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Reconciling use of Unmanned Air Vehicles for International Security with International Law

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Introduction

The use of unmanned air vehicles (UAVs, or drones) for reconnaissance and ground attack has emerged as an incendiary issue for the international community. The rise of new technical capabilities creates unprecedented military capabilities. These pit rival beliefs about international law and world order. Some of the problems were revealed in the first deadly use of these aircraft, on 4 February 2002 when the CIA targeted an attack in Afghanistan to kill Al Qaeda leader Osama Bin Laden. News rapidly emerged the attack missed its intended target but killed several Afghani civilians. Drones are controversial when they fail, and almost as controversial when they succeed. At stake are some of the most difficult issues of contemporary security and human rights policy, including:

- State self-defense versus state sovereignty.
- Counterterrorism versus protection of human rights.
- Individual rights to privacy versus state capacity for intelligence collection through drones.
- Legal presumption of innocence versus targeted assassination through drone strikes.
- Domestic pressure to act expediently versus strengthening long-term rules of acceptable international behavior.
- The temptation to use force versus the need for legitimacy through international law to make action sustainable, and reduce the risk of prosecution or counterattack.

Figure 1. A U.S. Predator UAV with a Hellfire missile is prepared for launch



Source: "Smart Weapons for UAVs", Defense Update, January 2007

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There have been as many as 4,400 people killed by United States drone attacks alone, according to the U.S. Government. An independent study commissioned by the United Nations concludes the actual number of deaths, especially among innocent civilians, is much higher.¹ There has been considerable discussion of the legality of such strikes among experts on human rights law and international humanitarian law. The topic is extremely important to countries who feel their national sovereignty is being undermined, especially Pakistan and Yemen. Other governments have raised strenuous objections not to the use of drones generally, but the lawless use in pursuit of national interests, in contempt of international norms. The United Nations has emerged as the principle place for resolution of these conflicting policies and expectations.

A technological revolution

Drone technology advanced slowly over the century. Drones were used in many different wars from WWII to Vietnam where they were primarily used for *reconnaissance*. Unlike modern versions, these flew to pre-set instructions and could not deviate. The first modern drones (also commonly called Unmanned Aerial Vehicles or UAVs, or Remotely Piloted Vehicles, RPVs) were tested in Israel and the United States in the early 1990s. Modern drones fly autonomously or under remote control. Depending on the model, they can loiter for long periods and deviate for specific purposes as opportunities rise.

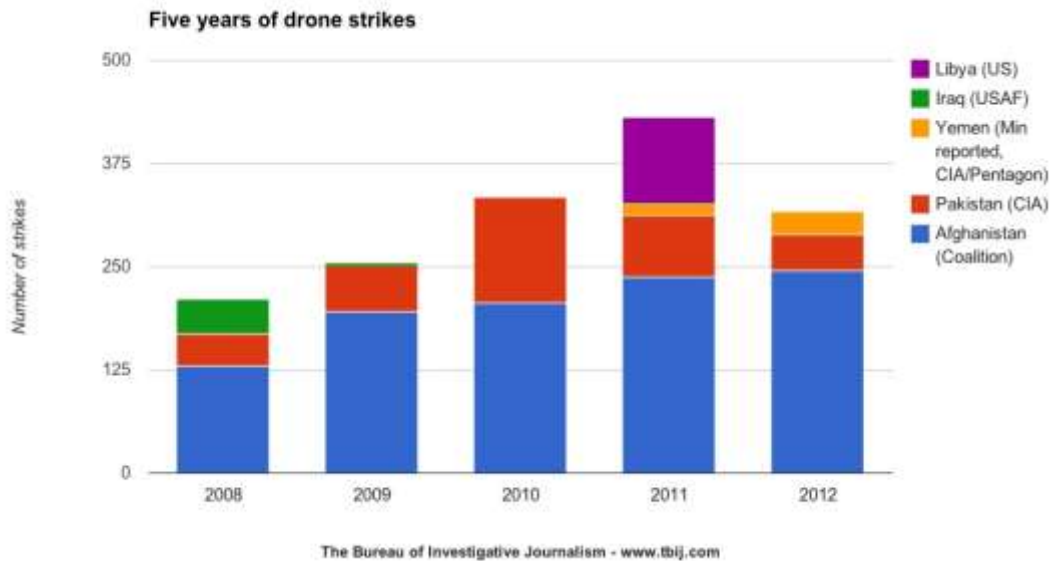
A major revolution in technology came with the introduction by the United States of *armed drones* in Afghanistan in late 2001. The U.S. Central Intelligence Agency first used an unmanned Predator drone in an attempted targeted killing in Afghanistan on 4 February 2002. The first targeted killing by a drone outside a war zone was a CIA strike on 3 November 2002 in Yemen. Only Israel, United Kingdom and the United States are known to have launched drone strikes against adversaries. Recently Hezbollah (in Lebanon) and Iran also have claimed to have launched drone reconnaissance and attack operations.²

¹ “‘Drone strikes killed more civilians than publicly acknowledged’ – UN investigator”, *RT News*, 18 October 2013. <http://rt.com/news/un-drones-report-afghanistan-us-366/>

² “Unmanned aerial vehicles: Death from afar”, *The Economist*, 3 November 2012. <http://www.economist.com/news/international/21565614-america-uses-drones-lot-secret-and-largely-unencumbered-declared-rules-worries>

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Figure 2. American Drone strikes, 2008-2012



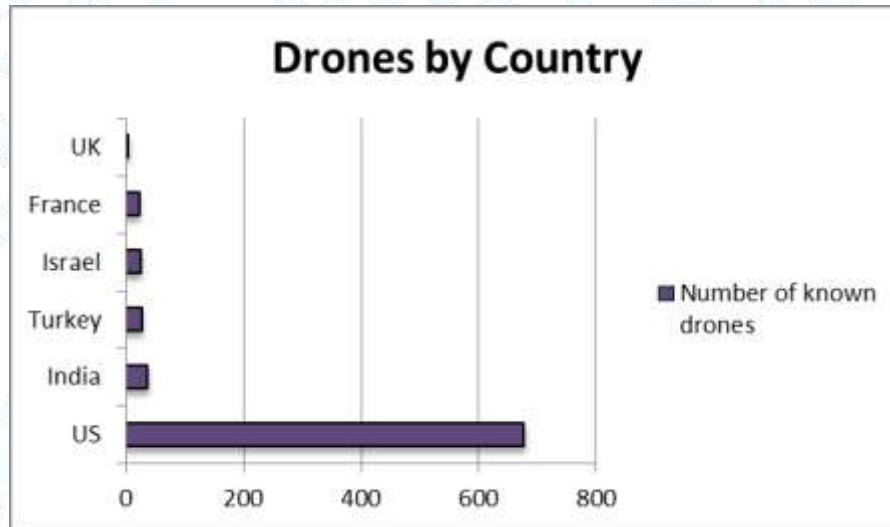
Current situation

A decade ago the U.S. had a virtual monopoly on drone technology. That is no longer true; more than 70 countries now own some type of drone, mostly for reconnaissance. Reconnaissance is not without controversy; question of personal privacy are especially important; many countries give individuals a legal right to privacy. But reconnaissance use is widespread. Drones are increasingly used even in UN peacekeeping operations (PKOs), where their long-term surveillance capabilities are especially welcome, although UN mandates often must be adjusted to permit this use.³

Though just a small number of those nations possess armed UAVs, drone technology is proliferating rapidly. A 2011 study estimated that there were around 680 active drone development programs run by governments, companies and research institutes around the world, compared with 195 in 2005.

³ John Karlsrud and Frederik Rosen, "In the eye of the beholder? The UN and the use of drones to protect civilians," *Stability*, Vol. 2, No. 2 (2013), pp. 1 -10.

Figure 3. Strike-capable UAVs/drones by country



Source: Data from the International Institute of Strategic Studies, 2012

Issues to be resolved

According to Philip Alston, UN special rapporteur on extrajudicial executions, there are two primary issues regarding drone attacks:

1. Are drone strikes outside of the immediate combat area of operations legal? Discourse on the subject is extremely limited. International law on killing is extremely complicated. To make the legal argument against targeted killing requires sophisticated knowledge of international law. In fact, the law is more complicated on killing than it is on torture although one would assume it was the other way around.
2. How does the international community maintain accountability on the use of drone strikes? Because the CIA program remains shrouded in official secrecy, the international community does not know when and where the CIA is authorized to kill, the criteria for individuals who may be killed, how it ensures killings are legal, and what follow-up there is when civilians are illegally killed. In a situation in which there is no disclosure of who has been killed, for what reason, and whether innocent civilians have died, the legal principle of international accountability is, by definition, comprehensively violated. Alston argues this lack of accountability will become more problematic as more countries acquire drone technology and can carry out cross-border drone strikes.

“This expansive and open-ended interpretation of the right to self-defense goes a long way towards destroying the prohibition on the use of armed force contained in the UN Charter. If invoked by other States, in pursuit of those they deem to be terrorists and to have attacked them,

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It would cause chaos,” Mr. Alston writes in his report to the UN Human Rights Council on 2 June 2010.⁴

Within the UN there has been surprisingly little discussion on drone strikes. In the Security Council, action is prevented by the American veto. Other bodies have more freedom, especially the General Assembly. Special investigator Christof Heyns, stressed that countries must respect international standards on the use of lethal force during arrests, and cautioned the emerging trend of using unmanned aircraft to kill suspects. He emphasized the use of armed drones into countries where there is not a recognized armed conflict to kill an opponent, such as in Pakistan or Yemen, is highly problematic. Heyns, a South African law professor, concludes that drone strikes outside a combat zone may constitute a war crime and is urging the UN to establish an investigative body.⁵

There is a common belief that without an international framework governing the use of drone attacks, the US is setting a dangerous precedent for other nations with its aggressive and secretive drone programs in Pakistan and Yemen, which are aimed at suspected members of al Qaeda and their allies. Other experts in international law are concerned that without a legal framework, drone use creates a precedent for unrestrained robotic warfare, presaging a world where governments, companies and armed groups attacks are free to secretly use unnamed weapons to kill their enemies anywhere.⁶

Country positions:

Global attitudes toward drone reconnaissance and drone strikes are very different. While the former appears to be more accepted, it is widely seen as a precursor of targeting killing. Much criticism falls on the United States, seen as the principle instigator of deadly drone attacks (Figure 3).

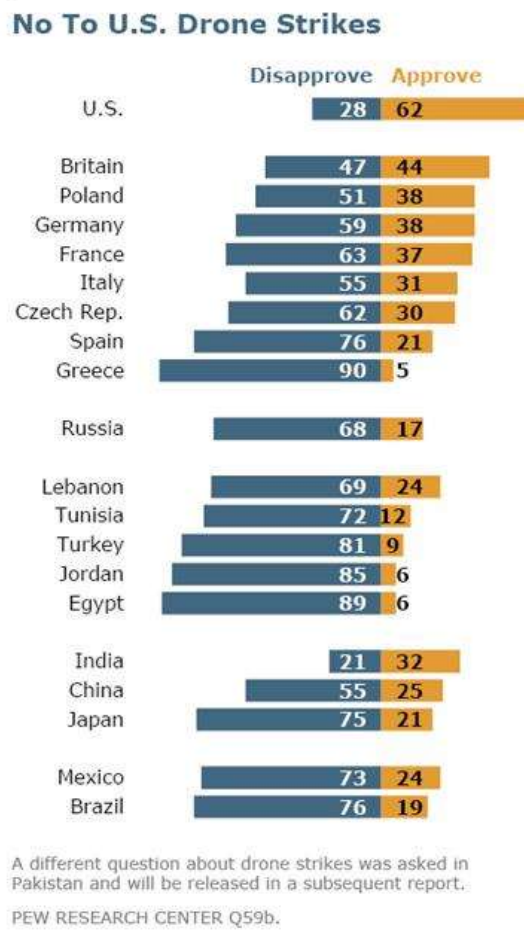
⁴ UN News Centre. “[UN Independent Expert Voices Concerns Over the Practice of Targeted Killings.](#)” June 2, 2010.

⁵ “UN rapporteur Christof Heyns condemns use of drone strikes”, *Guardian*, 17 October 2013.
<http://www.theguardian.com/world/2013/oct/17/un-rapporteur-heyns-drone-strikes-yemen-pakistan>

⁶ Mary Wareham, “Stop killer robots before it's too late”, *SBS*, 17 October 2013.
<http://www.sbs.com.au/news/article/2013/10/17/comment-stop-killer-robots-its-too-late>

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Figure 4. Attitudes toward American drone strikes



The polling in Figure 3 shows relatively high support in a few countries, notably the United States, but to a lesser degree in India. Everywhere else, leaders must acknowledge and consider strong public opposition.

China: China issued a statement in June 2012 to the UN Human Rights Council condemning American use of drone strikes. China has a drone program, stressing long-range models for use by its armed forces and for export. At the Chinese airshow in Zhuhai in 2010, China unveiled 25 new drone models. It is unknown which drones are operational. Several drones are designed to fire missiles and use jet engines. China’s distinguishes legal use of drones—in situations defined by international law such as declared war and enforcement of UN Security Council mandates—and contrasts its restraint with American practices, which it charges are similar to international piracy.

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Pakistan: As the target of much of America's drone activity, including deadly strike, Pakistan has become a leading international critic and demands international action to establish a clear legal framework. Pakistan's government faces serious challenges from the Taliban and regional separatist, but prefers to deal with these problems itself and politically, not through warfare. American conduct of a war in its airspace is described as a violation of Pakistani sovereignty.

Russia: Russia issued a statement in June 2012 to the UN Human Rights Council condemning American use of drone strikes in violations of the sovereignty of targeted countries. Legal use, Russian diplomats maintain, can be in a country's own legal air space, under a UN-mandate such as part of a peacekeeping operation, or in another situation clearly specified by international law.

United Kingdom: The United Kingdom generally supports American drone strikes and has shared targeting information. The UK began using drones in Iraq and Afghanistan in 2007 for intelligence gathering and has conducted drone strikes in those countries.

United States: The American drone program is large and one of its most secret military activities. It currently has over 675 drones. According to the US Government, an estimated 4,400 people have been killed by U.S. drone strikes between 2003 and 2012. International investigations give higher estimates of fatalities, especially deaths of innocent civilians. American policy stresses freedom of action, not legitimacy under international law.

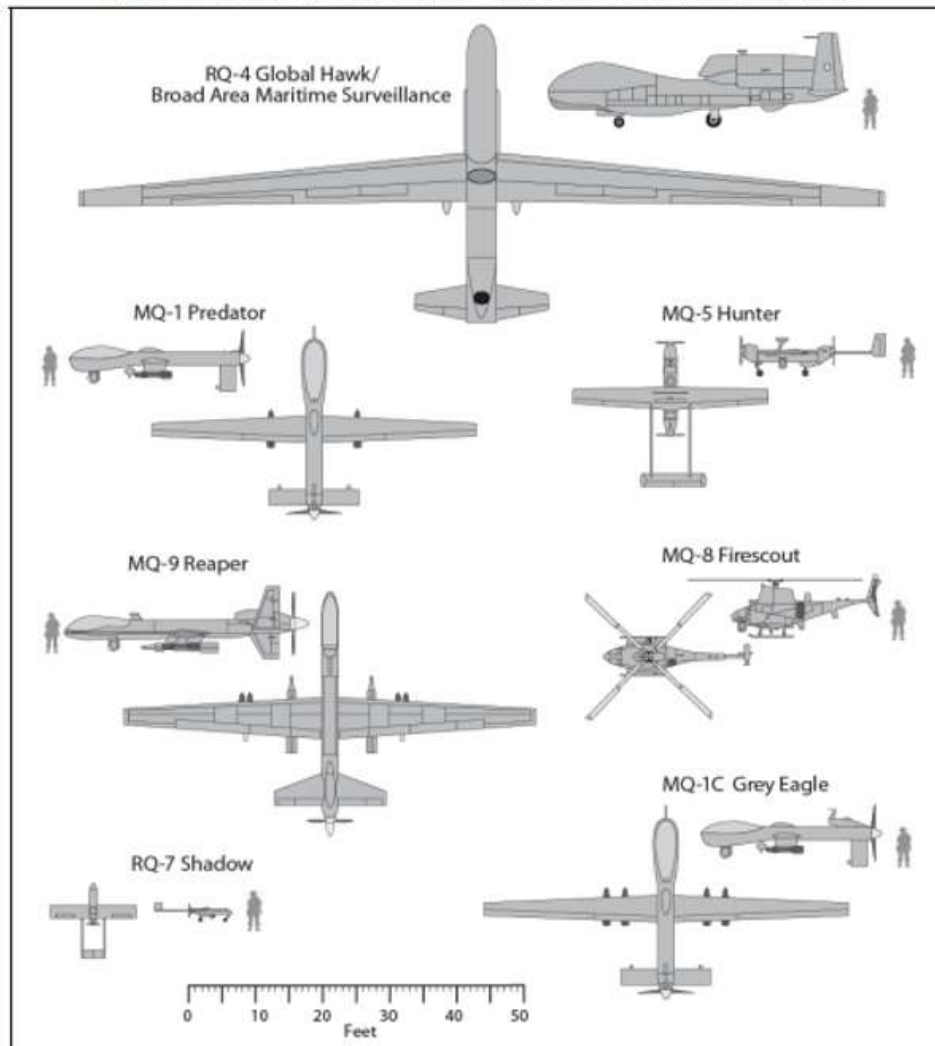
Proposals for further action

The member states of the UN are unlikely to ban use of drones outright, since reconnaissance applications are widely accepted. But restrictions on their use seem likely. Proposals to be considered include:

- Prohibition on all UAV/drone use (reconnaissance or attacks) outside UN mandated operations or legally justified warfare.
- Prohibition on UAV attacks use outside legally declared war zones
- Prohibition on attacks on unarmed combatants and civilians, possibly including legal responsibility for accidental death, injury and destruction or loss among non-combatants.
- Restrictions on drone strikes.

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Figure 5. U.S. Medium-Sized and Large Unmanned Aircraft Systems



Source: Congressional Budget Office, *Policy Options for Unmanned Aircraft Systems*, Publication 4083, Washington, DC, June 2011.

Notes: All aircraft are drawn to the same scale. The silhouette figure is a 6-foot-tall soldier, also drawn to scale.

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