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## THE CASE AGAINST ATTACK DRONES LEGAL, MORAL AND ETHICAL CONCERNS

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**JCSP 43 DL**

***Exercise Solo Flight***

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EXERCISE *SOLO FLIGHT* – EXERCICE *SOLO FLIGHT*

**THE CASE AGAINST ATTACK DRONES  
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## **THE CASE AGAINST ATTACK DRONES LEGAL, MORAL AND ETHICAL CONCERNS**

Drones have become America's principle weapon in the global War on Terrorism. Their use within the U.S military has evolved from simple platforms conducting surveillance to complex platforms capable of attacking targets. While effective, their use is not without controversy. The use of drones is expanding globally and they are now used by over 50 countries, including the United States (US), United Kingdom, France, Russia, and non-state actors such as Hizballah. Drones have become the new normal, replacing what boots on the ground have historically done and edging out what conventional military aircraft are capable of doing. Consider the following data points:

1. There has been a 1,200 percent increase in combat air patrols by drones;
2. The US drone fleet has increased from 50 aircraft to 7500 aircraft; and
3. US attack drones have struck targets in Iraq, Pakistan, Libya, Afghanistan, Yemen, Somalia and the Philippines.

While drones are a valuable asset when considered from the perspective of an effective surveillance capability, a declining US military budget, a desire to minimize US casualties and a military reliant on the use of technology as a force multiplier, this paper will argue the opposing view. That said, the use of attack drones should cease owing to their ineffectiveness in achieving US strategic goals and the moral, legal and ethical concerns inherent in the use of this technology.

In 2013 the US Army had more than 7500 drones compared to 76 in 2002 and the number of drones has been increasing ever since.<sup>1</sup> The advantages of drones are (1) their ability to conduct precision strikes, (2) they have a greater operational capability range not limited by the limits of the human body, (3) reduced operational cost when compared to conventional aircraft, and (4) they have both a tactical and strategic ability to directly influence the enemy's Centre of Gravity (CofG). The disadvantages of drones are (1) strategic ineffectiveness, (2) pilot emotional and mental concerns, (3) legal and (4) ethical concerns.<sup>2</sup>

Usage of attack drones by the United States has evolved across four phases. Phase 1 (2002-2004) is characterized by an evaluation of attack drone capabilities through limited strikes on high-value targets (HVT). The first attack outside of an identified war zone took place in 2002 when a drone attack in North Eastern Yemen killed al-Qaeda leader Salim Sinan al-Harethi who was *suspected* of masterminding the 2000 USS Cole bombing in Aden. Phase 2 (2005-2007), is identified through an increase in drone strikes but retaining the same target set as Phase 1 (HVT) and the strikes were exclusively conducted in Pakistan. Phase 3, occurred during the latter half of the Bush administration (2008) and is characterised by the sharp increase in the frequency of drone attacks: in 2008, 37 attacks occurred compared to a total of 9 attacks across phase 1 and 2. The Bush administration rationalized that if limited attack drone strikes had been successful more strikes would be even better. Phase 4 (2009-Present), is characterized by not only a greater frequency of attacks but a broader target list to include targets of opportunity and identified militants of dubious rank; between 2008 and 2011 over 200 drone attacks had

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<sup>1</sup> David Whetham, "Killer Drones," *The RUSI Journal* 158, no. 3 (2013): 22.

<sup>2</sup> Muhammad Nadeem Mirza, Irfan Hasnain Qaisrani, Lubna Abid Ali, and Ahmad Ali Naqvi, "Unmanned Aerial Vehicles: A Revolution in the Making." *A Research Journal of South Asian Studies* 31, no. 2 (July-December 2016): 249.

occurred.<sup>3</sup> Table 1 illustrates the relationship between the deaths of HVTs and other deaths through drone attacks.

**Table 1 - Drone Strikes By Phase**

Phase	Strikes	High Value Targets Killed	Total Deaths	HVT to Total Deaths Ratio
1 (2002-2004)	2	2	11	1:5
2 (2005-2007)	6	2	53	1:26
3 (2008-2009)	48	5	333	1:66
4 (2009-2010)	161	7	1029	1:147

Source: Leila Hudson, Colin S. Owens, and Matt Flannes, "Drone Warfare: Blowback From The New American Way of War," *Middle East Policy* 18, no. 3 (2011): 125.

During phase 1, 2002-2004, five to six people were killed for every HVT killed in comparison to 2010 where 147 people were killed for every HVT. These extra deaths led to an inflamed Pakistani population, the destabilisation of governmental institutions and to a rapidly growing population of survivors which have been incentivized to join the ranks of terrorist groups that have the ability to conduct revenge operation against Americans and their drone teams.

Drone warfare should cease because while tactically successful it has been strategically counterproductive in achieving US security goals. The escalated drone attacks in Yemen and Pakistan has resulted in a corresponding increase in civilian casualties which has fueled

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<sup>3</sup> Leila Hudson, Colin S. Owens, and Matt Flannes, "Drone Warfare: Blowback From The New American Way of War," *Middle East Policy* 18, no. 3 (2011): 124.

resentment against the US by the local population. Since 2004, civilian deaths in Pakistan hover imprecisely between 1500 and 2500 and in the War on Terror the US is losing the war of hearts and minds.<sup>4</sup> There has been a growing unrest in countries where drone attacks are occurring. Protests in Pakistan, Somalia and Yemen have become commonplace and the protests have complicated the US withdrawal from Afghanistan by providing justification for militant attacks in Afghanistan as well as Pakistan. Doctrinally, the use of drones has taken on a life of its own. Drone tactics are driving strategy rather than the other way around as drone warfare has progressed from decapitation attacks against leaders to targeting ordinary Taliban members and Yemen insurgents.<sup>5</sup> The target envelope has expanded to beyond HVT to people who may not be terrorists but behave like militants in insurgent controlled areas. Drone strikes also end up killing enemies of Pakistan, Somalia and Yemen who many not be threatening the United States at all. Drone strikes are a blunt application of force by the United States versus a real attempt to deal a pivotal blow to a movement. For example, by using attack drones as the only policy tool in the Pakistan Federally Administered Tribal Areas (FATA), without corresponding local political engagement, the US is creating accidental guerrillas who unable to retaliate against the US within Pakistan, will then cross the Pakistani border into Afghanistan to exact revenge.<sup>6</sup> Drone attacks also works against newly codified counterinsurgency doctrine instilled from Iraq which focuses on diminishing the political, social and economic conditions that create and bolster the armed resistance seen in an insurgency. A key principle of this new counterinsurgency doctrine is the focus on reducing deaths and preventing the creation of new insurgents. Drone warfare is a

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<sup>4</sup> Leila Hudson, Colin S. Owens, and Matt Flannes, "Drone Warfare: Blowback From The New American Way of War," *Middle East Policy* 18, no. 3 (2011): 122.

<sup>5</sup> Audrey Kurth Cronin, "Why Drones Fail: When Tactics Drive Strategy," *Foreign Affairs* 92, no. 4 (2013): 44.

<sup>6</sup> Leila Hudson, Colin S. Owens, and Matt Flannes, "Drone Warfare: Blowback From The New American Way of War," *Middle East Policy* 18, no. 3 (2011): 126.

strategic disconnect between counterinsurgency and counterterrorism and it has not been effective in resolving a conflict.<sup>7</sup>

Drone attacks may have been effective in diminishing hierarchically structured terrorist groups led through a cult of personality such as al Qaeda but have been less effective against dispersed broad network of groups such as ISIS.<sup>8</sup> Targeted killing has thwarted groups from replacing dead leaders with new leaders but their deaths have also been used as a propaganda tool by terrorist groups. As-Sahab (The Clouds), the propaganda arm of al Qaeda, has been able to attract recruits and resources by broadcasting footage of drone strikes portraying them as indiscriminate violence against Muslims and they cast their leaders who have been killed as martyrs.<sup>9</sup> Terrorist organizations use drone strikes that kill civilians to cast Americans as immoral bullies who don't care about the common people.<sup>10</sup> A more effective way of defeating al Qaeda and other non-state groups would be to publically discredit them through a political strategy aimed at dividing its followers.

Drone warfare should also cease due to the negative mental and emotional impact on the well-being of the drone pilots. Drones are a *standoff* weapon, which is consistent with the human desire to separate oneself via distance from an adversary.<sup>11</sup> Historically at one end of the adversary to distance spectrum, we have a human throwing rocks, on the other end we have a Tomahawk cruise missile. A drone operator's degree of remoteness from a target is very great

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<sup>7</sup> Leila Hudson, Colin S. Owens, and Matt Flannes, "Drone Warfare: Blowback From The New American Way of War," *Middle East Policy* 18, no. 3 (2011): 127.

<sup>8</sup> Audrey Kurth Cronin, "Why Drones Fail: When Tactics Drive Strategy," *Foreign Affairs* 92, no. 4 (2013): 45.

<sup>9</sup> Megan Smith, and James Igoe Walsh, "Do Drone Strikes Degrade Al Qaeda? Evidence From Propoganda Output," *Terrorisim and Political Violence* 25, no. 2 (n.d.): 314.

<sup>10</sup> Audrey Kurth Cronin, "Why Drones Fail: When Tactics Drive Strategy," *Foreign Affairs* 92, no. 4 (2013): 44.

<sup>11</sup> David Whetham, "Killer Drones," *The RUSI Journal* 158, no. 3 (2013): 23.

considering that an operator may be sitting thousands of miles away from where the drone is actually flying its mission. Consider the physical difference between a sniper who is observing their target and a drone operator who is observing their target. The sniper is in the combat area and potentially in danger, whereas the drone operator is not, resulting in the pilot's moral and emotional disconnection with the situation.<sup>12</sup>

As an example, on August 6, 1945 at 8:15 am B-29 Enola Gay dropped an atomic bomb on the city of Hiroshima and the crew witnessed a blinding light and a mushroom shaped cloud covering the entire city in smoke and fire. What they didn't see or feel was *how* this explosion immediately killed approximately 70,000 people. They didn't feel the suffering and death of men, women and children. Captain William S. Parsons who armed the bomb said, "I knew the Japs were in for it, but I felt no particular emotion about it."<sup>13</sup> Remote separation from a target such as the crew of the Enola Gay, leads to physical and moral separation making it easier to 'pull the trigger'. Through the introduction of new technology, (more) physical distance is bridged but at the same time (more) moral distance is created.

English philosopher AC Graylong noted that an RAF bomber crew in the Second World War would willingly unleash bombs from 20,000 feet and knowingly kill hundreds or thousands of women and children but the same crew given a knife could not slit the throats of a family next door: an example of a suspension of moral concerns making it easier for an individual, distant from a person, to commit violent acts.<sup>14</sup> A drone operator is intimately aware of their target and may have tracked it in real time for hours, days or months. A RAF operator noted that:

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<sup>12</sup> Ibid., 24.

<sup>13</sup> Mark Coeckelbergh, "Drones, Information Technology, and Distance: Mapping the Moral Epistemology of Remote Fighting," *Ethics and Information Technology* 15, no. 2 (2013): 87.

<sup>14</sup> David Whetham, "Killer Drones," *The RUSI Journal* 158, no. 3 (2013): 24.

*“... a day, two days, maybe a month can be spent watching and then with it happens, we don't leave once we've dropped the weapons we stick around for battle damage assessment and because of the way of the Muslim faith – they like to bury their dead before the sun goes down – generally you will see the funeral procession, the women and children arrive, it can be very emotional...”<sup>15</sup>*

Lieutenant Colonel Kent McDonald who was involved in a US Air Force study of drone pilot stress risk observed that:

*“When they have to kill someone, and when they're involved with missions when they're observing people over long periods of time and then they either kill them or see them killed it does cause them to rethink aspects of their life and it can be bothersome.”<sup>16</sup>*

Expecting people to go to the office and help kill people and then go home to play games with their children has led to cognitive dissonance that is difficult for drone pilots to maintain without significant and perhaps long-lasting effects.

Drone warfare should cease due to the legal concerns surrounding its usage. The US has relied on civilian drone pilots resulting in legal concerns regarding their employment. Civilians who employ lethal force, not as a result of direct self-defence, may be charged with murder and are not protected by the Laws of Armed Conflict. The use of civilian drone pilots has resulted in the phenomenon of civilians being participants in a conflict while being geographical separated from the conflict. Consider the situation “if a man knowingly helps his brother to plan an IED by driving him and the device in his car, he might be a civilian, but he is facilitating the planting of

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<sup>15</sup> Ibid., 25.

<sup>16</sup> Mark Coeckelbergh, "Drones, Information Technology, and Distance: Mapping the Moral Epistemology of Remote Fighting," *Ethics and Information Technology* 15, no. 2 (2013): 96.

the device and can therefore be considered to be directly participating in hostilities at that time. As such, he may be legitimately targeted while carrying out this role. Consider then, a husband who drops his wife at work at an air base in Nevada where she will be piloting a drone employed in offensive operations. The question must then be raised whether he, too, becomes a direct participant in hostilities while acting as a chauffeur?"<sup>17</sup>

Additionally, while there are strict guidelines in place regarding the decision to deploy munitions from drones, a concern is what happens if something goes wrong and how individually responsibility can be determined in the case of errors, such as civilian deaths, considering the distance between the drone and the pilot. Across the spectrum of the Laws of Armed Conflict (LOAC) there is the fundamental principle of the Chain of Responsibility which in practice means that responsibility lies with the commander on the ground. Which leads some to argue that since the onsite commander make the final decision to employ lethal force they are accountable, not the drone pilot, for any errors, thus removing the drone pilot from any responsibility for their actions.<sup>18</sup>

Despite these strict guidelines civilian deaths due to drone attacks have risen. One report reviewing the use of drones in Pakistan's remote tribal areas concludes that 32% of those killed in drone attacks since 2004 were civilians.<sup>19</sup> A prominent example is the 2008 targeting of a wedding party in Wech Baghtu Afghanistan by drone pilots which resulted in the killing of 63 people including 37 Afghan civilians, mostly women and children, and 26 insurgents. The Taliban had been seeking safety near the wedding party which was celebrating a wedding at a housing complex, when the Taliban was attacked by a drone airstrike resulting in the civilian

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<sup>17</sup> David Whetham, "Killer Drones," *The RUSI Journal* 158, no. 3 (2013): 26.

<sup>18</sup> *Ibid.*, 26.

<sup>19</sup> David Whetham, "Killer Drones," *The RUSI Journal* 158, no. 3 (2013): 27.

deaths.<sup>20</sup> Drone attacks occur within the paradox of precision: the more accurate the weapons employed the more attention upon any misses or mistakes. Experience indicates that public support for military action will fall away as the number of civilian casualties increase.<sup>21</sup> The distance between the drone pilots and the conflict zone makes it difficult to discriminate between a combatant and a non-combatant in a combat zone.

There are also legal concerns with the use of attack drones against non-State entities. For the laws of war to apply, a state resorting to force must show that its decision to use force is in response to another states armed attack. A difficulty with this definition is that al-Qaeda is not recognized as a state under traditional international law and only states can initiate attacks against other states under the premise of self-defence. As the US has not declared war against al-Qaeda and regards those captured as not qualifying as lawful combatants then at best one can say is that the US is involved in a law enforcement operation. As such killing cannot be the *sole objective* of an operation. The International Covenant on Civil and Political Rights (ICCPR) prohibits “arbitrary killing as well as punitive or deterrent killing of terrorists.”<sup>22</sup> Killing is only allowed to prevent a *concrete* and *imminent* threat to life and only if there is no other non-lethal means of preventing that threat to life. As a result since the US has not declared war against al-Qaeda or other terrorist groups, does not view those captured as lawful combatants and those killed are not in the imminent act of a terrorist activities, then the use of drone attacks is illegal.

Drone warfare should cease due to the ethical concerns around its employment. The distance between the conflict zone and the drone pilots has resulted in warfare becoming unreal to citizens. To maintain public resolve when democracies want to use military force, especially

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<sup>20</sup> Ibid., 27.

<sup>21</sup> Ibid., 28.

<sup>22</sup> Milena Sterio, "The United States' Use of Drones in the War on Terror: The (Il)legality of Targeted Killings under International Law," *Case Western Reserve Journal of International Law* 45 (2012):206.

where national interest is not obviously at stake, a democracy needs to minimize military casualties. Drones are the next level of removing risk to participants by using distance to remove the risk of harm to the pilot as well. Author and scholar Michael Ignatieff<sup>23</sup> posed the question: “are we on the eve of a new age of ‘drive-by’ wars, in which American power can strike anywhere, in near certainty that neither its civilians nor its soldiers will ever be put at risk?”<sup>23</sup> Does this capability transform the likelihood of war potentially transforming it from an option of ‘last resort’ in a first or at least an early response to conflict? In essence, drone warfare lowers the threshold to employing military force making the occurrence of war more frequent.<sup>24</sup> US Army Chaplain D. Keith Shurtleff noted that “as wars become safer and easier, as soldiers are removed from the horrors of war and see the enemy not as humans but as blips on a screen, there is a very real danger of losing the deterrent that such horrors provide.”<sup>25</sup> Attack drones demonstrate an ability to kill but *little or no willingness to die* for a cause and may make conflicts more difficult to resolve due to a lack of will to put one’s own people in harm’s way when required, leading to endless wars.<sup>26</sup>

Drones are a valuable asset for they are able to conduct precision strikes without placing the drone pilot in danger, their operational capabilities are beyond that which a human body can endure and their operational costs are favourable compared to conventional aircraft. But the disadvantages of attack drones are many. Their use, and resulting civilian deaths, fuel anti-US resentment which undermines US strategic interests. Drone attacks increase the likelihood of drone pilots having emotional and mental illnesses, the legalities of drone attacks are vague and

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<sup>23</sup> Alan W. Dowd, "Drone Wars: Risks and Warnings," *Parameters*, Winter-Spring 2013: 11.

<sup>24</sup> *Ibid.*, 12.

<sup>25</sup> Milena Sterio, "The United States' Use of Drones in the War on Terror: The (Il)legality of Targeted Killings under International Law," *Case Western Reserve Journal of International Law* 45 (2012):213.

<sup>26</sup> Alan W. Dowd, "Drone Wars: Risks and Warnings," *Parameters*, Winter-Spring 2013: 12.

there are the ethical concerns that drone strikes increase the likelihood of conflict. For these reasons drone strikes should cease.

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