

After Proliferation

by MIRKO HOHMANN

One of the few constants in the international security environment is its persistent change. We tend to compare the current international system with the relative stability of the Cold War and forget how exceptional that episode was. Just as the world is changing, so are military capabilities. From the sling to the longbow, from gunpowder to nuclear technologies—weapons are constantly developed further to inflict larger damage on the opponent and to reduce risks for state's own militaries.

The 21st century has seen the rise of yet another technology: unmanned aerial vehicles (UAVs), commonly referred to as drones. While unarmed UAVs have been used since the 1970s to gather intelligence, armed drones have been deployed by the United States, Great Britain and Israel for over a decade in support of their military operations. Most controversially, they have developed into the backbone of the American “war on terror” as they provide an excellent tool for targeted killings of jihadist fighters.

Drones Are Here To Stay

Asked about the implications of the loss of an unarmed drone over Iran in early 2013, a high-ranking U.S. Navy official simply replied: “They could have gone to Radio Shack and captured the same ‘secret’ technology” (The New York Times 2013). The development of armed UAVs is certainly more complicated. In general, however, drones rely on comparatively simple electronic parts. This makes them both inexpensive and easily available, and therefore attractive both to states and non-state actors. While moral implications should not be easily set aside, this perspective highlights the urgency to discuss the concrete foreign policy implications of drone proliferation.

First, each state has to define whether the use of armed UAVs fits into its broader approach to foreign policy. For most states, in particular for the United

States, this involves a discussion on how to properly integrate the tactical use of drones into counterterrorism strategy. The more complicated second issue concerns the question of how to lay down legal standards to regulate and potentially restrict the spread of armed drones.

A Strategic Fit?

From the Obama administration's point of view, the argument in favour of armed drones seems obvious: not only are they cheaper than regular manned aircraft, they also eliminate risks for military personnel. Soldiers can earn their medals flying drones remotely from a base on U.S. ground and still spend the evening with their families. Especially in times of diminishing support for "boots on the ground," the low political risk associated with the use of drones plays a crucial role.

At the same time, UAVs are attractive because of their tactical effectiveness. A death toll of over 2,500 operatives has not gone unnoticed by al Qaeda, the Taliban and their "associated forces." Up to 50 senior leaders have been successfully targeted and documents found during the Abbottabad-raid targeted at Osama bin Laden revealed that the organizations struggle to recruit on that level.

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Finally, most experts agree that drones strikes are much more precise than manned aircraft or special operations: due to their ability to observe possible targets for hours before striking, they can reduce collateral damage to civilians.

Nevertheless, such an optimistic view on the use of armed drones could be shortsighted. A terrorist organization's ability to inflict damage is based on both its operational capability and its members' motivation to fight. While drone strikes focus on the tangible operational side, they leave motivation out of the equation. There is nothing heroic to the conduct of drone strikes and captured terrorists have frequently cited them as an incentive for their attacks. One can also understand how the use of literally untouchable weapons has increased anti-Western sentiments, especially in directly affected countries such as Pakistan.

In addition, U.S. military involvement in Iraq and Afghanistan has lead al Qaeda to adopt much more decentralized structures; the organization is now operating from over half a dozen Middle Eastern countries (Scheuer 2011). Both politically and militarily, it remains unclear whether the United States will be able to sustain drone strikes all over that region.

Besides the debate on whether the extensive use of drones is an appropriate approach to strategically defeat al Qaeda, or terrorism in general, other practical challenges have to be addressed: UAVs have a comparatively high crash rate, which leads to difficulties when implementing them into civil airspace. The recent German Euro Hawk debacle is a just one case in point. In addition, because drones move slowly, they cannot be used against opponents with capable anti-aircraft defense or in contested airspaces.

A Legal Challenge

Up to this point in time, UAVs' tactical advantages have driven their use, while strategic questions go unanswered. Moreover, the development of a legal framework has lagged behind. The United States is currently juggling with two different justifications for the use of drones. The first one assumes that the United States is engaged in an armed conflict with al Qaeda, the Taliban and their associated forces. This line of argument is usually applied in Afghanistan, Iraq and the tribal areas in Pakistan. The second justification assumes that the United States is acting in self-defense against terrorist threats. Hence, the use of drones is just an extended form of law enforcement. The latter argument seeks to justify attacks in Yemen and Somalia as well as Pakistan.

In both cases, support from international law is very weak. In international armed conflicts, states are allowed to use lethal force against their opponents. Nevertheless, there remain strong doubts whether such a conflict exists with regards to the Pakistani territories as well as to the vague term of associated forces. The second argument is even weaker. Accord-

ing to the UN Charter, lethal force in self-defense is only to be used when “strictly unavoidable to protect life” and in order to counter an “imminent threat.” Whether terrorists in Yemeni or Somali deserts pose such a threat to American citizens or national interests is more than questionable.

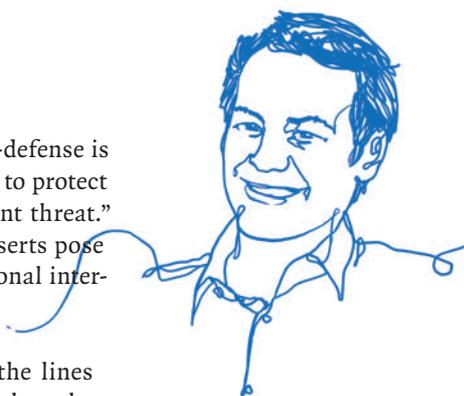
In general, the United States is blurring the lines between combatants and civilians; those who take active part in hostilities of an armed conflict and those who do not. In 2011, John Brennan, now Director of the CIA, argued that no civilian had been killed in drone attacks—an argument that is only possible when applying an extremely broad definition of a combatant. His argument seems almost preposterous when looking at the so-called signature strikes, in which only the suspicious behavior of certain groups justifies attacks. Lastly, it is noteworthy that four American citizens have been killed by drone strikes since 2002—without any official trial.

The Way Forward

For the United States, the way forward is twofold: first, the Obama administration will have to intensify its work on a long-term counterterrorism strategy. Second, it will need to establish more specific legal rules for the use of drones and establish a process of judicial oversight. While it seems unreasonable to demand that each decision has to be made public, the applied standards should be well known.

This proposition is in America’s own interest. The current approach to counterterrorism focuses on counter-operational tactics and does not include counter-motivational approaches. Killing one generation of terrorists while creating the next one is not a convincing way forward. At the same time, we should be aware that drones will proliferate. Non-western countries are quickly catching up on drone technology and the American approach to drone strikes is setting a precarious precedent.

This is the point where the European states must join the conversation. So far, very few European governments have raised their voice on America’s use of armed UAVs. There are two concrete steps that should be taken. First, European leaders have to clarify that the current extensive use of drones does not comply with international norms. If we do not make this clear now, it will be hard to respond credibly when, for example, Russia employs drone strikes against “terrorists” in Chechnya. Second, a concrete code of conduct should be promoted and it has to address legal processes as well as industry regulations. Legal



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norms have to set a fixed threshold for the use of “law enforcement” and clearly distinguish between combatants and civilians. Industry regulations should deal with the issue of uncontrolled proliferation to non-state actors.

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When finally having those discussions, it is important to keep in mind that drones still require humans to be “in the loop,” to fly or program them. In less than a decade, we will face the first generation of systems with humans “out of the loop.” To date, tactics have preceded strategy and legality. In future, it will be crucial to develop a standard to address the emergence of autonomous weapons systems.

NEW YORK TIMES, THE (2013): Simple, Low-Cost Surveillance

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SCHEUER, M. (2011): The Zawahiri Area. The National Interest, Sep/Oct 2011.