Commentary

Changing The Rules of War:

The Controversies Surrounding the United States' Expanded Use of Drones

by Emanuel Boussios

The Obama administration has an opportunity, and some would say an obligation, to create a doctrine that sets guidelines for the development and deployment of unmanned aerial vehicles (UAVs), also known as drones. There are a number of debates surrounding the use of drones, the most contentious of which have been as to whether governments have *legal authorization* to do so, and of how *combatant status* is defined under current international law. In Obama's first term, his administration worked to rollback the world's arsenal of nuclear weapons. His efforts and vision of a world without nuclear weapons was one of the reasons why President Obama was awarded the Nobel Peace Prize—inclusive, of course, of his efforts to strengthen international diplomacy. Yet, during this same period, his administration has developed and utilized revolutionary military technologies that may well become signature weapons of the 21st century. Since 9/11, there has been an alarming increase in the use of drones.

Drones generally fall into two categories: those that are used for reconnaissance and surveillance purposes, and those that are armed with weapons for military purposes. The use of drones has grown enormously in recent years, in part, because unlike manned aircraft they can fly long missions. For example, a British drone, Zephyr, can fly non-stop for over 82 hours, are less costly, and have no (immediate) military casualties. Although the cost per flight hour varies by drone type, Predator and Reaper drones cost about $2,500-3,500 per flight hour, while larger armed systems such as the Global Hawk drone cost about 10 times as much (Southworth, 2013). As of November 2013, 87 nations possess some form of drones and conduct various kinds of surveillance either over their own territories or beyond (Taylor, 2013). Given the extraordinary demand for UAVs, hundreds of companies are currently developing small and large scale drone technology. According to the Teal Group, global spending is set to nearly double from $6 billion in 2013 to 11.6 billion in 2023. This raises a serious question: What happens when an overwhelming majority of nations have drones? The United States, in conjunction with the international community, may benefit from recognizing this dangerous trend and helping reconstruct international laws to more effectively deal with the use of drones. Restricting the use of drones worldwide will likely reduce future conflicts. An example of such a conflict is the Japanese government's anger over a (suspected) Chinese drone 'violating' the airspace over a small island chain controlled by Tokyo that is at the center of a bitter territorial dispute with China.

The United States has been a leader in driving the UAV revolution and its use in the field. According to recent reports, the US Department of Defense now has well over 7,000 aerial drones, compared with just 50 a decade ago. The fiscal year 2012 budget included $5 billion for drone research and development (Southworth, 2013). In 2012, the U.S. Air Force trained more UAV pilots than jet pilots for the first time in history. Despite cuts in defense spending, the fiscal year 2014 budget totaled $4.1 billion for all unmanned systems (Osborne, 2014). This increase in expenditure has played itself out in the battlefield. President Obama has ordered seven

times more drone strikes than his predecessor President Bush in the covert conflicts in Pakistan and Yemen, according to independent estimates (Jackson, 2013). While the British and US Reaper and Predator drones are physically in Afghanistan, control is via satellite from a US Air Force base outside Las Vegas, Nevada. This is likely to be a game changer. The use of this type of weaponry and technology allows the point of critical human decision making to move physically *off* the battlefield and also, increasingly, chronologically away from the time of kinetic action. Of critical concern is the extent to which operators become 'trigger happy' with remote controlled armaments, situated as they are in complete safety, distant from the conflict zone. Perhaps as warmaking becomes safer (with the removal of soldiers from the actual horrors of war) and mobilization less difficult, there is a very real danger of losing the deterrent that such horrors provide. Several critics (Chow, 2013), however, have indicated that perhaps this danger is indeed overblown. A study of Air Force personnel found that 17 percent of Predator or Reaper drone operators, and 25 percent of Global Hawk operators, show signs of what the Air Force terms "clinical distress," which includes depression, anxiety and other symptoms that interfere with job performance or disrupt family life. For comparison, approximately 28 percent of U.S. soldiers returning from Iraq are diagnosed with clinical distress, according to the Air Force (Chow, 2013). For these operators the reality is that the precision and accuracy of these drone attacks are as good as the intelligence on the ground with proper communication. Many operators have seen close-up video of what the military calls "collateral damage," casualties involving women, children or other civilians that is unnerving and unsettling to them contributing to this combat stress (Khan, 2011). As one drone operator had put it, "We always wonder if we killed the right people, if we endangered the wrong people, if we destroyed an innocent civilian's life all because of a bad image or angle (Linebaugh, 2013)." Even if the end result appears to be successful, it leaves a hint of doubt as to how accurate their confirmation of weapons and hostile individuals were.

While armed drones were first used in the Balkans war, their use has dramatically escalated since that time. More specifically drones have been used regularly in Afghanistan (recently in Iraq and Libya), in the 'undeclared war' in Pakistan, and Somalia (in 2011, US armed drones began operating in the failed state). In October 2013, a U.S. drone strike in Somalia killed two terrorists of the al Qaeda-affiliated group al Shabaab. In another U.S. drone strike in Somalia, a key leader of the al Shabaab group, Ahmed Abdi Godane, was killed in September 2014. This has been part of a greater international response in the sub-Sahara region. The deployment of French surveillance drones in Mali was reported in October (2012) (Cole, 2013). [In the military intervention in Libya—US drone strikes were credited for ending the exile of former Libyan President Muammar Gaddafi.] The Bureau of Investigative Journalism has obtained 2012 data from the US Armed Forces, NATO and the UK's Ministry of Defence and reveals, for example, that more than a quarter of all armed Coalition air sorties in Afghanistan were carried out by drones (Ross and Woods, 2012). In a 21-page report, the UN special rapporteur on human rights, Ben Emmerson, records a dramatic reduction in drone strikes in 2013 in Pakistan (in response to Pakistani government pressure) but increases in Afghanistan and, towards the end of the year, in Yemen (Ross and Sterle, 2014).

There is also a substantial debate taking place over the issue of *combatant status*, of which targeted assassinations of suspected 'combatants' test the legal limits of the Obama administration's power. While the U.S. government maintains that drone strikes have undermined the Al-Qaeda leadership, critics have argued whether or not the strikes are compatible with the principle of distinction under international law. According to Article 48 of the Protocol Additional to the Geneva Convention (AP I, 1977), "In order to ensure respect for an protection of the civilian population and civilian objects, the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military

objectives and accordingly shall direct their operations only against military objectives." (Henckaerts and Doswald-Beck, 2005) For example, in September 2011 Anwar al-Awlaki—a US citizen accused of being the organizational leader of al Qaeda in the Arabian Peninsula— was killed by a US drone strike in Yemen. The UN Charter, and numerous international treaties, prohibits carrying out the targeted killing of individuals on foreign soil outside of armed conflict, except in extraordinary circumstances. Generally such extraordinary circumstances are understood to involve imminent threats of physical violence, where no other alternative exists but to employ lethal force. The controversy stems from whether the Yemeni government, Yemen is a critical U.S. ally, had officially supported this action *or* did the U.S. in fact violate its airspace to kill a suspected *combatant*. Of further importance is this critical question: what is more dangerous, al Qaeda's vows to retaliate or the reaction of the Yemeni people to the US's violation of their country's airspace and to the murder of a man many of them considered their own (despite his US citizenship)? Although drone strikes give the appearance of toughness and have enormous short-term benefits, their damages to political alliances over the *long term* are of great concern.

Where drone use is *legally authorized* is dependent on location and purpose. In specific 'declared' combat zones (i.e. Afghanistan) drone use has *clear rules of engagement*. According to the UN Charter, countries can use force for self-defense. Since the U.S. had solid international legal footing for attacking Afghanistan after 9/11 in self-defense, critics have argued that in areas where the US is not involved in armed conflict, it cannot lawfully resort to military force. [The US Congress authorized the use of military force after 9/11, which allowed the president to target those who "planned, authorised, committed, or aided the terrorist attacks" of 9/11—which interpreted to mean Al-Qaeda—but some have questioned whether drone strikes are justified under the post-9/11 authorization and therefore would require additional congressional authorization.] In less clear cases, such as undeclared combat zones (i.e. U.S. drone use in Pakistan, Yemen) the US is expected to work with the government of the country in which it is operates drones abiding by a key exception to the Article 2(4) of the UN Charter prohibition on the use of force. The Pakistani government has, at times, reacted angrily to what they view as unilateral actions there, which is a significant lapse in meeting the requirement of the use of force being carried out with the consent of the 'host' state. Such long term damage to alliances and to U.S. national interest in this case is known as 'blowback' – incidents that arise in later years as a latent result of actions taken today. Whereas the CIA in the 1980's was 'secretly' arming the mujihadeen fighters (led by Osama Bin Laden) against the Soviet Union in Afghanistan, these so-called freedom fighters were later responsible for the bombings of 9/11. Today, this 'blowback' could later appear in Northern Pakistan whose residents will internalise the distress and hatred that resulted from the hundreds of drone strikes that have taken place in their country over the last decade. As one anti-drone organizer in Yemen put it: "Many people are living in constant fear because they could be next, creating widespread and long-term psychological torture. Many young boys are afraid to gather and children stop going to school and families stop gathering." (Lazare, 2014). Similar cases have been seen even where military force was not used. In September 2012, a U.S.-made Predator surveillance drone— monitoring the PKK along the borders between Turkey and Iraq— was shot down by PKK Kurdish guerillas, shattering on the mountainous terrain near the Iraq-Turkey border (the PKK has been fighting for independence from Turkey state since 1984). For Kurdish guerrillas hiding nearby, it was an unexpected gift from the propaganda gods, whom soon after posted a YouTube video of the capturing of this charred wreckage. In yet another case, a dispute over the legality of 'routine patrols' recently occurred between Japan and China. Japan scrambled fighter jets near Chinese territory after what they suspected to be a Chinese drone flown near a small island chain (Senaku Islands— in Chinese parlance, Diaoyutai Islands)

controlled by Tokyo that is at the center of a bitter territorial dispute with China. The Chinese government, claiming 'routine' Chinese patrols of the islands are in line with international law and practice, warned Japan that any attempts to shoot down its unmanned drones over disputed islands in the East China Sea would be considered as an act of war and will invite retaliation.

How lethal are UAVs? Across Pakistan, Yemen and Somalia, the Obama administration has launched more than 390 drone strikes killing more than 2,400 people, at least 273 of them reportedly civilians (Serle, 2014). This does little to paint a picture of deadliness. Moreover, the latest research has shown the weapon systems on board these drones are getting even smaller and more precise in nature. For example, the previously criticised Hellfire missiles are being replaced by smaller Griffin or Spike missiles with the new Reapers typically carrying 6 Griffins as opposed to the 2 larger Hellfires originally carried. There are limitations to its use, however. If the Obama administration were to intervene in the current Iraq crisis, the use of drones has been ruled out. That is because the primary benefit of using drones is the ability to make precision attacks and carry out targeted assassinations. An aerial assault in Iraq would be much larger in scale, covering huge swaths of territory including the destructions of buildings and bridges. However, with drones becoming increasingly deadly— and able to carry a larger load of weapons— its abilities on the battlefield terrain could translate to a dramatic expansion in its use for much wider conflicts.

Drone use has not been limited to military use. Civilian intelligence agencies and surveillance military drone manufacturers are looking for ways to use drones for domestic surveillance, with the US Justice Department disclosing recently that two domestic law-enforcement agencies (the NYPD has been reported to soon use drones) use unmanned aircraft systems. The Obama administration has been defending its surveillance tactics since The Washington Post reported, after a review of secret documents provided by former NSA systems analyst Edward Snowden, suggested that the National Security Agency has been extensively involved in the US government's targeted killing program. The report made claim that although the US government had been collaborating closely with the CIA in the use of drones against terrorists abroad they inevitably gather some data on Americans. If this trend continues, drones will undoubtedly accelerate the dramatic expansion of the 'surveillance state', and bring to the forefront an important debate on the protections of privacy laws and civil liberties.

This is a critical time for the Obama administration to initiate conversation that can lead to an international doctrine regarding the use of drones and related technologies. These advanced weapons have become a critical piece of this administration's foreign policy. Their accuracy, relative ease-of-use, reduced (human) risk, and comes at a considerable discount in light of recent military budget cuts. Similar to the nuclear arms race, however much more expeditiously, there has been a global proliferation of the drone. A step in the direction of regulation has been taken by the UN body with the creation of a UN special rapporteur to new NGO campaigns which has called for a preemptive ban on 'next generation' drones currently under development.

Although the US government has started to make efforts to establish policies and to engage in the growing debate over drone usage, more needs to be done. Most likely, it will require a focused effort on the part of the president. The ability to set the terms of the debate, and to create the necessary international attention and cooperation, would be enhanced if presented in a major presidential speech. This would initiate an important debate in Congress, and of course, internationally. There are several important issues that President Obama needs to address: The first is that of revising the current international law to cover the development and use—war acts vs. covert acts— of these new technologies (i.e. The UN Charter and "use of force"). The

second involves establishing clear delineations between the military vs. civilian intelligence agency use of such technologies, and the proper role for Congress and the President regarding drone use. The third issue, and perhaps the most important, involves the coordination of 'development and use' doctrines by the United States and its allies. By taking the initiative now, Obama has the opportunity to provide the momentum necessary to motivate other leaders and nations to embark on a mission to fill today's gaps in the discourse and guide tomorrow's policy.

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