Current drone warfare

Current drone warfare in the light of the prohibition of interventions

The use of drones in armed conflicts in Afghanistan, Iraq, Israel, Yemen, Libya, Mali, Pakistan, the Philippines, Somalia and Syria

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Drone Wars – The results of 9/11

Immediately after the attacks of September 11, 2001, i.e. in the first military responses to transnational Islamist terrorism, the use of unmanned systems (generally referred to as drones) constituted an important cornerstone of the US military operations. This new method of warfighting first adopted by Bush and subsequently by Obama postulated the moral right to fight terrorists anywhere in the world. 1) This applies especially if they do not in any way follow generally recognised, established norms of warfare, or if the states that shelter terrorists are not willing or able to fight them. At its core, this doctrine is based on the US arguing that international law gives it the right to defend itself against a terrorist enemy operating globally. 2) The USA quickly realised the significant benefits derived from the use of drones: negligible threat to the operators, the possibility of reconnoitring a target well in advance and in a sustained manner, and the use of remote-controlled precision air-to-ground missiles for the destruction of a target respectively the killing of an enemy. 3) It seemed possible to conduct almost any military operation, at any time, and at almost any chosen location.

On 16 February 2001, an AGM-114 Hellfire air-to-ground missile was launched successfully for the first time from an MQ-1 Predator Unmanned Combat Aerial Vehicle (UCAV). 4) At the time, the technicians and engineers of the US Air Force and of General Atomics Aeronautical Systems were not yet aware of its ground-breaking importance. 5) However, in the wake of September 11, 2001, events started moving rapidly. The first use of an armed MQ-1 Predator in the airspace above Afghanistan was recorded as early as October 2001. On March 4, 2002, an MQ-1 Predator was used to fire a Hellfire to provide close air support for US ground forces. From 2001/02, the US flew over Iraq and Yemen, and, beginning in 2003, over Pakistan. The attack carried out by a MQ-1 Predator in Yemen in November 2002 was the first attack of a drone outside of Afghanistan as part of the Global War on Terror. It eliminated the target Qaed Salim Sinan al-Harethi. He was held responsible for the 2000 attack on the US Navy guided missile cruiser USS Cole in Yemen. Kamel Derwish, a further suspect who also had American citizenship died with him. 6) This incident is therefore also regarded as the first in which a US citizen became the victim of a drone strike. In June 2004, a MQ-1 Predator carried out the first targeted killing on Pakistan territory. 7) Further MQ-1 Predator use followed in Somalia (from 2011, against the Al-Shabaab terror organisation) and the Philippines (2006 and 2012 against the terror group Abu-Sayyaf). Beginning in 2007, the MQ-9 Reapers were used successfully. These are advanced versions of the MQ-1 Predator and are also capable of carrying a much higher weapon payload than the Predator. 8)

These successful operations convinced the American military and political leadership that a combination of armed and unarmed drones certainly was an effective weapon against terrorists. 9) The American defence industry then successfully sold or leased RQ-1/MQ-1 Predators and MQ-9 Reapers to allies (inter alia France, the Netherlands, Italy, Spain, Great Britain, Australia, Turkey, and Morocco). At present, the Royal Air Force (RAF) is the only air force outside of the USA to command ten American-produced MQ-9 Reaper UCAVs. Since 2007, these have been operated from Creech Air Force Base (AFB) in the USA, and RAF Waddington in Great Britain. Since 2014, British MQ-9 Reapers (equipped with AGM-114 Hellfire air-to-ground missiles and GBU-12 Paveway/laser-guided bombs) have been used against ISIS in Iraq and Syria. The British armed forces are planning to extend their quantitative capacities. 10) Israel also can look back on a long tradition of using unmanned systems. It was one of the first states to use UCAVs in targeted killings. Heron-type armed systems (in Israel referred as Machatz-f) are currently in permanent use in territories where hostile Hamas and Hezbollah elements operate. 11) In the course of operations Cast Lead (2008-2009) and Pillar of Defense (2012), drones of the Israeli Defense Force (IDF) carried out targeted killings in the Gaza Strip. 12)

On the modus operandi of current drone warfare

The secret US drone wars
The Intercept, a whistleblowing website comparable to WikiLeaks, which went online in 2014, published four important US military documents in October 2014, which shed light on the use of drones or UAVs and UCAVs constituting the US answer to terrorist acts. All documents had been classified secret, which illustrates the explosive potential of the information they contain. One document gives a detailed description of Operation HAYMAKER in Afghanistan. In a period of just over a year, two Afghan provinces witnessed a total of sixty individual operations against Taliban fighters. In 56 cases, a Kinetic Strike was carried out, i.e. weapons were used. These strikes were almost exclusively executed by armed MQ-1 Predator and MQ-9 Reaper UAVs. In these attacks, a total of 219 persons were classified as Enemy Killed in Action. Four additional Direct Action operations led to the capture of four more persons. In an interrogation, one of them, a mid-level Taliban commander captured by US Special Forces during Operation BRANDYWINE, stated the following on the use of US drone strikes against his fighters (translation):

[...] the scariest/most intimidating message for the Taliban, at any level, from fighter to senior leadership, is anything to do with drones or aerial bombing. The Taliban has no way to defend against them and they are certain to end in absolute destruction of whatever their target is.

In the light of these statements, which found their way into the published documents (as said, actually classified as secret), the clear conclusion can be drawn that the political leadership of the USA is convinced that the strategy of targeted killings is a highly effective tool. Two further sources published by The Intercept deal with US operations in the Horn of Africa. The US documents state that the operations were highly successful and need to be expanded further. The operations are executed Outside a Defined Theater of Active Armed Conflict, which severely limits the activities of US ground troops on foreign territory. All that is required for striking a High Value Target or a High Value Individual is a Positive Identification to the extent of near certainty. So, identification of the target individual does not require 100% certainty. Pursuant to the Authorization to Use Military Force (AUMF) procedure, the ultimate responsibility for this rests with the President of the United States.

During the Bush Administration, from the end of 2001 (marking the date of the beginning of armed drone operations) until the end of 2008, a total of 48 targeted killings by means of drones are known to have been carried out. During the Obama Administration, between 2009 and 2013 alone, 307 such attacks were documented. Of these, 122 were carried out in 2010 alone. This represents a massive increase. AUMF is the American legal basis for the fight against terrorism and the use of drones, as authorized by both Houses of Congress a week after September 11, 2001. AUMF authorizes the President to use necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on 11 September 2001, or harbored such organizations or persons.

This represents an authorisation which President Obama inherited from his predecessor and interpreted and applied liberally. The alleged success of targeted killing via drones made the US expand their attacks. At first drones were used exclusively by the military (and here especially by the US Air Force and the US Joint Special Operations Command, JSOC) in defined areas of operation (i.e. Afghanistan and Iraq), but the CIA increasingly became interested. This resulted in military operators using the drones they piloted to carry out missions for the CIA, i.e. a civilian intelligence service.

In the space of only a few years, further US bases for drones were set up in the Middle East and in Africa. In the meantime, attacks by means of UCAVs had been extended to countries such as Pakistan, Yemen, and Somalia. Terror organisations such as the Somali Al-Shabaab Militia now also found themselves in the crosshairs. Whether or not a target individual had actually been identified became less important, and there was a deliberate decision to tolerate potential civilian casualties, i.e. collateral damage. So, also civilian casualties, highly questionable from a moral point of view, became acceptable in the conduct of operations. From this point onwards, the term signature strike was used. In 2012, President Obama authorised the CIA and the JSOC to employ signature strike i.e. his two spearheads in the Global War on Terror, to fight targets on the basis of their signature. This referred to a target individual's behaviour pattern, which was collated on the basis of wiretapped telephone conversations, accessible human sources of information, and targeted air reconnaissance. The information thus gathered formed the basis for the assumption that a certain individual would be in a certain place at a certain time. This was a crucial difference to previous attacks, which had, almost exclusively, been directed against targets catalogued on target lists defined by the CIA and JSOC. Until today the most spectacular successes against the leading cadre of ISIS were achieved by the continuous use of armed US drones. In spring 2016 alone, American UCAVs are said to have killed Abdul Rahman Mustafa al-Kaduli (until his death, number 2 and financial head of ISIS), Abu al-Hija (high-ranking IS commander, held responsible, inter alia, for an attack on US forces in northern Iraq), and Abu Omar al-Schischani (member of the ISIs top echelon). Finally, in August 2016, the USA reported the death of Abu Muhammad al-Adnani, high-ranking ISIS founding member and its head of communications. He, too, is said to have been killed by a US drone strike.

For the first time, in summer 2016, the US government published (previously secret) extracts from the Presidential Policy Guidance (PPG): Procedures for Approving Direct Action Against Terrorist Targets Located Outside the United States and Areas of Active Hostilities. It lists certain conditions which must be met before a targeted killing by drone can be carried out.

[...]  
1. near certainty that the terrorist target is present  
2. near certainty that noncombatants will not be injured or killed  
3. assessment that the relevant governmental authorities in the country where action is contemplated cannot or will not effectively address the threat to U.S. persons  
4. assessment that capture is not feasible at the time of the operation  
5. assessment that no other reasonable alternatives exist to effectively address the threat to U.S. persons
This publication makes clear that the US government must have, by degrees, become aware that it is acting in a grey area as far as international law is concerned. The publication of the PPG could thus be understood as a first step of the USA towards greater transparency in drone warfare.

Worldwide drone proliferation and technology distribution

The USA, Israel, and Great Britain are certainly the most advanced states as regards the use of UAVs (or, if carrying weapons, UCAVs). Other states, however, are catching up in development and procurement. France, but also Italy, and Morocco, are already using American-produced UAVs. The Italian 32º Stormo Armando Boetto stationed in Amendola has operated MQ-1 Predator UAVs or UCAVs since 2002. Since 2015, the Italian Air Force has been using their MO-1 Predator against ISIS.25 France uses, inter alia, EADS Harfang MALE UAVs. It has also procured MQ-9 Reaper, which it has successfully used in Mali, and especially over Mali’s inaccessible northern desert region.26 In Afghanistan, Germany relies on leased Heron MALE UAVs. Other countries are catching up with western industrial nations. The Turkish armed forces’ TAI Anka MALE UAV was both developed and produced domestically. Russia and China also boast their own systems or development programs. China’s armed forces, for example, are currently successfully using CH-4 MALE UAVs and Soar Dragon HALE UAVs. Ukrainian forces in the Donbass captured drones produced in Russia (e.g. Forpost and Orlan-10).27 Since 2015, Ukraine has also procured and used various drone systems. On 7 September 2015, the Pakistani Armed Forces announced the first successful launch of Baraqu air-to-ground missiles from a Burraq UAV. The missiles are said to have killed three Taliban fighters in the border area between Pakistan and Afghanistan.28

Iran is also likely to have capable UAVs. The Iranian Shahed 129 UAV was first presented to the public in 2012. Only one year later a video was published that supposedly showed a Shahed 129 launching an air-to-ground missile. In 2015, Iraq successfully used armed Chinese CH-4B UAVs against ISIS. Apart from Iraq, Egypt and Nigeria also possess this Chinese UAV type. This is another striking example of the increasing export market for drone systems of various types and sizes.29 It is therefore only a matter of time until insurgent or terrorist movements come to own potent, unmanned systems. Since 2012, drones of various types have already been used - verifiably and repeatedly - by, for example, Hamas and Hezbollah over Israel, by ISIS over Iraq and Syria, and by pro-Russian separatists in eastern Ukraine.30 In 2012, Hezbollah successfully launched an Iranian Shahed-129 MALE UAV in Lebanon and flew it over Israeli territory. Only there was it possible for Israeli fighter jets to shoot it down. The use of such a system by Hezbollah came as a nasty surprise to the Israeli Defense Forces (IDF).31 Two years later, during the IDF operation Protective Edge in the Gaza Strip, Hamas successfully launched a number of drones.32 In autumn 2016 the first reports about drones used by the ISIS and the Taliban appeared.33 Given these developments, it must be assumed that in future an increasing number of states and non-state actors will use drones for their purposes.

Current drone operations in the light of the prohibition of interventions

Use of force and principle of sovereignty

The Charter of the United Nations (UN Charter) of June 1945 is the most important legal document in international law. Of central importance to what is often referred to as the Constitution of the United Nations, is the so-called Use of Force (or Prohibition of Force), codified in Article 2 (4) of the UN Charter. The Use of Force is a cornerstone of international law (= ius cogens) and also recognised in customary international law.34 Article 2 (4) of the UN Charter states:

Article 2 (4) Use of Force

All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.35

If a state uses an armed drone in combat operations inside the territory of another state, this constitutes the use of military force. The use of armed drones could therefore be a violation of Article 2 (4), UN Charter. This view is supported by recognised state practice concerning the use of military force. Thus the Use of Force article is supposed to be interpreted broadly, every use of military force inside another state’s territory is to be regarded as a violation of Article 2 (4).37 Therefore, a drone entering another state’s airspace and launching an air-to-ground missile to kill, in a targeted manner, persons on the ground (among them, conceivably, uninvolved civilians) constitutes a possible violation of Article 2 (4), UN Charter.38

A drone attack, which is a violation of the Use of Force, also violates the Principle of Sovereignty and the Prohibition of Intervention. The UN member states enjoy the same rights and privileges (irrespective of size and influence), and individual states must not indiscriminately interfere in the internal affairs of another state.39 The Principle of Sovereignty is derived from Article 2 (1) of the UN Charter and is recognised in customary international law. It states:

Article 2 (1) Principle of Sovereignty
Using an armed drone inside another state’s territory may thus be a violation of the Principle of Sovereignty.\(^41\)

**Right to self defence**

However, the use of an armed drone above another state’s territory may also be justified. There are two exceptions to the UN Charter’s Use of Force, of which the first is Article 51. It affirms the Right to Self-Defense for a state or a subject of international law, and means that states may defend themselves in the event of an armed attack.

**Article 51: Right to Self-Defense**

Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken the measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.\(^42\)

The second exception to the Use of Force is a Security Council Resolution concerning military sanctions pursuant to Chapter VII. Since the creation of Article 2, any war (or armed conflict according to the definition set out in the Geneva Conventions between states, by definition), violates international law. The right to wage war (jus ad bellum) only applies in exceptional cases, all set out in the UN Charter. In 1974, UN General Assembly Resolution 3314 defined pertinent terms in further detail. It is, for the most part, an interpretation of Article 39 of the UN Charter. A war of aggression is thus a crime against peace, and the state responsible can be held to account according to international law. Furthermore, direct as well as indirect force, and the threat of force, are illegal. Even the subjects of international law may use military force only pursuant to Chapter VII or Article 39, UN Charter, respectively.\(^43\)

If the peace is threatened or breached, or acts of aggression are carried out, the United Nations can take measures to restore international peace. To this end, a suitable mandate is granted. Article 39, UN Charter, defines the issue, while Article 41 (measures not involving the use of armed force) and Article 42 (military measures) set out the benchmarks of possible approaches.\(^44\) Apart from measures of self-defence pursuant to Article 51 or the authorisation of military force pursuant to Chapter VII, the following can also be the case: (1) a state expressly requests an intervention inside its territory to be carried out by another state, (2) a state requests the support of another state with counterinsurgency measures to be carried out on its territory, and (3) a state requests the support of another state in carrying out domestic police tasks on its territory.\(^45\)

Article 2 and Article 51 of the UN Charter are therefore also relevant as regards the use of drones. A closer look shows that it is, above all, the exceptions to the Use of Force which are highly important for an assessment of current warfare by means of unmanned reconnaissance and weapon systems; especially, if subjects of international law use such weapons as *means of warfare* above the territory of other states.\(^46\)

However, the essential point is that it is not the use of armed or unarmed drone systems that is relevant, but the manner in which these are used by states *vis-à-vis* other states or above their territory.\(^47\) In this, an unmanned drone differs in no way from a manned bomber or reconnaissance aircraft: The use of drones interferes with the sovereignty of states and in the Use of force.

**Current arguing and justification of drone operations**

The USA argues that its global drone attacks are legal, pursuant to Article 51, UN Charter, i.e., the right to self-defence. All state and non-state actors with hostile intentions towards the USA are legitimate targets.\(^50\) Many experts in international law agree that applying Article 51 to Afghanistan was and is legal. To this end, the UN Security Council passed Resolutions 1368 \(\&\) 1373. These gave the USA the legitimization to defend itself against a non-state actor, in this case *Al Qaedz,*\(^49\) The operation was thus legitimate from 2001 to 2002, whenupon the Afghan government requested support.\(^50\) What is the case, however, with the attacks carried out in Iraq, Pakistan, Yemen, Syria, or Somalia? Also Iraq, or rather its legitimate government, elected after the fall of Saddam Hussein, asked the USA for support in its fight against insurgent groups and *ISIS.* As was the case with Afghanistan’s request for help, the Prohibition of Force did not apply here.\(^51\)

It can be assumed that in the case of Pakistan the attacks have been carried out (at least sometimes) with the approval of the local government. There is a reasonable certainty that the Pakistani government took a duplicitous approach *vis-à-vis* its population, denouncing US drone attacks publicly, while tolerating them unofficially. How else could there be credible reports that there were, or still are, US drone bases on Pakistani territory? From 2001 to 2011, for example, US MQ-1 *Predator* drones were repeatedly spotted at Shamsi airport, in Beluchistan, 200 km to the south of Quetta (seat of the Taliban’s so-called *Quetta Shura*). They seem to have been operated by the CIA and the US Air Force. Only following an incident where 24 Pakistani soldiers were killed by US combat aircraft in the border region between Afghanistan and Pakistan did Pakistan ban the USA from using the base, whereupon the USA vacated the site. If the USA really have pulled out of Pakistan, and if there really is no agreement between Pakistan and the USA regarding drone strikes on Pakistani territory, any attack would contravene the Prohibition of Force set out in the UN Charter and, therefore, also violate international law. In a similar case - *Congo vs. Uganda - the International Court of Justice (ICJ)* - found as follows: the fact that the Congolese military was unable to put an end to attacks on Uganda emanating from Congolese territory does not give Uganda the right to advance into Congolese territory with its own forces.\(^52\)
The situation is similar in Yemen. It must be assumed that there have been instances when the Yemeni government requested US help against Al-Qaeda. In contrast to Pakistan, there are no credible reports on US bases in Yemen, but there are indications of such a base in neighbouring Saudi Arabia. It can therefore be assumed that US drone operations in Yemen are carried out not only from the known base in Djibouti, but also from Saudi Arabia. Indications pointing in this direction have also been made public by the documents published by The Intercept (and already quoted here).

The advantage of an US drone base near the Yemeni border lies in the substantially reduced flight distance, which is, of course, shorter from Saudi Arabia than from Djibouti in Africa. This results in a much higher "loiter time" of the UAVs or UCAVs above their targets. The distance to the targets is one of the biggest challenges, according to the ISR Taskforce, Requirements and Analysis Division in its report ISR Support to Small Footprint CT Operations - Somalia/Yemen. A base’s proximity to the targets to be reconnoitred makes a much longer observation period possible. In Somalia, which can be classified as a "failed state", rule of law or governmental authority is doubtful. What, if any, recognised and legitimate national authority is there to request an intervention from a third party? The situation in Iraq and Syria is also problematic. In these cases, there is also no mandate for military operations against ISIS. As far as Iraq is concerned, at least the Iraqi government requested the support already mentioned. In Syria, however, some states (inter alia France) carrying out air strikes with their manned and unmanned weapon systems invoke Article 51 of the UN Charter. It is still contested if the terror attacks in Paris really were an armed attack of high intensity (along the lines of 9/11), and if states can invoke Article 51 in dealing with terrorist organisations (and therefore non-states) such as ISIS.

As a result the USA, but also Great Britain and France are acting in their attacks in Pakistan, Yemen, Syria, Somalia or broader Africa without a clear mandate under international law. On the other side Russia might argue it is acting on the request of the Syrian state but it is clearly violating the international law in Ukraine. All of them do not strike against clearly defined, enemy armed forces, but direct their attacks, on the basis of reconnaissance data they have generated, against groups and individuals, subsumed under the vague and politically highly problematic term "terrorists." The examples cited reveal a grey area in international law, which the USA and other actors occupy "nolens volens." It seems clear that these actors attempt, as part of warfare by means of drones, to interpret Article 2 (1) and (4) (Principle of Sovereignty, Use of Force), as well as Article 51 (Right to Self-Defence) of the UN Charter to their own ends. The fact that drones are unmanned means that their loss produces little cause for concern. The USA is fully aware of this grey area. The government therefore attempts to depict its approach coherently "vis-à-vis" public interventions. The Obama Administration, for example, argued that, as opposed to the Global War on Terror Doctrine of the Bush years, it was engaged in an Armed Conflict against Al-Qaida, the Taliban and associated Forces.

Drone warfare and international humanitarian law

In the event of an armed conflict, it must be the highest priority of the participating parties to limit or to contain its effects as much as possible. In armed conflicts, international humanitarian law applies (ius in bello, law of armed conflict). Relevant criteria are to be found in the Hague Conventions and the Geneva Conventions. International humanitarian law basically applies to two types of armed conflicts. These are:

1. international armed conflicts
2. non-international armed conflicts

This distinction is relevant insofar as fundamentally different conventions can be applied in the two situations. The following applies in international armed conflicts: the Hague Conventions of 1899/1907, the four Geneva Conventions of 1949 (with the exception of Common Article 3), and Protocol I of 1977 (relating to the Protection of Victims of International Armed Conflicts). Common Article 3 of the Geneva Conventions of 1949 and Protocol II of 1977 relate to non-international conflicts.

Dieter Fleck, a well-recognized expert of International Humanitarian Law, states in his Handbook of International Humanitarian Law concerning the application of the different conventions in international armed conflicts:

"An international armed conflict exists if one state uses force of arms against another state. This shall also apply to all cases of total or partial military occupation, even if this occupation meets with no armed resistance (Article 2, para. 2 common to the Geneva Conventions). The use of military force by individual persons or groups of persons will not suffice. It is irrelevant whether the parties to the conflict consider themselves to be at war with each other and how they describe this conflict."

Further on, he refers to the application of the different conventions in non-international armed conflicts:

"In a non-international armed conflict each party shall be bound to apply, as a minimum, fundamental humanitarian provisions of international law (see Article 3 common to the Geneva Conventions). Regular armed forces should comply with the rules of international humanitarian law in the conduct of military operations in all armed conflicts however such conflicts are characterized.

A number of states jointly intervening in a non-international armed conflict does not set a precedent for a change of the classification of the conflict. An armed conflict that is conducted solely on the territory of one state can, however, be regarded as an international armed conflict if a foreign state uses its armed forces to fight alongside insurgents against regular government forces. This situation immediately brings to mind the precarious legal situation in Ukraine. In the so-called Tadi case, the International Criminal Tribunal for the former Yugoslavia (ICTY) stated that a non-international armed conflict applies..."
Experts in international law are debating whether a state’s military intervention in another state’s non-international armed conflict affects an internationalisation of the whole conflict, or only between the two states involved. Thus, two types of conflict could take place concurrently. Common Article 3 defines a lower threshold for a non-international armed conflict than does Protocol II. This is why the terms non-international armed conflict of low intensity (Common Article 3) and high intensity (Common Article 3 and Protocol II) are used. Altogether Flick comes to the conclusion:

“There is an important trend in the law towards expanding the scope of application of rules related to the conduct of hostilities originally contained only in the law of international armed conflict to situations of non-international armed conflict, while, at the same time, respecting the distinction which continues to exist in these two types of conflict on matters of status of the fighters.”

Protocol II presupposes a high level of organisation among the insurgents, and, in addition, comprehensive, continuous, and coordinated fighting. Furthermore, the non-state conflict party must also be in control of a part of the state’s territory. Whether this is the case will be difficult to tell, since the states involved will most probably deny that the non-state parties to the conflict are, in effect, already exercising this control.

One example of this is the current conflict in Ukraine. It is also puzzling when insurgent groups, such as, for example, currently in Syria, also fight each other. This particular situation is not even taken into account by Protocol II.

Targeted killings are legal in an international armed conflict as long as they produce a real military advantage. However, individuals who enjoy protected status or that of hors de combat must not be attacked. The fact that a target individual cannot be taken prisoner does not automatically justify a targeted killing. This especially applies to persons whose legal status as regards international legal norms cannot be exactly determined. Sanctioning anticipatory calculations in attacks (‘There will be no survivors’) is not legal (No Survivor Policy or carrying out Follow-On Strikes). The result of the attack must be proportionate (Proportionality Assessment) as regards potential civilian casualties (Collateral Damage). This also applies to so-called bystanders, i.e. persons who are in the immediate vicinity of a possible drone strike’s target individual. With civilians, another crucial question is in how far their activities contribute to a participation in hostilities, depriving them from their protected status. International humanitarian law is a highly complex composite of interdependent norms which make it necessary for every situation to be assessed individually, without, however, losing sight of the whole. This similarly applies to non-international armed conflicts.

The compliance of drone strikes with the international humanitarian law is only valid, if certain principles are fulfilled. The principle of distinction requires that only lawful targets (that means combatants or civilians directly participating in hostilities and military objective) are targeted intentionally. The principle of proportionality requires that the expected collateral damage is not excessive in relation to the anticipated military advantage. The principle of humanity requires the use of weapons that will not inflict unnecessary suffering.

Summary and outlook

Yet, a drone’s nature and special characteristics, especially the fact that it is unmanned and can remain above a target for an extended period of time, makes its use more attractive for the military and politicians than that of a conventional, manned military aircraft. The possibility of killing an identified terrorist anywhere in the world, at the push of a button, and almost in real time, increasingly makes the use of drones a politically accepted means of projecting military power. Most of the time, the alleged terrorists or enemies operating covertly hide among the population whose support they enjoy (at least partly). Even by using the most precise weapons, they are difficult to fight without inadvertently producing casualties among the civilian population. This cannot be avoided, even by following all pertinent rules of international humanitarian law. The terrorists are also fully aware of this and therefore deliberately move into the vicinity of civilian environments. In the long run, additional the instrumentalisation of civilian casualties can work as recruitment strategy for insurgencies and terrorist networks and thus generates new adversaries. Using unmanned weapons systems may makes it possible to produce tactical and operative successes; strategically, however, the very opposite may occur.

As it is simply not possible to identify every enemy individually, and despite diligently taking all preventive measures it is impossible to avoid civilian casualties completely, the death of an innocent person may have far-reaching consequences. This creates a dilemma which unmanned weapons systems can only partially solve. Leadership decapitation strikes; the targeted elimination of the leaders of insurgencies or terrorist groups, often turn out to be Pyrrhic victiones. As a rule, attempting to solve a conflict through force, irrespective of the type used and whether it is applied in a targeted and precise manner will not produce the hoped-for success. It may plausibly be argued that the US strategy of signature strikes gives priority to the elimination of the target and not to the protection of civilians. This approach thus clearly violates international humanitarian law: on the one hand as regards its legitimacy (ius ad bellum) and, on the other hand, its norms (ius in bellum). The important part of any assessment, however, is whether the attacks and their execution conform to international law, not whether they are carried out by UAVs or UCAVs.

Bibliography
Some authors argue that targeted air strikes (or drone attacks) are to be regarded as measures short of war or surgical strikes and thus do not violate the affected state's territorial integrity or its political independence. Israel used this argument after its air force carried out a targeted strike against the Iraqi nuclear programme on 7 June 1981 (Operation Opera). - cf.: Anthony D'Amato, 'Israel's Air Strike upon the Iraqi Nuclear Reactor', American Journal of International Law 1982 p 59f.

When drafting the UN Charter, it was the intention of the UN to prevent any acts of aggression or other breaches of the peace. This includes any use of military force. - cf.: Dieter Dörr, Peter Reifenberg, 'Gezielte Tötung erlaubt? Der Fall Osama bin Laden', (Mainz, 2011), p 9f.


"Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state[..]" This is connected to the Principle of Sovereignty, UN Charter, art 2 (1).


The example of Afghanistan requires some elaboration. In 2001 and 2002 the USA operated in Afghanistan on the basis of Article 51, UN Charter. In 2002, a legitimate Afghan government was formed under President Hamid Karzai. From this point on, the USA, its armed forces, as well as the international armed forces of the International Security Assistance Force (ISAF) operated on Afghan territory at the invitation of the state. The current situation in Syria is similar. Russian troops are in the country at the invitation of the Assad government, and are thus legitimised by international law. Western governments, however, reject any legitimacy of the Assad government and thus question the international legitimacy of Russia's intervention.


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