

# **Drones and the Future of Armed Conflict: Ethical, Legal, and Strategic Implications**

ed. David Cortright, Rachel Fairhurst, and Kristen Wall.

Chicago: Univ. of Chicago Press, 2015. Pp. xi, 295. ISBN 978-0-226-25805-8.

Review by Edmund F. Byrne, Indiana University-Purdue University Indianapolis ([ebyme@iupui.edu](mailto:ebyme@iupui.edu)).

This collection aims to clarify the effects of drones on the conduct of modern warfare. Its editors (all Univ. of Notre Dame) and ten of fourteen contributors work at law and policy-oriented institutions and academic departments, mostly in the United States. Their specific objectives, according to the preface by United Nations Special Rapporteur Cristof Heyns (Univ. of Pretoria), is to enhance precaution standards, suggest a role for the UN, improve monitoring of drone killings, and shed light on state complicity in drone strikes. Though these are global issues, the authors concentrate on US policies and practice in light of ethical norms embodied in international law and just war theory (6).

Following Cortright and Fairhurst's chapter i overview, "Assessing the Debate on Drone Warfare," the book's other chapters concern three major subjects: the morality of drone warfare; its strategic implications for counterterrorism policy; and its impacts on political accountability, freedom of information, and human rights.

In chapter 2, "The Morality of 'Drone Warfare,'" Jennifer Welsh (European Univ. Inst., Florence) proffers an astute analysis of the human dimension of drone killing. She attempts to redefine "combatant" and to assess the difference between killings in war and non-war situations. She criticizes the loose equivalence between "imminence of" and "generally engaged in" terrorist activity. She concludes that drone killing is neither good nor bad in itself and may be a legitimate instrument of war in some circumstances.

Martin Cook (US Naval War College), in chapter 3, "Drone Warfare and Military Ethics," addresses the morality of drone killing, through tactical, operational, and strategic "lenses," before turning to international law and grand strategy. He approves of drones as a means to an end, except in the case of "signature" strikes against all fighting age males. Operationally, he believes drone use has been appropriate in Afghanistan, but not always elsewhere. Strategically, drones often do more harm than good to users regardless of their tactical and operational efficacy. Some US attacks on al-Qaeda have conformed to international law, but not, Cook writes, the George W. Bush administration's concept of "anticipatory self-defense" (National Security Strategy of 2002). Since the United States is no longer the sole user of military drones (62), meaningful international standards for their deployment are a pressing need.

In chapter 4, "International Law and Drone Attacks beyond Armed Conflict Zones," Mary Ellen O'Connell (Notre Dame School of Law) refutes eight supposed legal justifications of drone killings outside combat zones, arguing notably that appeals to some global war are counterfactual even as to Afghanistan; so a self-defense justification based on such a war fails (65-68). For example, a nation's consent" to an outsider's intervention because it is "unable or unwilling" to deal with terrorists inside its borders is no legitimate reason for such intervention. Other justifications do not comply with the International Committee of the Red Cross definition of "continuous combat functions."

Karen Greenberg (Fordham Univ.), in chapter 5, "Drone Strikes and the Law," exposes legal flaws in US drone policy. Under George W. Bush, "enemy" might denote not just a given nation but also

"persons or organizations." She observes that, while Congress and the courts have imposed some checks, the 2001 Authorization to Use Military Force remains in full effect. President Barack Obama officially sought to follow international law, but his Supplemental Brief has actually expanded executive power to include not only al-Qaeda and the Taliban as enemies, but also those who "fought alongside them" (80) as an "associated force." The latter term began to appear in court documents, then in the 2012 National Defense Authorization Act. Hence, targeted killings were validated for "self-defense" against "substantial support" and "imminent" threats, including "actively engaged in planning."

In chapter 6, "Justifying the Right to Kill," Pardiss Kebraei (Center for Constitutional Rights) supplements Greenberg's argument by criticizing the Obama administration's drone policy for its poor legal rationale and lack of transparency and adequate judicial review. He opposes attacking individuals and insists that "imminent" may not be applied to just any ongoing planning. He denies that "enemy" includes "affiliates" or "associates of affiliates"; involvement in terrorism must mean actual conduct, not simply ideology. He notes that, though "transparency" has allegedly been addressed in a new Policy Guidance, the document remains secret. Finally, Justice Department memoranda regarding judicial reviews are restricted to members of select congressional committees.

Chapter 7, "The Strategic Implications of Targeted Drone Strikes for US Global Counterterrorism," by Audrey Cronin (George Mason Univ.), highlights the drawbacks of deploying drones to achieve counterterrorism objectives. Drone strikes may eliminate, say, al-Qaeda leaders without really degrading the group's propaganda capabilities. Targeting an ill-defined foe (and causing collateral civilian casualties) increases anti-American animus: the world is anti-drone, even if US civilians are not (112).

Moreover, there is no way of knowing whether the reduction in major terrorist attacks on Americans is a result of drone killings. Thus, tactically effective drones have doubtful long-term benefits for counterterrorism (119).

Assessing "Security Implications of Drone Warfare" in chapter 8, Patrick Johnston (RAND Corp.) favors using killer drones against non-battlefield targets, but worries that other entities will acquire and use comparable weapons. He notes that the efficacy of US drones quickly increased from experimental forays in 2002 to attacks on high value al-Qaeda targets and then tapered off after 2013. He contends that drones can prevent terrorists from meeting in groups and destroy their safe havens—purposes largely acceptable to other governments. But, again, as other states inevitably develop similar weapons, international norms will be an urgent desideratum. Still, Johnston writes, "it would be folly for the United States to relinquish any counter-terrorist advantages derived from such [targeted] killings in order to strengthen global norms against targeted killings" (139).

In chapter 9, "Winning without War," Cortright and Fairhurst maintain that the preferred strategy for countering terrorism should be military, though they concede that long-term non-military approaches are more effective and legitimate in dealing with non-state actors, especially in the *case* of localized Taliban forces as opposed to al-Qaeda with its global objectives. They advise "filling political vacuum with diplomatic activity" (157), as delineated in the UN's post 9/11 Resolution 1373 and reports from the March 2005 Madrid International Summit on Democracy, Terrorism, and Security.

Mary Dudziak (Emory Univ. Law School) shows in chapter 10, "Targeted Killings and Secret Law," that, ironically, presidents Richard Nixon and Barack Obama have relied on "secret law" to justify unconstitutional war making. Each has flouted "the transparency needed for political checks on presidential war to function" (163). Nixon secretly extended the Vietnam War into Cambodia, while Obama has carried out drone attacks beyond the borders of Afghanistan. Both kept some congressional members informed, thereby neutralizing them should opposition materialize. Dudziak also points out that the current Foreign Intelligence Surveillance Court is "building a body of secret law on surveillance" 075;

cf. 178). The ignorance of average citizens concerning military affairs makes it unlikely that public pressure will restore constitutional limits.

British investigative reporter Chris Woods' reveals a sharp discrepancy between official US casualty reports and data gathered by other organizations, for example, the Bureau of Investigative Journalism (TBIJ) and various international news agencies, including reputable Pakistani media. Also, the TBIJ, the New America Foundation, and the *Long War Journal* have reported more civilians killed than US agencies do (184-85), chiefly because the CIA considers all military-age males to be combatants, even though keeping kill numbers down pacifies US civilians (195).

In chapter u, "The Myth of Precision," Rafia Zakaria (Indiana Univ.) argues that the accuracy of killer drone strikes has been exaggerated, yielding an underestimation of innocent civilians killed, let alone displaced (more than a million according to Amnesty International). Although the ostensible goal is to kill leaders, heavily populated places like Karachi have been targeted. Since this violates people's "right to home," reports of the consequences of drone use should include not just casualties but human rights violations (212).

In their conclusion, the editors stress: the need for consistent standards to minimize drone use by other countries; the immeasurable harm done to US strategic interests by a lack of transparency; and the need for better methodologies in assessing the validity of the self-defense argument. They also underscore the necessity to transfer oversight of drone killing from the CIA to the military, with its more manageable constraints.<sup>2</sup>

Interested students and specialists will find the articles in *Drones and the Future of Armed Conflict* to be a fine introduction to unresolved problems of US drone killing policy and practice, particularly the need for adequate legal controls vis-a-vis unconstitutional secrecy and the proliferation of drone users in the future. One weakness of the volume, given its emphasis on drone efficiency and precision, is the omission of a fuller, more informed technical discussion of present capabilities and future potentials of the twenty-first century's most intriguing and morally ambiguous weapon system.

---

1. Author of *Sudden Justice: America's Secret Drone Wars* (NY: Oxford U Pr, 2015)—see my review at *MiWSR* 2015-106.

2. Some changes in this respect have recently been made. See A. Entous and G. Lubold, "Drone Plan Gives Pentagon Wider Role," *Wall Street Journal* (17 June 2016) A7.