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TARGETED KILLING WITH DRONES?
IN DIALOGUE WITH TAMAR MEISELS

CILJANO UBIJANJE DRONOVIMA?
U DIJALOGU SA TAMAR MEJZELS

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TARGETED KILLING WITH DRONES? OLD ARGUMENTS, NEW TECHNOLOGIES

ABSTRACT

The question of how to contend with terrorism in keeping with our pre-existing moral and legal commitments now challenges Europe as well as Israel and the United States: how do we apply Just War Theory and International Law to asymmetrical warfare, specifically to our counter terrorism measures? What can the classic moral argument in Just and Unjust Wars teach us about contemporary targeted killings with drones? I begin with a defense of targeted killing, arguing for the advantages of pin pointed attacks over any alternative measure available for combatting terrorism. Assuming the legitimacy of killing combatants in wartime, I argue, there is nothing wrong, and in fact much that is right, with targeting particular terrorists selected by name, as long as their assassinations can be reasonably expected to reduce terrorist hostilities rather than increase it. Subsequently, I offer some further thoughts and comments on the use of remotely piloted aircrafts to carry out targeted killings, and address the various sources for discomfort with this practice identified by Michael Walzer and others.

KEYWORDS

drons, targeted killing, justification, asymmetrical warfare, terrorism

It is always a hard question whether new technologies require the revision of old arguments. Targeted killing isn't new, and I am going to repeat an old argument about it. But targeted killing with drones? Here the old argument, though it still makes sense, leaves me uneasy.¹

Michael Walzer

As the US and Israel continuously wage war on terror, they increasingly find themselves under attack for their policy of assassinating terrorist leaders. It has been argued that targeted killing violates international standards of legitimate warfare and that it is on a par with political assassination, or extra-judicial execution, and as such unequivocally banned by international law. In the extreme, it has been compared with the terrorist activity it purports to combat. Nevertheless, Former US President Obama repeatedly stated and demonstrated that targeted killing is his favored counter-terrorism measure. Israel, which has long resorted to this tactic, escalated its use after the outbreak of the second Intifada.

1 Walzer 2016: 12.

Targeted killing can be carried out by ground forces or by conventional airplanes, and it may involve the use of bullets, bombs or poison.² Mostly though, at least in the American case, targeted killings are performed by “drones”, operated at a distance. These are also the well-publicized cases of targeted killing, attracting the greatest public attention, not least because of the collateral damage they are reported to incur, and possibly due to the science fiction type images they invoke in popular imagination.

The question of how to contend with terrorism in keeping with our pre-existing moral and legal commitments now challenges Europe as well as Israel and the United States: how do we apply Just War Theory and International Law to asymmetrical warfare, specifically to our counter terrorism measures? What can the classic moral argument in *Just and Unjust Wars* (Walzer 1977) teach us about contemporary targeted killings with drones?

In a series of recent article and interviews, Michael Walzer takes up this new challenge, accepting some old arguments about targeted killing, while expressing reservations over the increased, and largely unsupervised use (overuse or misuse) of drones to perform this task at a distance, as well as unease over some choices of target (Walzer 2013; 2016).³

The following section briefly restates my own old argument for targeted killing, much of which is based on what I learned from Walzer’s *Just and Unjust Wars*. As is immediately apparent, I diverge slightly from Walzer in unequivocally adopting the ‘armed-conflict’ model as the only relevant framework for assessing our governments’ anti-terrorism strategies, rather than considering any law enforcement procedures, or any mixture of the two regimes.⁴ The subsequent section offers some further thoughts and comments regarding the specific use of remotely piloted aircrafts to carry out targeted killings, and addresses the various sources for discomfort with this practice identified by Walzer and others.

Targeted Killing

The key to the argument that targeted killing is legitimate under international law is the contentious proposition that a state of war, or armed conflict, exists between states and terrorist organizations. In the forthcoming arguments, I follow the American and Israeli Supreme Courts in maintaining that the relevant normative framework for considering counter-terrorism measures is that of an (international/non international) armed conflict, bringing the full privileges of belligerency into play.⁵ More generally, I suggest that where international law is unclear and

2 As in Israel’s failed targeting of Hamas leader Khaled Mashal in Jordan in 1997, when Mossad agents administered poison into Mashal’s left ear. Israel was subsequently compelled to hand over the antidote.

3 Michael Walzer, on Whether Drones Should Be Banned, *Berkley Center*, March 13th, 2013 <https://www.youtube.com/watch?v=Ky5iYOKORBA>.

4 Cf. Walzer, Walzer 2016: 13–14. See also the discussion of “*jus ad vim*” in Walzer 2006: xv–xvi.

5 For Israel, see: HCJ 769/02 Public Committee Against Torture in Israel v. Government of Israel (*Targeted Killings* Case) [2005] and HCJ 7015/02. For the US, see: E.g. Maxwell

indeterminate – that is, where alternative interpretations are possible – we ought to adopt an understanding of ‘armed conflict’ that does not exclude the new wars we are actually fighting.

Once at war, or engaged in armed conflict, any combatant may be killed under circumstances that far outstrip those that constrain ordinary self-defense (Gross 2004: 104). Terrorists are unquestionably combatants, albeit irregular combatants: they are the instigators, organizers, recruiters, commanders and operatives of an armed struggle. At the very least, terrorists belong to a type of unprotected civilians who are not unengaged in hostilities.⁶

Like political assassination, targeted killing aims at its victims narrowly and attempts to avoid collateral deaths. Ordinary citizens remain, so far as possible, immune from attack. While targeted killing shares this morally favorable aspect of political assassination, it avoids the normative shortcomings of assassination. First, targeted killing does not take aim at protected civilians who are unengaged in military activity. Second, unlike political assassination, targeting terrorists does not require a complex political evaluation of the victims cause, determining who is and who is not a political enemy; at most it requires a moral stand against terrorism. Terrorists are targeted for what they do – not for the causes they serve. Targeted killing shares the moral advantages of political assassination – the line it draws between liable targets and ordinary civilians – without retaining its problematic aspects. The terrorists’ paramilitary status serves to distinguish targeted killing from political assassination, which targets civilian officials. Military objective – preventing and combatting terrorism rather than punishment – serves to distinguish targeted killing from “extra-judicial execution”.

In the context of war, it is somewhat puzzling even to consider a judicial option – capture and trial of terrorists – as a first and preferable (albeit often impractical) option.⁷ Exhausting the difficult and costly option of arrests is not legally required.⁸ In war, the law authorizes the use of lethal force as first resort against enemy persons and objects within the parameters of the armed conflict (Corn 2009: 1347–1348). There is no wartime requirement to attempt capture and trial of combatants in war, rather than killing them as a first resort. Arguably, “unlawful combatants”, as opposed to soldiers, may also be targeted in unconventional settings, including civilian surroundings such as their homes and in their beds, because there is no other realistic way of combatting them, no front line to be considered. Terrorists defy all conventional rules that confine combat to the battlefield, and are therefore unentitled to their reciprocal protections (Statman 2003a: 196). They force armies to combat them in the midst of civilians, or else relinquish the fight altogether.

2012: 49, Blum and Heymann 2010: 157. Former President Barack Obama, Speech at the National Defense University.

6 This was the terminology adopted by former Israeli Supreme Court Justice Aharon Barak in HCJ 769/02 Public Committee Against Torture in Israel v. Government of Israel (*Targeted Killings* Case) [2005], esp. paragraph 31.

7 Cf. Walzer 2016: 13, who does not accept the war model in all cases, and argues that it would be better to bring terrorists to trial, though this is not always a reasonable option.

8 HCJ 769/02 [Dec. 11 2005]. Para. 40.

In the United States, the debate over targeting terrorists concerns two distinct types of military strategy, often carried out by drones: “personality strikes” and “signature strikes” (Heller 2013: 90). Strictly speaking, only personality strikes are targeted killings. They involve the listing and subsequent assassination of previously identified named individuals (Waldron 2015: 2). Israel, as well as the US, openly engages in personality strikes when it targets leading figures in Hamas. Signature strikes, by contrast, are mostly US drone attacks that target groups of men who have certain behavioral characteristics associated with terrorist activities or membership in Al Qaeda or its affiliates, but whose identities are unknown. As Andrew Altman explains, “Their ‘signature’ behavior functions as if it were the uniform of an enemy force, opening them to lethal attack, in the eyes of the U.S. government”. (Altman 2014: 3–4)

The majority of strikes launched by the US appear to have been signature strikes, and most of the CIA strikes apparently fall into this category (Altman 2014: 3–4), (though it may be the case that signature attacks were cut back towards the end of the Obama administration) (Walzer 2016: 17). Whether or not signature strikes (particularly as carried out by the US) are justifiable in the course of combating terror, they are much more like “untargeted killing”, as most wartime killings are. Jeremy Waldron points out that in some cases, “drones pass over areas like insurgent or terrorist training camps where, it is presumed, any young man present especially if he is armed is deemed a legitimate target whether he has been specifically identified or not.” (Waldron 2015: 2) These are not individualized killings, and actually appear quite similar to conventional wartime targets. In other contexts, where targets are not clearly paramilitary, or analogous to a military base or camp, it cannot be legitimate to automatically count all males of military age as liable combatants.⁹ In such cases, individualization of the target may actually be required, determining liable targets for “personality strikes”.

Judged under a wartime regime, there is nothing wrong, and in fact much that is right, about targeting individual terrorists – whether by name, or simply because of their part in hostilities. Killing terrorists is a legitimate and desirable military objective. In terms of proportionality, it is a good to be weighed against any regrettable harm to civilians.

Regarding civilians and their surroundings, much critical attention has been focused on the collateral damage incurred in the course of targeting operations, as well as on the specifically American use of drones and their effect on the surrounding population. In war, however, armies are authorized to attack and kill enemy combatants in ways that foreseeably cause death and injury to civilians, as long as the anticipated harm to civilians is not disproportionate “in relation to the direct and concrete military advantage anticipated” (Altman 2014: 19). In fact, when targeted killings are carried out with due care, they actually cause far less collateral damage than many conventional wartime tactics. This is the very essence of the case for pinpointed attacks.

In principle then, targeting terrorists in the course of an armed conflict as a preventive, rather than a punitive, measure is a legitimate defensive act, subject to

⁹ Cf. Walzer 2013. For the Israeli Court discussion of “direct part in hostilities” see H CJ 769/02 Para 33–40.

the usual necessity, proportionality and reasonable chance of success conditions. Moreover, judged as a wartime tactic, targeted killing is a particularly limited and fastidious form of combat and is therefore often morally preferable to alternative modes of belligerency commonly employed in war.

In practice, care and caution regarding choice of target and enemy civilians are crucial to the justification of targeted killing (Walzer 2016: 14). Both the Israeli Supreme Court and the Obama administration publicly affirmed various conditions. Whether high standards are actually met in practice is a further issue of contention (Walzer 2016: 15–18). Opposition to targeted killing often points to the lack of clarity surrounding the decision-making procedure and to the manner in which attacks are carried out. Such worries include suspicion of government power, fear of its abuse, lack of transparency, mistakes, misjudgments, use of unmanned aircraft, killing by “remote control” (Walzer 2016: 15–18). All these are secondary arguments against targeted killing (which does not make them any weaker). They do not principally oppose the killings themselves but rather express concern about their execution in practice, as well as about the feasibility of carrying out such operations legitimately. At the very least, they call for institutional guarantees against abuse of government power and related dangers.

None of these objections present conclusive arguments against the permissibility of targeting terrorists. Such concerns can, and should, be resolved in keeping with the general wartime framework in which these attacks are carried out. That is, we should require the standards of care and caution for enemy combatants and civilians, as well as the extent of oversight of administrative power, that we would normally require during wartime (e.g. review by a legal advisors) and in accordance with the standards applied to any other act of war.

One such requirement is reasonable chance of success. What is the point of targeted killing? “These Killings are part of a strategy of disruption and decapitation directed against terrorist organizations.” (Waldron 2011). Does this work? Opponents suggest, that such killings actually solicit acts of retaliation, deepen hostility and mistrust by antagonizing surrounding populations, encourage radicalization and jeopardize the chance of peace, escalating, enhancing and prolonging conflicts, rather than reducing terrorism (Gross 2003: 352, 356–358; Gross 2004: 100–103, 113; Gross 2010: 111).

Judging the expediency of targeted killing is admittedly fraught with difficulties. “Thwarted attacks remain unobserved, and counterfactuals – attacks that would have been launched had there never been a firm assassination policy – are difficult to gauge.” (Gross 2003: 357; Gross 2004: 101; Gross 2010: 114–117). As Daniel Statman points out, however, “Morally speaking, wars are a risky business. Still, according to just war theory, one is allowed to use lethal measures if there are good reasons to believe they will be efficient in self-defense.” (Statman 2003b: 778). In keeping with just war theory, we need not be absolutely sure that the strategy we employ is conducive to our defense; we need only employ it in good faith on the general assumption that it has a reasonable hope of success, and show good cause for this belief (Statman 2003a: 193; 2015: 9).

What causes might we have for this belief? Proponents of targeted killing readily admit that assassinations do not annihilate terrorism in one fell swoop. No one

argues that it presents an overall solution to terrorism. Those of us who support it believe that assassinating terrorists is a successful means of reducing terrorist hostility, at least in the long run, as it acts both as a deterrent (rather than punishment) and as an impediment in the face of terrorist organizations and their leaders. Such killings weaken terrorist groups, cause demoralization among their members, force them into hiding, and restrict their movements and activity. Underground terrorist movements with little internal structure often rely on the personal charisma or professional skills of the leaders and key figures of certain organizations. It is reasonable to believe that killing such individuals will gradually make it harder for the terror machinery to function (Statman 2003a: 192; 2003b: 778).

Moreover, assessing the efficacy of assassination policies involves evaluating not only their long-term (rather than merely immediate) effects but also their psychological impact. Terrorist leaders faced with personal danger often conceal themselves in the midst of civilian populations and reposition themselves constantly. The consistent and vivid threat posed by the “long arm” of their enemy, which is out there waiting to pluck them out of any place perhaps when they least expect it, presents a considerable emotional and practical obstacle. Wanted arch-terrorists do not go about their business as usual. Instead, they move around incessantly hoping to confound their enemy, presumably at considerable cost to their missions and public image. Left to their own devices there is every probability that terrorists will resume their activities. Finally, targeted killing has at least one definite consequentialist benefit; namely, it carries with it a far lower risk of *bad* moral results than any other available military strategy. Targeted killing is our best shot at combating terrorism at the lowest cost to human life (Statman 2003b: 778; 2003a: 193; Gross 2004: 99, 113; Gross 2010: 101).

Drones

What about collateral harm and resentment caused by drone warfare, as well as further objections directed at the use of unmanned aerial vehicles “killing by remote control” (Strawser 2013)? Although there is no essential connection between the use of drones and the principled argument over targeted killing, the two issues are at least contingently connected and the moral debate about drones is very much entangled with the debate about the morality and the legality of targeted killing (Statman 2015: 8). Some disentangling is in order.

First and most obviously: regardless of academic debate, drones are here to stay. To quote the recent American film *Good Kill*: “Drones aren’t going anywhere. In fact they’re going everywhere”.¹⁰ Perhaps quite soon everyone will have them (Walzer 2013, 2016: 18), though the feasibility of non-state actors successfully operating drone programs in American or Israeli skies appears most unlikely.¹¹

¹⁰ *Good Kill* (2014), <http://www.imdb.com/title/tt3297330/>.

¹¹ The popular notion that anyone can buy a drone is comically reflected in the BBC series *Episodes*, where Matt Leblanc tells Sean he’s thinking of buying a drone, to do drone stuff. <https://www.youtube.com/watch?v=VT3wRBueTJY> (*Episodes*, Season 4, episode 7). I doubt this potential is a source for concern. It seems a far cry from watching the tops of birds to launching successful drone warfare against mighty nations like Israel and the United States.

And this is the second point about drones – they are inherently a-symmetrical weapons favoring states, both morally and strategically. Arguably, this is actually one of their advantages. Running an effective drone program requires sophisticated satellite systems, large infrastructure and trained manpower, where state-level air superiority is already established and working in cooperation with the drone operations. Despite the remote-control imagery, Walzer explains, “drones are actually flown from bases fairly near their targets and it requires some 170 people to maintain the drones and get them into the air.” (Walzer 2016: 15) Given the expense and complexity of running an effectively lethal drone-system, as well as the anti-aircraft defenses operated in Israel and the U.S, drones would be entirely ineffective, not even particularly desirable, in the hands of non-state actors or their patrons aiming to kill civilians.¹²

Drones are not suitable weapons for individuals or terrorist organizations flying over countries with anti-aircraft capability. They are a weapon of states, particularly good states aspiring to distinguish combatants from civilians, though we know that good states will not always act well. Such asymmetry may seem unfair, but it is actually a moral point in favor of drones. In terms of upholding traditional *jus in bello*, drones are useful to the “good guys”. They are precision weapons, offering the possibility of careful compliance with the laws of war, to those who wish to comply. They are not particularly advantageous for engaging in wholesale killing or terrorism; less sophisticated low-tech weapons will suffice to do that trick.

Strategically, western style liberal democracies and their leaders are vulnerable to the threat of terrorism against civilians, as well as to terroristic abuse of the laws of war that occurs when terrorists use their own civilian as human shields in order to deter attacks by nations committed to the principle of distinction. Anti-aircraft warfare, on the other hand, is not one of our weaknesses (if they get drones, we’ll shoot them down). Without complete state-level air superiority, drones are incredibly ineffective. They are slow, and can easily be shot down by even the most basic anti-aircraft defenses. Drones offer a built-in advantage to states that try to distinguishing between combatants and civilians over murderous terrorist organizations that kill indiscriminately.

12 B. J. Strawser explains: Many speak of drones not as individual weapons, but more as “drone systems.” Each drone flight involves the drone itself (or drones, usually many drones working in tandem), but also involves the integrated satellite systems that navigate them and communicate with them anywhere on the planet, the ground uplink stations themselves that send and receive this communication, as well as sophisticated secondary satellite systems the piloting teams draw upon for navigation. It is this – the large infrastructure that is required for even minimally successful drone operations – that is only plausible for states to possess; and far out of the reach of even the most well-funded non-state actor groups. Additionally, without state-level air superiority, drones are incredibly ineffective. They are slow, lumbering planes that can easily be shot down by even the most basic anti-aircraft defenses. They would be like shooting down a slow moving, low flying Cessna, or even easier. The only reason they are effective where we use them is because we use them in places where complete air superiority is already established and working in cooperation with the drone operations. Non-state actors almost never have this. As such, even if they somehow COULD co-opt the massive infrastructure needed for an effective drone program (which I don’t think they could), their drones would be pathetically and easily shot down out of the sky almost instantly.

Third, given the previous points (drones are not going away, and they are essentially a weapon for (relatively) good states) the relevant question is how – not if – to use them. The laws and customs of war supply the answer: aim narrowly at identified combatants, sparing civilians whenever possible. Drones have this capacity to refine, rather than dull our moral sensibilities, and enhance compliance with the laws about distinction and proportionality, minimizing collateral damage. If they are not used to this end, then human are at fault, not the machines they employ.

Many of the earlier arguments about targeted killing pertain to the use of drones as well. Assuming the war model and last resort, Statman poses and answers the appropriate question: “Are civilians put at higher risk of harm by the use of drones than by the use of alternative measures?” (Statman 2015: 2; 2014: 41) Here again:

The crucial point to remember here is that the alternative to the use of drones is not the avoidance of violence altogether, which would entail zero-risk to civilians but the use of other, more conventional, lower-tech measures, such as tanks, helicopters, and so on. (Of course, if the use of force were not necessary, there would be no justification for using force even when no harm to civilians was to be expected). But such imprecise measures would almost certainly lead to more civilian casualties rather than to fewer.¹³

More critical of drone warfare generally, Jeff McMahan nonetheless concedes that the advantage of remotely controlled weapons is their ability to be highly discriminating in the targets they destroy:

What differentiates the newer models of remotely controlled weapons from traditional long-range precision-guided munitions is that they allow their operators to monitor the target area for lengthy periods before deciding whether, when, and where to strike. These are capacities that better enable the weapons operators to make morally informed decisions about the use of their weapons. (Statman 2015: 42)

Similarly, Walzer notes, drones “combine the capacity for surveillance with the capacity for precise attack” (Walzer 2013).

Solving one moral problem, however, may in this case entail another. Drones that hover above for lengthy periods of time enable better informed moral decisions but what about the psychological collateral harms they inflict, as the costs of increased precision is offloaded onto surrounding civilians “Living under Drones”.¹⁴

The undoubtedly terrifying experience of daily life under the continuous buzzing of circling predator drones overhead, monitoring their target area for lengthy periods of time, is by now well documented, as well as quite easily imaginable.¹⁵ Israelis, in particular, cannot be impervious to this argument that counts psychological harm to civilians in wartime proportionality calculations. This type of damage

¹³ Statman 2014: 42.; Statman 2015: 2., 41-45, 42.

¹⁴ *Living under Drones: Death, Injury, and Trauma to Civilians from US Drone Practices in Pakistan*, International Human Rights and Conflict Resolution Clinic, Stanford Law School; Global Justice Clinic, NYU School of Law (September, 2012). <http://chrgj.org/wp-content/uploads/2012/10/Living-Under-Drones.pdf>

¹⁵ *Ibid.* See esp. Chapter 3, 59–101. This is the core section of the report, including first hand accounts describing the emotional trauma, as well as the total disruption of every aspect of private and social life, caused by drone attacks in Pakistan. See also the testimony in Appendix A.

to civilians has been repeatedly appealed to by Israel in justifying massive military incursions into the Gaza strip, in response to relatively few casualties on the Israeli side. Both in 2008-9 and more recently, Israel has effectively suggested that its proportionality calculus accounts not only for the physical costs inflicted by Hamas, but also the psychological implications to its southern population living under the continuous threat of Hamas rocket attacks. Advocating for Israel in these matters commonly involves reference to the devastating, life-disrupting, emotionally traumatic and economic costs to terrorized civilians, rather than merely to the number of actual fatalities on the ground (Dershowitz 2009). And what is true when making ‘the case for Israel’, must apply with even greater force in the case of civilians under drones in Pakistan and elsewhere.

I have no experience of living under drones, and only short-term experience of living under ineffective Hamas rocket attacks (as well as Scud missiles from Saddam Hussein’s Iraq in 1991). Despite the statistically low risk, shrieking rockets (not to mention buzzing drones) imminently threatening sudden death or injury from the skies, is admittedly quite an unsettling and unnerving experience, most notably for children. All the more so, I can only imagine, in the case of effective lethal aerial vehicles circling in the sky for extended stretches of time, threatening to strike at any moment.¹⁶ Waldron is quite right to point out that the relevant perspective for assessing the terrorizing effects of drones is that of the people who actually endure them, rather than professional risk assessments (Waldron 2015: 14).

Terror on the ground (far more so in Pakistan than in Tel Aviv) must be accounted for in any proportionality calculation, whether *ad bellum* (as in the Israeli case) or *in bello*, when the US chooses its weapons for combating terror. Nevertheless, psychological harm to civilians, just like any other collateral damage in war, has to be balanced alongside, and as against, other considerations such as military objectives and the costs of alternative weapons.

One significant factor in comparing terrorized populations with the terrifying effects of drones is the question of intent. Is the harm to civilians intentional, or is it a side effect of a legitimate objective? In the case of terror bombings, civilian casualties are intended directly, providing a just cause for war, as are the additionally terrorizing effects of these murderous attacks. Similarly (though not entirely equivalently), drones ought not to be deployed deliberately to “hover visibly and audibly precisely in order to terrify the villagers, so that they expel Taliban militants hiding among them” (Walzer 2016: 16). In the case of drones, psychological harm is justifiable to the extent that it is incurred sincerely as an undesirable side-effect of the war on terror. Moreover, unlike physical collateral damage, justifiable solely with reference to military objective, the frightening effects of drones are primarily the by-product of their surveillance capacity, focusing their aim and minimizing concrete harm to civilians.

Consider the following important point by Walzer in response to Stanford/NYU Clinics’ reports. Notwithstanding clear evidence of constant fear and buzzing drones, Walzer notes that... the very effectiveness of drone attacks raises questions about these

¹⁶ See *Living under Drones*, p. 81, where one man describes this harrowing experience, describing the reaction to the sound of the drones as “a wave of terror” coming over the community: “Children, grown-up people, women, they are terrified... They scream in terror.”

accounts of the fear they provoke. Attacking drones must hover at such high altitudes that they can't be seen or heard. If they didn't do that, the intended targets, who presumably know they are targets, would simply stay out of sight" (Walzer 2016: 16).

Walzer adds:

Even the most nuanced accounts are contradictory: Gusterson quotes reporters who liken the sound of drones to "lawnmowers in the sky," but then describes a successful killing that happened "without warning".¹⁷

Undeniably, reconnaissance drones hover (and hum) at lower (visible and audible) altitudes. But they do so precisely in order to allow for accurate targeting of a particular individual. So while, "The buzz of a distant propeller is a constant reminder of immanent death",¹⁸ it should also serve as a reminder of our attempt to spare civilians.

Is there nonetheless something about killing at a distance that makes drones particularly objectionable or prone to misuse? Historically, hurling flying cannon balls, tearing people apart across the battlefield, must also have seemed like terrifying remotely controlled weapons in their time. Unmanned Aerial Vehicles, however, are entirely distanced from the battlefield and offer their operators (though not necessarily everyone involved in maintaining the drones and getting them airborne) (Walzer 2016: 15) the advantage of risk-free combat. Various writers have suggested that riskless warfare is a bad in itself, either because it renders one's opponent non-threatening and therefore non-liable to attack in self-defense (Kahn 2002: 3),¹⁹ or else because it is dishonorable, unfair, and lacking in military valor.²⁰ Some objections to drone strikes – those concerning asymmetrical warfare, distant engagement, the loss of old fashioned military virtues and defenseless targets facing a faceless death – apply equally to long range missiles²¹ and, though perhaps to some lesser degree, also to aerial bombardment by manned aircrafts.

A number of answers have been put forth to these objections, most notably by B.J Strawser and Danny Statman. Drones are economical: morally, they have the capacity to minimize casualties among civilians and combatants; financially, they are relatively cost-effective for states to produce and deploy in relation to inhabited planes carrying out similar missions, freeing shared resources for welfare expenditure (Strawser 2010: 344). Consequently, Strawser argues for a moral duty to employ UAV's as opposed to exposing soldiers to unnecessary risk, contending "that in certain contexts UAV employment is not only ethically permissible, but is, in fact, ethically obligatory" (Strawser 2010: 344).²² Statman points to the motivational benefits of safe warfare in enlisting risk-averse nations to take part in humanitarian military interventions (Statman 2015: 3; 2014: 42–43).

In "Targeted Killing and Drone Warfare", however, Walzer worries that this capacity for riskless warfare makes drones dangerously tempting. The ability to

¹⁷ Walzer 2016: 16, note 10, with reference to Gusterson 2016.

¹⁸ Waldron 2015: 14 citing first hand report by David Rohde, "Reuters Magazine: The Drone Wars," *Reuters*, January 26, 2012.

¹⁹ For discussion of this argument, see: McMahan 2013: xi-xii, and in Statman 2015: 4; 2014: 44.

²⁰ Cf. Waldron 2015: 4–5, Statman 2015: 5; 2014: 43–44.

²¹ See Statman 2015: 8; 2014: 44.

²² See also Strawser 2013: 3–24, 17–20.

kill the enemy without risking our soldiers makes killing too easy, leading to a relaxation of the targeting rules and actually increasing general unfocused warfare (Walzer 2013). Moreover, unlike soldiers in conventional wars, drones and their remote operators cannot demonstrate “due care” for civilians by assuming risks on their behalf.²³ Walzer invites “us to imagine a war in which there won’t be any casualties (on our side), no veterans who spend years in VA hospitals, no funerals. The easiness of fighting with drones should make us uneasy. This is a dangerously tempting technology” (Walzer 2016: 15). This diagnosis appears painfully plausible – zero risk warfare encourages trigger happiness.

The appropriate remedy is less clear, bearing in mind the images of war paralytics and body bags invoked by Walzer’s comment. It seems entirely preposterous, even slightly grotesque and obscene, to place our young soldiers, and probably also enemy civilians, in greater physical danger by reverting to lower tech weapons. Walzer does not suggest this. In fact, the only appropriate response in keeping with *jus in bello* is actually more targeted warfare: using drone capacity to focus the aim as narrowly as humanly and technologically possible, attempting to hit the enemy-target and preferably no one else. Any other use of drones is clearly unacceptable, as is any other use of a sling shot, or a bow and arrow. Complaints about the misuse and over-use of drones (Walzer 2016: 12, 15–18; 2013), intentionally or negligently terrorizing populations (Waldron 2015: 14), ought rightly to be aimed at particular policies and policy makers, rather than at the technology.

Targeting Terror with UAV’s

Assassinating avowed terrorists in the course of an armed conflict as a preventive, rather than punitive, measure is a legitimate act of self-defense, no less, and perhaps more so, than killing soldiers in combat. Certainly, it is more defensible than related acts of political assassination, which we tend to condone when we share the assassin’s judgment of his victim. In the case of terrorists, there is little possibility of disagreement among liberals concerning the moral evaluation of the targets in light of the horrific nature of their deeds. While the debate over the expediency of targeted killing remains inconclusive and contested, there are at least good reasons to believe that targeting terrorists is conducive to defense, which is all that can be reasonably required of any military strike. Moreover, since military operations – specifically those aimed at terrorists – are often something of a gamble, targeted killing (with drones or otherwise) bears the distinct moral advantage of aiming narrowly at combatants and minimizing civilian casualties.

The legal and moral status of irregular combatants is neither on a par with the status of soldiers nor comparable to that of civilian criminals. While it is difficult to specify precise limits for distinguishing irregular combat from some forms of organized crime, it seems clear that organizations dedicated to an ongoing violent struggle against Israel or the U.S., and now also Europe, are not civilian criminal organizations. Whether we call them “irregulars” or “unlawful combatants”, or

23 On “due care” for civilians and Walzer’s requirement that soldiers take demonstrative risks in order to prevent excessive harm to civilians, see Walzer 1977: 155–156, and Walzer, Margalit 2009: 6.

simply describe them as “civilians performing the function of a combatant”, terrorists are active agents of an armed struggle.²⁴

As direct participants in hostilities, terrorists are not entitled to the due process protections of the criminal justice system and are subject instead to the liabilities and vagaries of the wars in which they willingly partake. Trying and sentencing offenders is a job for the law courts rather than the army. Targeted killing in the course of an ongoing low-intensity conflict is, by contrast, a form of combat rather than punishment or revenge; as such, it need not comply with any procedural requirements for trying those accused of crimes committed in the past.

At the same time, irregulars who do not abide by the laws of war are not entitled to the specifically conventional protections accorded to lawful combatants, such as the right not to be targeted in civilian locations or to the status of prisoner of war when captured (all are naturally entitled to human rights). Terrorists are legitimate targets for military attack whether they are targeted by name or by deed, at all times and places, subject only to necessity and proportionality.

The legal standard of proportionality in war requires that the military objective be attained at the lowest possible cost to genuine civilians. Due care for civilians during targeting missions involves weighing the value of each target as against the harm to their surroundings and taking relevant precautions concerning the location and precise timing of attack, selecting appropriate methods and weapons, and possibly introducing a degree of oversight consistent with the supervision of other wartime measures. Beyond conventional tactics, named killing may warrant some institutional guarantees against abuse and ulterior motives because of the individualized nature of the killing and its affinity with assassination. Secondary concerns notwithstanding, named killing exhibits the greatest conformity with the *jus in bello* requirement of distinction.

Unmanned aerial vehicles have the capacity to perform this task at a distance, focusing lethal harm at a liable target while minimizing collateral deaths, provided of course that we program them to do just this. If we do not, the fault is not in our drones, but in ourselves. Unlike many conventional weapons (though not unlike long range missiles and aerial bombing), drones pose no danger to their operators. Some count this as a point in their favor, while others worry about the dangers of riskless warfare. This dispute is largely academic. Either way, no state in its right mind would give up the strategic superiority offered by drones. Not only are drones safe to use, but we also need not worry too much about their proliferation. Drones are essentially weapons of powerful states.

While it is true that a single predator may not be all that expensive, running a drone program requires a huge complicated, massive infrastructure around it. Additionally, drones are only effective where complete air superiority is established, as is the case with the US drone program in Afghanistan, Pakistan and Yemen. Non-State actors don't have this. Without state-level air superiority, slow flying drones are easily (pathetically and almost instantly) shot down.²⁵

24 HCJ 769/02 [Dec. 11 2005], esp. paragraph 31.

25 I am very grateful to B. J. Strawser for discussion, and esp. for his detailed explanations of the technical complexity of running an effective drone system.

Moreover, drones are not only weapons of states, but particularly effective for those states that care about complying with discrimination and proportionality, since drones are very good at that. This type of asymmetry or double standard – enabling law abiding states to fight safely against terrorists who cannot respond in kind – is a good thing. The surgical killing of identified enemy combatants is as good as war gets, certainly compared to the common practice of killing young conscripts in battle and incurring large scale collateral damage.

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Tamar Mejsels

Ciljano ubijanje dronovima? Stari argumenti, nove tehnologije

Apstrakt

Pitanje kako se boriti s terorizmom u skladu s našim postojećim moralnim i zakonskim obvezama sada izaziva Europu, kao i Izrael i Sjedinjene Američke Države: kako primeniti teoriju pravednog rata i međunarodno pravo na asimetrični rat, posebno na naše protivterorističke mere? Šta nas može klasični moralni argument u pravednim i nepravednim ratovima naučiti o savremenim ciljanim ubistvima dronovima? Počinjem odbranom ciljanog ubijanja, raspravljajući o prednostima napada sa tačno određenim ciljem nad bilo kojom alternativnom merom koja je na raspolaganju za borbu protiv terorizma. Pretpostavljajući legitimnost ubijanja boraca u periodima rata, tvrdim da nema ničega lošeg, i zapravo da ima mnogo toga što je dobro, s ciljanjem određenih terorista odabranih po imenu, sve dok se može razumno očekivati da će se njihovim ubistvom smanjiti teroristička neprijateljstva, a ne povećati. Nakon toga, nudim neka dalja razmišljanja i komentare o korišćenju daljinski upravljanih letelica za izvršavanje ciljanih ubistava i bavim se različitim izvorima nelagode s tom praksom koje su identifikovali Majkl Volzer i drugi.

Ključne reči: dronovi, ciljano ubijanje, opravdanje, asimetrični rat, terorizam