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PaKSoM 2020

Proceedings of the 2nd Virtual International Conference Path to a Knowledge Society-Managing Risks and Innovation

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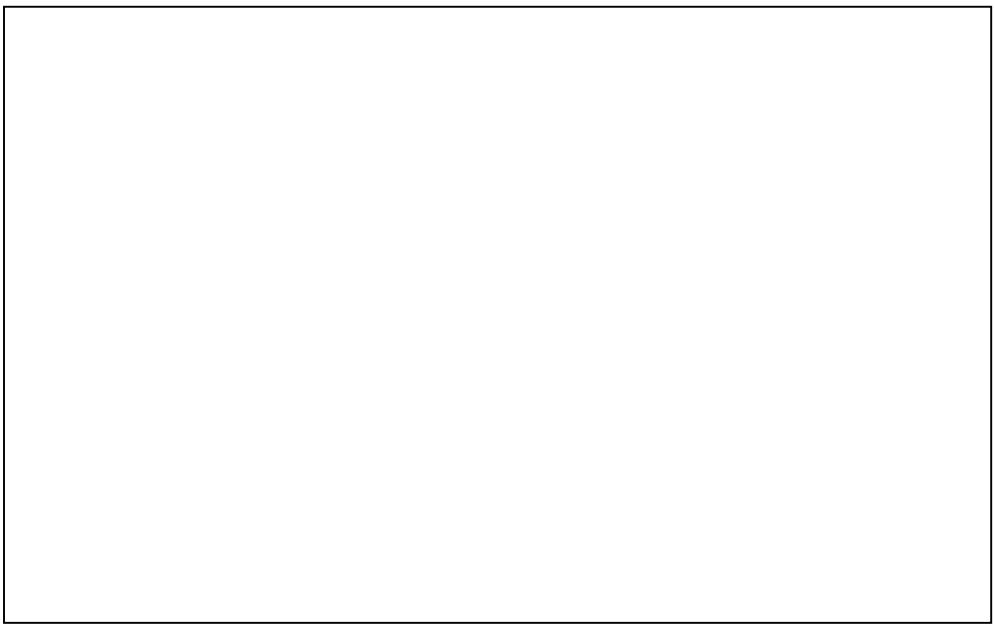

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Controversies Surrounding the Use of Drones in Armed Conflicts

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Abstract—**In this paper, the authors discuss contemporary wars, which increasingly highlight the key role and impact of high-tech weapons of various purposes and characteristics, electronics, IT and robots. This is evident in almost all armed conflicts. History testifies to the correlation between the technology and enhanced use of material and human resources at a given time by the ruling political elites. The growing technical and technological development over the past three decades has influenced the character and manner of conducting modern armed conflicts as well as media coverage of wars around the world. The use of drones has brought about the need to re-examine humanity in war characterized by the use of modern technological achievements. Despite the sophisticated technology, the use of drones in armed conflicts has resulted in innocent victims and civilians. On the other hand, the question of commanders and perpetrators remains in the case of targeted killings carried out illegally, without prior court proceedings. Thus, the basic human right, the right to life, is endangered. Despite that, international law has not regulated the use of drones. This is of multiple importance, especially having in mind further development of unmanned aerial vehicles and new possibilities for their use in war conflicts.**

Keywords: war, unmanned aerial vehicles, drones, international law

I. INTRODUCTION

As a complex historical and social phenomenon, and intense conflict as well, war has always attracted the attention of social thought theorists. For Heraclitus, war was "father of all, and king of all. He renders some gods, others men; he makes some slaves, others free" [1]. There have always been attempts to justify and challenge the concept of war, or explain it as an inevitability, an evil and an actual social phenomenon. It is an act of violence that aims to force the opponent to obey, but also a political act, a political tool, the continuation of political relations, but by other means [2].

Among other things, scientific and technological progress has opened a new chapter in the history of war in the form of dramatic technological improvements that made weapons more precise and destructive, but the cataclysmic potential of nuclear weapons soon sobered the military planners. It became clear that the value of weapons, as a means of achieving foreign policy goals, must have certain limits. Military technological achievements dominant in certain historical periods have shaped the warfare, not only in terms of military organization and its use in armed conflicts [3]. Thus, for example, the 19th and early 20th centuries warfare is associated with the industrial age and the nation-state and can be characterized as mass industrial warfare. Mass industrial warfare is based, among other things, on the recruitment, equipment and maintenance of combat readiness of numerous armed formations, the use of telegraph for communications and railways to move troops and necessary military equipment. Mass industrial warfare had its advantages, which were evident in the colonial wars, where technologically advanced imperial armed forces overran indigenous armies established in accordance with the mode of warfare based on artisanship. This also affirms the thesis that the

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subjectivity of war has sunk into the technological aspect of warfare, that is, into the operational dimension of war efforts aimed at maximizing the value of exploiting the available resources [4]. In addition, the military industry has become another branch of the economy in the most powerful countries, a profitable exporter, an engine of economic growth and development. Therefore, the view of modern war, as a social practice, recognized in the constant logistical preparations for armed conflicts, among other things, through the design and use of increasingly sophisticated weapons, is quite justified [5].

On the other hand, we should not forget the IT development that, among other things, influenced the revolutionary changes in military organization and warfare with the concept of network-centric warfare, based on rapid exchange of huge amounts of multimedia digitized data and high quality information on the course of combat operations within a single information network. This greatly facilitates the coordination, interoperability and timing of combat units of various branches and specialties [6]. Even without further elaboration on the application of contemporary scientific and technological achievements, the best evidence is the fact that the success of military interventions in the Gulf War, FRY, Afghanistan and Iraq is largely attributed to the choice made as early as the 1970s, when scientific research and technological development programs were launched for advanced weapons such as precision-guided ammunition, development of stealth technology and communication infrastructure [7].

II. SPECIFICS OF DRONE USE

Drone is the most known and commonly used form of semi-autonomous weapon systems, which influenced the practice of warfare in this century. As an unmanned aerial vehicle, the drone is a multi-purpose platform, as it can be used for reconnaissance, surveillance, patrolling, gathering intelligence and carrying out armed operations. In addition, there is the possibility of remote control from the ground control station, as well as the possibility, that has been strongly developed in recent years, to deploy a number of miniature drones harmonized with conventional war aircraft, so that the drones can engage the enemy air defense and thus protect the fighter jets [8]. Drones are not limited by the capabilities of pilots and rule out the tragic consequences of downing, so they have an advantage over conventional aircraft because, among other things, they can fly longer and without interruption, do not endanger the lives of personnel (especially pilots), which is especially important for maintaining the unit morale, also having in mind the limited number of pilots [9].

In addition, the drone downing rules out the possibility of capturing a crew member and torturing them in order to obtain information or blackmail their government. In assessing the economic aspect, UAVs are much cheaper than fighter aircraft, so even when they are downed, the damage is much smaller. On the other hand, drones are harder to detect by the opponent, which is the most rational solution for performing a specific combat task. These are just some of the considerations that have influenced many countries in the world to include drones in their military arsenal. At the same time, there is a noticeable tendency to increase the number, which indirectly indicates their possible use in armed conflicts [10].

When it comes to the negative side of the use of drones, they can be conditionally divided into logical, legal and moral aspects. In this regard, the target identification in the field is of special importance, given that the problem of identifying a terrorist or an enemy fighter often occurs in practice. Although intelligence operations, preparations, checks, identifications as well as video surveillance of a certain area are carried out in practice, there are unintended consequences such as a drone killing the allied or own troops [11]. Therefore, there is often a logical dilemma. If the drone operators are not able to recognize their own or allied soldiers, how can they distinguish enemy fighters or terrorists from civilians who usually wear similar clothes in populated areas. The analysis of this dilemma also points to the most important issue related to the suitability of using drones in armed conflicts, taking into account numerous international war and humanitarian law limitations that protect civilians.

Although the combat drones are sophisticated and precise weapons with the ability to carefully select targets, unexpectedly large number of civilian casualties has been recorded. There are no exact data, but it is considered that their share in the total number of victims is up to 20-30%. According to the available data, American drones have killed

1,551 civilians in Afghanistan, Pakistan, Somalia and Yemen since 2004, with some attacks that can be considered as war crimes. According to Pentagon documents that emerged, 90% of those killed by drones in the US operations in northeastern Afghanistan in 5 months of 2013 were accidental victims [12]. This information unequivocally indicate that drones are not truly precision weapons, given that civilians are killed in great numbers, although certain measures are being taken to reduce the likelihood of unintended casualties. In such circumstances, the concern is quite justified, as is the question of the role of the operator in the circumstances when they notice a concentration of civilians in the immediate vicinity of the target. It is also an obligation arising from the principles and actual rules of war and humanitarian law, which, among other things, protect civilians and civilian objects.

III. INTERNATIONAL LEGAL FRAMEWORK

International law has not specifically addressed the issue of drone use. They are not prohibited under international law, but their use, which is not in accordance with the principles and rules of that law, is prohibited. Although these are new weapons with new firepower and tactical capabilities, the field related to the use of drones in armed conflicts needs to be codified on a universal level, focusing on their use. This should be perceived as a way of determining the instances where the use represent war crimes or crimes against humanity. In addition, we should bear in mind that drone attacks abroad are a crime of aggression if they are not carried out with the invitation or consent of the foreign state. In this regard, there is a need to define the responsibility of individuals in addition to the responsibility of the state, because drone attacks are war crimes, which indicates the need for responsibility not only of the commander but also the direct perpetrator. The international community has not made an appropriate agreement that would regulate the trade in combat drones. One possibility could be the Missile Technology Control Regime, which has mechanisms in place to prevent the spread of missile technology, and in particular unmanned systems that can be used to deliver weapons of mass destruction. However, it is an informal agreement, not an official international agreement and as such it is not legally binding [13].

Regarding the drone regulation, the Martens Clause deserves special attention. It has its place in all important documents in this field, and it has been confirmed by the International Court of Justice. In this regard, a number of modern international conventions that have affirmed it, demonstrate its goal "to confirm the importance of international law even in cases where current international conventions do not prescribe rules that would be applied in certain situations" [14]. In addition, the said clause has its normative value and acts independently of other rules. It is one of the basic principles of international humanitarian law, such as the distinction between combatants and non-combatants, the prohibition of direct attacks against civilians and facilities, the prohibition of inflicting excessive suffering and the absence of unrestricted freedom of states to select the means and manners of waging war. In short, it is an effective tool in countering the rapid development of military technology. In other words, it has its prominent role in the application of new means of warfare that appeared after its creation or are yet to appear. Therefore, it is most often used in circumstances when anything that is not explicitly prohibited does not necessarily mean it is legal.

The debate has been going on for a long time, with the demands of numerous human rights activists and civil society organizations, to take legal measures under the auspices of the UN and ban lethal armed robots, weapons that go against the principle of humanity as one of the fundamental principles of international humanitarian law. On the other hand, the more moderate view is based on the argument that fully autonomous weapon systems should not be banned in advance just because of the autonomy in the form of independent target selection, but only if there is clear evidence that their combat engagement violates the international law of armed conflict, especially the principles of proportionality and distinctions in terms of target selection in armed engagement [15].

In addition, there are views that not only the use of autonomous weapon systems is not morally wrong, but also there is a moral obligation to observe the principles of avoiding unnecessary risks and saving limited resources. Namely, the commander should not engage a fighter plane with a pilot in an action that can be performed with equal success using a drone, because there is a clear moral obligation to apply a safer way of conducting combat operations. In

other words, it is allowed to risk the pilot's in order to successfully achieve combat objectives only when there is a justifiable reason for that. As an argument against banning autonomous weapon systems on the basis of creating asymmetry in combat capability, it is said that consistent implementation would lead to the absurd situation of banning any advancement of military technology out of sheer precaution [16]. It seems to be a one-sided view, looking to exploit robotization in modern wars, thinly veiled as concern for the reduction of human casualties. Proponents of the view that new types of weapons should not be banned automatically solely on the basis of apocalyptic stereotypes about robots prevalent in popular culture believe that there is a simple solution. States wishing to develop lethal robots and other types of autonomous military systems should act transparently in terms of plans and intentions and inform the international community and other states of the science-based benefits of autonomy, as well as establish common standards for testing and evaluating their implementation. The standards would serve to legitimize the construction of fully autonomous armed systems in a safe manner and in accordance with international law of armed conflict. In addition, a part of the professional community does not support the preventive ban because it has never proven to be an effective regulatory strategy in the history of war, instead they believe that the legal regulation of fully autonomous weapons systems is possible even within the existing international legal framework [17].

Nevertheless, Human Rights Watch has launched a global campaign for negotiations on developing an internationally binding instrument, which would in turn provide a mechanism to oversee critical functions of fully autonomous weapons systems. According to this global non-governmental organization, the Martens Clause, included in the Geneva Conventions, Additional Protocol I and in the preamble of the UN Convention on Certain Conventional Weapons, provides a sufficient legal basis for placing obligations on states to always consider moral implications of possible application when developing new military technologies. The part of the professional and civil public that advocates a mandatory ban refers to the content of the Martens Clause because it gives precedence to the laws of humanity and public conscience in cases when the protection of fighters and civilians from new war circumstances is not covered by international law. New circumstances of war certainly include new type of weapons, however, only if the nature of these weapons would be reasonably considered to be contrary to the laws of humanity and public conscience [18].

Fully autonomous weapon systems would not be able to apply the laws of humanity and public conscience in a combat operation, since these principles require human compassion - inherent only to human kind. In a combat operation, the application of the principles of humanitarian law is aimed at minimizing the damage to fighters and civilians by preventing the arbitrary use of armed force and aimless killing. Therefore, the application of the two principles implies an assessment of all the complexities of the concrete context of the battle, which the programmed algorithms of operation of lethal robots can hardly predict. Opponents of the introduction of fully autonomous weapon systems emphasize that robots will never be able to match the human ability to instantly assess the degree of danger coming from an enemy fighter or civilian, or to feel respect for the importance of someone else's life [19]. Despite all efforts, the problem of regulating the proliferation of combat drones, through universal international agreement on their trade, remains open.

IV. Conclusion

The debate over the advantages and disadvantages of drone use is not calming down, with a sharp division in the predictions of possible ethical consequences that could result from the interaction between a human and a fully autonomous system. Nevertheless, it is evident that drones are not ordinary weapons, and in the years ahead, drones will have increasing flight autonomy, even estimated as practically infinite, which will enable them to reach any point on the planet. In addition, the weapons on these platforms are predicted to be smaller and more destructive. Although it is a precise weapon, an increased number of civilian victims is evident. In addition to the aforementioned, drone attacks are also a way of targeted killings or death penalty without prior court proceedings, without knowing who and why ordered the execution. Apart from the illegal killing of the immediate victims of the attack, the use of drones violates human rights of many other people, with some

of them accidentally losing their lives, dying from injuries or remaining permanently disabled. Despite the specifics and stated dangers of the use of drones, international law has not dealt specifically with this issue, although it is evident that their status should be codified as soon as possible and a universal international agreement should be concluded to ensure the prohibition of combat drones proliferation. This is of particular interest to the international community, especially if a further development of the possibility of using UAVs for war purposes is taken into account. Otherwise, there will be new interpretations and, among other things, an expansion of the notion of fighters as legitimate targets and more civilians engaged in hostilities who are killed. This can result in changes in the norms of international law, and ultimately lead to armed conflict without any rules and mercy for any participant.

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