) to effectively operate against such enemy combatants (32). Such circumstances require precision strikes upon individual targets. For instance, drone strikes in Pakistan are targeted at known terrorists (33), not random bombardment. The missions in Pakistan and Libya require intelligence at the level of identifying of individual targets. Drones use the output from inter-agency "high-value target teams" (34) to accomplish "at a distance" strikes at targets that heretofore have been allocated to US Special Operating Forces (34).

The US is undergoing a transformation in its strategic forces due to an increasing emphasis on the use of drones. This is changing the job description of the pilot, the tasks of US defense institutions, and the organization of those institutions, and the objects of US national security and US foreign relations. As well, there is an emphasis on the use of drones due to transformations occurring in US national security policy and operations; such changes include renewed emphasis upon dangers posed by super-empowered individuals (35) and interest in the internal conditions of failed states — neither of which were at the forefront of US strategic thinking before 9/11. In any case, the combination of drones, precision guided munitions, and US resolve has led to a fulcrum moment in history in which the US can engage multiple conflicts from an unprecedented distance with a minimum military footprint, and without affecting the day-to-day living of the US population.

Conclusion

US policy currently maintains that the use of drones in Pakistan and Libya is ethically reasonable. Moral validation is derived from the criteria of Just War Theory.^{xxii} The order to use force comes from legitimate authority (e.g., the US President in the case of Pakistan, or the UN Security Council in the case of Libya). The intention of US involvement in both cases involves protection of civilian populations from imminent threats. The use of precision guided munitions enables discrimination between

combatants and non-combatants, and may minimize unnecessary collateral damage. Conventional tactics could result in greater losses to both US forces and innocent civilians.

The US legally justifies the use of drones in Pakistan as an extension of legitimate conflict (against al Qaeda). Some organizations claim that this is not sound logic, and illegal, maintaining that the targeted killing of operatives in Pakistan is a form of extrajudicial execution (9). Such concerns warn against establishing standards that enable the US (or other governments) to target and eliminate hostile operatives anywhere in the world under any circumstances (9). US drone strikes against al Qaeda targets in Yemen (36) add to these concerns.^{xxiii} However, the legal precedent of drone strikes against al Qaeda operatives in Pakistan and Yemen is based upon the assumed right to self-defense.

The use of drones has incurred significant effect upon US strategic calculus. Involvement in countries such as Pakistan and Libya would be unlikely without the capability to effectively operate from a stand-off distance, with minimum military footprint. There are incremental changes occurring in US national security policy, particularly as regards the way the US views humanitarian and counterterrorism missions, this is at least partly due to the availability of drone technology. US drone strikes in Pakistan, Yemen, and Libya are examples of the gradual changing contours of the US national security posture.

Although the current US position(s) on the use of drones in humanitarian and counterterrorism operations have been mindful of UN caveats, there is no guarantee this will always be the case. There is a high demand for drones within all of the armed services. Congress has an increasingly obvious interest in maximizing US power while minimizing US military involvement. US senior leadership, at least under the Obama Administration, tends to embrace a pro-drone position. These characteristics suggest a future where drones will likely continue to play a major role in US military operations. Thus, a key question is not whether the US will utilize drone technology, but instead how such technology can and should be employed in humanitarian and counterterrorism operations. For the US, the issue is one of either continuing to “lead from behind” (37) the UN stance or forging new foreign policy paradigms that include stand-off weaponry.

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Competing interests

The author declares that he has no competing interests.

Notes

- i. “Unknown others” designates persons whom military reconnaissance could not confirm as militants, “unknowns” are individuals of unidentifiable affiliation, which could be, but which are not necessarily, civilians.
- ii. The logic behind this statement is that since the nature of a UCAV is to enable action at a stand-off distance, an operator may be less prone to make ethical decisions about the use of force. Instead, an operator may be overly-aggressive, irresponsible, or less prone to human emotions such as guilt and remorse.
- iii. The reason for going to war cannot be for vengeance or retribution for actions in the past. The use of force must be as a response to imminent threats to the safety and security of the lives of innocent people.
- iv. The injustice suffered by one party must outweigh that suffered by another. The possible magnitude of the loss of one side is greater than the losses of the other side.
- v. The decision to use force must come from a person or persons who are considered legitimate political leadership by the general public.
- vi. For example, protection of populations from imminent threats is right intention.
- vii. The use of force should not be futile and infinite, but rather practical and directed at limited objectives.
- viii. Force is permissible only if diplomatic alternatives are failures or clearly impractical to resolution of the conflict.
- ix. The benefits of armed conflict must outweigh evils or harms.
- x. The use of force should discriminate between combatants and noncombatants.
- xi. One should not attack a military target in the presence of information that the collateral damage would be clearly excessive in relation to the probable military advantage.
- xii. The use of force should be minimal and necessary in order to achieve a military objective. The suspect is

- inapprehensible using conventional tactics, or the use of conventional tactics would cause more harm than good.
- xiii. Elements of this tradition serve as cornerstones for modern International Humanitarian Law.
- xiv. Characteristically, US policy is morally relativistic.
- xv. Currently, drones have multiple operators responsible for different aspects of the functioning of the vehicle. Drones cannot yet identify and engage their own targets, but there is discussion of developing platforms capable of doing so.
- xvi. In the future, the only way that drones could become illegal is if (a) drones autonomously selected and engaged their own targets, and (b) in response to autonomous drones, states developed a convention against such robotic weapons, such as the convention proposed by the International Committee for Robotic Arms Control.
- xvii. Unknown persons could be unarmed affiliates of known terrorists or civilians.
- xviii. The discrimination and proportionality of the employment of Hellfire munitions in Libya is yet to be publically accounted for as of the writing of this paper.
- xix. Modern sensors provide high definition imagery, which enables unprecedented access to the battlefield for reconnaissance. Drone operators see the results of combat missions in detail, more so than any pilots ever before.
- xx. That does not stop politicians from acquiescing to drone strikes one day, only to publically condemn the same drone strikes the next day, ostensibly in order to save face and promote a positive public image at home.
- xxi. In fact, two months before drones were deployed in Libya, the Pentagon issued a statement that drones could “stop the next Darfur.”
- xxii. Just War Theory is just one of many possible frameworks that validate the use of force and the use of drones in Pakistan and Libya.
- xxiii. Colombia’s recent extraterritorial targeted killing of FARC-EP rebels in Ecuador also reinforces the concern that extraterritorial counterterrorism is a reality, a reality that may clash with traditional notions of political sovereignty.

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