

Drone Dialogues Geneva

Outcome Report of the Geneva Informal Roundtable
Meeting on Military Drones in Africa



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Cover photograph

Mural of a drone, Geneva center, 2018. ©Wim Zwijnenburg

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Informal Roundtable Meeting on Military drones in Africa

On 25 April 2022, PAX and the Geneva Centre for Security Policy (GCSP) organized an informal roundtable meeting on military drones in Africa. The purpose of this meeting was both to engage with representatives from Permanent Missions to the United Nations (UN) in Geneva on recent developments in the field of uncrewed systems and to function as a space for dialogue on the unique challenges arising from the growing use of these technologies for military and policing operations. The meeting also sought to explore opportunities to expand the role of the African Union and African States in the wider debate on the use of drones in military and counterterrorism operations. At the meeting, a wide array of experts elaborated on the legal, military and export control implications around drone use and proliferation. The meeting was

Developments around the export and use of drones in Africa

The first session shed light on how military drones have been used on the African continent over the last three decades. The presentation outlined the following points:

- Throughout the 1980s and 1990s, drones were merely used for intelligence, surveillance, and reconnaissance (ISR) purposes. It was with their first armed use - allegedly in the late 1990s by Israel but confirmed in 2002 by the United States (US) in an extrajudicial execution of a suspected Al-Qaida fighter in Yemen - that drones gained their notoriety, in particular in secret cross-border operations, though later also in regular military operations.
- The following decades saw a sharp increase in armed drone use by states, with currently nearly 30 states operating armed drones.
- Around 2014, there was a growing use of commercial weaponized drones by non-state armed groups (NSAGs), using more sophisticated and high-tech drones.
- Drones have become an essential tool in military operations due to their ability to improve situational awareness, strike a target with more precision and be persistently present in operation areas, as well as the lowered risk to one's own troops and their low cost.
- Relevant examples of drone use are the operations conducted by the US and France in the Sahel, the drone bases in the Horn of Africa through which the US carries out attacks against armed groups in Yemen and Somalia, the expansion of the Nigerian drone fleet in their fight against Boko Haram, the use of armed drones by various external actors in the war in Libya, and the deployment of armed drones by the Ethiopian government in the Tigray conflict. The increased interest in, purchase and use of armed drones by various North African governments

(for example Algeria and Morocco), states in the Sahel and other African states (such as Rwanda) were also mentioned.

- Ongoing concerns expressed by civil society groups are, among others the lack of clear legal positions on armed drone use, and accountability and transparency mechanisms by states, the lowering threshold of the use of lethal force, and the rapidly expanding use of armed drones by NSAGs.
- In 2016, the US, supported by 54 countries, published a [Joint Declaration](#) on the export and subsequent use of armed drones, which was followed by a process leading to draft International Standards for the export and use of armed drones. Under the Trump Administration, this process was stalled with no known updates. Against this closed process by a small group of armed drones users, NGOs and experts have called for a multilateral and inclusive dialogue that should result in robust and progressive international standards, addressing their armed drone use, transparency and accountability mechanisms, and future proofing arms export controls.

A participant was interested in the degree to which NSAGs have laid their hands on armed drones. Here, it was noted that NSAGs, like the Houthi rebels in Yemen, initially used weaponized commercial drones, but with support from Iran, are now producing their own kamikaze drones using commercially available parts and components. These drones can have a range of 1500 km and have effective explosive payloads which are currently actively used to target civilian and energy infrastructure in Saudi Arabia and the United Arab Emirates. As commercial drone markets develop it is expected that in the future more NSAGs will be able to acquire military type grade drone capabilities. Another question related to the different multilateral discussions around armed drone use ^{1[OBJ]}, with one of the participants noting that, apart from sporadic recognition of increasing concerns, efforts towards improved regulation of armed drones seem to have stalled in these multilateral institutions and asked what role the international system should have in this discussion. In response, the expert stressed the importance that states clarify legal positions on the use of lethal force, in particular under international human rights law, and for States to publicly push back against attempts to undermine the ruling interpretation of international legal principles around the use of force. This is particularly important as practices by some states could set a disturbing precedent that undermines regional peace and security and risks affecting standing legal principles. ♦

¹ See the UN Special Rapporteurs reports of 2012, 2013, 2014 and 2020 on extrajudicial executions and the subsequent discussion in the UN Human Rights Council, the informal discussion in the UN Security Council and the UNSG's reports on Protection of Civilians, informal meetings and discussions during Arms Trade Treaty discussions, the discussion by the African Commission on Human and Peoples' Rights and the Development of a Draft Common Position in the European Union.

Legal overview of the various aspects of military drone use

The second session of the day served to provide an overview of the legal framework that regulates armed drone use. The following points were highlighted:

- There is no international regulatory framework that specifically addresses armed drone use. It is rather governed by already existing international legal regimes, namely the law governing the use of force (*jus ad bellum*), International Humanitarian Law (IHL) in the case of armed conflicts, and International Human Rights Law (IHRL) which applies during times of peace but also continues to apply during times of war. Firstly, it should be determined whether the resort to the use of force as such is legal and secondly, whether the specific manner in which drones are deployed is lawful under IHL and IHRL.
- Depending on a specific situation at hand, both IHL and IHRL may apply to counter-terrorism operations. The assessment about the legal framework that governs a particular situation should be done on a case-by-case basis. The speaker also outlined the geographical scope of IHL in situations of international armed conflict (IAC) and non-international armed conflict (NIAC) and clarified not to support an interpretation of IHL where, in a NIAC, any movement by members of non-state armed groups across borders would automatically expand its geographical application beyond the territory of the country in question.
- In situations of armed conflict, any use of force must abide the principles of distinction, proportionality, and precaution. With respect to the principle of distinction, the mere carrying of a weapon would not in itself be sufficient to determine that an individual may be legitimately targeted.
- Considering that drone systems are capable of respecting IHL, the precision of the targeting depends on the information provided to an operator, the commander, and the willingness to abide by the rules.
- IHL imposes an obligation to respect and ensure respect for IHL. The obligation to ‘ensure respect’ extends to third parties as well. In light of this obligation, all States, including those who are supplying arms and logistics, and states sharing data, have a legal obligation to consider the risks of weapon systems which are being sold or transferred and used by parties to an armed conflict being used to carry out violations of IHL. Third States have a positive obligation to do all in their power to ensure that parties to an armed conflict abide by IHL.
- IHRL, and in particular the right to life, is fundamental because it provides a stronger level of civilian protection than IHL.
- The international community should discuss armed drones use in a more comprehensive manner with the inclusion of their legality under *jus ad bellum* as well as other implicated values such as the right to be free from oppression.
- There is a discriminatory aspect to armed drone use both in the communities targeted by deadly strikes – predominantly from the Middle East and Africa – and the double standards applied to African states vis-à-vis Western drone powers in discussions around who should be allowed to use armed drones for national security purposes. There is a need for decolonization of the current international system and discussions around disarmament as part of a more comprehensive approach to regulate armed drones.

One of the participants asked whether the weaponization of drones should be banned altogether instead of making war more efficient; one of the experts replied that the question of legality and legitimacy of armed conflicts is one of *jus ad bellum*, and IHL does not provide answers to this. IHL has been created for specific situations of extreme violence, as these continue to happen across the globe, in order to limit the consequences on the civilian population and others hors de combat, as much as possible. Another question related to past discussions held in the UN Human Rights Council on armed

drones and what had come out of this dialogue, and whether it was needed to enlarge the scope. Here, another expert noted that the approach to justifying the targeting and killing of civilians in discussions is often that of IHL, whereas other frameworks like IHRL and in particular the right to life should also be applied. ♦



Non-state actors and military drones

The third session elaborated on the security implications of the use of military drones by and against non-state armed groups as well as its impact on the civilian population, using Nigeria as a case study.

The following points were addressed:

- In Nigeria, drones purchased from China were initially used by the government for ISR purposes only. Later, the government also started to increasingly use armed drones for counter-insurgency purposes.
- The use of drones by NSAGs, both for the gathering of intelligence and for the carrying out of attacks, has also been growing steadily. Drone attacks by such groups, including the Islamic State in the West African Province (ISWAP) known for using off-the-shelf commercial drones, are still less precise than those carried out by states but the weaponizing of their drones is becoming increasingly sophisticated and professional. The ISWAP insurgency is known for using off-the-shelf, do-it-yourself drones for harassing military units, reconnaissance, and media operations. As for drone attacks by NSAGs, a participant noted that NSAGs are exhibiting copycat behaviour.
- With conflicts mostly existing within border communities with proximity to other terrorist groups in the Sahel, as well as the expanding conflicts in the North-West and North-Central of Nigeria, the use of drones by NSAGs in Nigeria is also expected to grow even further.
- With respect to the use of drones by the Nigerian government, a lack of understanding of the contextual and cultural sensitivities of certain regions has increased the risk of targeting errors, leading to civilian victims, who are often neglected by the government. This has also led to a trust deficit in security institutions.
- There are also privacy concerns around the use of drones for ISR purposes.
- Recommendations made to the Nigerian government were: (i) articulate a national policy on drones, (ii) adequately implement laws and policy to, among others, ensure accountability in cases of unlawful drone strikes, (iii) take measures to protect privacy and human rights, (iv) instead of importing drones, produce them in Nigeria in order to mitigate costs, and (v) ensure sustainability and properly train security personnel on how to use drones.

The session ended with a comment by one of the participants that Nigeria does not have the capabilities to adequately manage military operations and that drones are used to fill this gap. ♦

Arms export control regimes in relation to military drones and technology

After a lunch break, the roundtable meeting continued with a session around existing export control regimes and to what extent these are effective in regulating the proliferation of military drones. The following points were highlighted:

- More and more countries have shifted their focus from crewed to uncrewed aircraft and driven by the main producers and exporters of armed drones: the United States, Israel, Turkey and China.
- All the three main arms control regimes – the Missile Technology Control Regime (MTCR), Arms Trade Treaty (ATT) and the Wassenaar Arrangement - suffer from the limited extent of their membership: none has worldwide coverage. This limited participation coupled with a mismatch between existing provisions and technological advances has led to weak control regimes, further exacerbated by the growing number of states that have started to dominate drone production and proliferation while not being members of existing control regimes. In this context, there is a need to start negotiations and campaigns to ensure the participation of all drone-producing and exporting countries and to bring them into the fold of the relevant regimes.
- In this respect, recommendations made were: (i) intensify efforts to promote the universalization of the ATT, (ii) update the MTCR Guidelines and Annex and include specifications that cover most lethal armed drones, since its current weapon classification is outdated, (iii) include potential drone recipients that are not MTCR members in MTCR discussions, (iv) widen membership of the Wassenaar Arrangement and MTCR and have their members engage with key non-members such as China, Iran, Iraq, Israel, and Pakistan, to encourage their membership or obtain their commitment to guidelines on armed drone export and (v) resurrect the Joint Declaration of 2016
- An interesting innovative effort is UN Security Council Resolution 1540, which prohibits exports of nuclear, chemical, or biological weapons to non-state actors, which includes the use of drones as a delivery vehicle and, other than the other regimes, applies to all member states.
- As we develop regulations around export, we should also include the accountable, responsible, and ethical use of lethal force, and not lose sight of transparency. The current regimes are, however, not sufficient to address all drone related issues.
- The Joint Declaration of 2016, developed under the Obama administration, with South Africa, Mali, the Seychelles, and Nigeria as African signatories, does not create global standards as such, but rather calls for them to be developed. The process that followed and resulted in the current draft international standards on armed drones, has not been inclusive to civil society, however, and in some ways undermined existing control regimes. The process moreover did not include a reflection on past bad practices and an acknowledgment of the harm resulting from these. The Declaration nevertheless really demonstrates an appetite to step up efforts towards national standards and international norms. African states have an opportunity to take up a leading role in such efforts.

A participant raised the question of how especially governments can be held responsible for unlawful uses of force with drones, considering that states often get away with violating regulations. One of the experts answered that international regulations are still valuable, despite wilful violations of them, and that people should be calling out their own governments. A lack of compliance may sometimes be

intentional, other times due to a lack of knowledge on the implementation of international norms. In response to a question on whether the current conceptualization of arms control frameworks is sufficiently comprehensive and reflective of values from people from the Global South, the expert noted the inherent racism in decisions on western military operations and highlighted how arms transfers place responsibilities on both exporting and importing states. When asked about the regulation of future technologies, another expert explained that this need very much depends on capacities and use, becoming more pressing when used against civilian targets or infrastructure. Advances in swarm technology should be part of the discussion on lethal autonomous weapon systems. The expert also expressed concerns about export control in light of the sudden abandonment of long-standing principles prompted by the rush to transfer arms to Ukraine. ♦

Ethical concerns surrounding military drones and the need for accountability and transparency

The last panel explored the implications of emerging technological advances on military drone use as well as the ethical concerns surrounding these trends. The experts participating in this session noted the following points:

- Efforts towards shared understandings and international standards have been hampered by the fact that there is no single international mechanism focusing on drones. Rather, multiple mechanisms exist regarding certain aspects related to drones, including exports, transfer, and lethal autonomous weapon systems (LAWS).
- Different technological developments could change the abilities of drones (through the use of new materials, sensors, and processing power) and improve their functionalities (through improvements in design, miniaturization, navigation, and robotic learning). Military doctrines, standards and norms need to adapt to the current and evolving use of military drones and ensure these keep up with technological trends.
- As military and civilian systems are affected by similar technological innovations, the blurring of the lines between these systems will continue, meaning that actors that are not affiliated with the military will continue to have access to systems sharing similar technical capabilities.
- In addition, a lot of technological innovation is driven by the civilian sector, including dual-use items. Military actors may be prompted to use smaller cheaper platforms alongside the traditional large and expensive military platforms, or in some cases replace these larger platforms altogether. Secondly, it means that we can expect an increase in access to innovation and technology pertaining to drones to a broad spectrum of actors.
- It is important to recognize the rapid evolutions in this domain and consider what they may mean in terms of national, regional, and international security.
- Challenges in discussing the ethics of drone use include the question of whether drones as such even pose unique moral concerns, the entanglement of effectiveness and ethics in justifications for drone strikes, the prioritizing of the law over ethics, and the lack of transparency around possession and use.
- The ethical framework around Just War Theory (JWT) is centred around minimizing harm to the innocent in the *jus ad bellum*, *in bello* and *post bellum* phases. The framework of military ethics is based on virtues and values. Ethics requires training and time, and in military circles energy should be put into creating ethical 'muscle memory'.

- We should move from a capability approach to a practice approach, in the sense that we should not view technologies as mere instruments: they shape our thinking and practice such as signature strikes where targets are selected based on data.
- Claims that drones are discriminative and precise in spite of high civilian casualty rates, the deliberate obscurity in reporting on casualties and their identities, the risk transfer from the perils of conflict to civilians, the instilled an atmosphere of fear and hostility and the replacement of human 'understanding' on the ground by technological insights, are ongoing ethical challenges.
- Drones also appeared to have lowered the threshold to use force, and instead of an effective response to insurgency appear to have prompted the radicalization of targeted communities instead. Moreover, the ongoing lack of transparency surrounding drone practice – for example with respect to the US drone bases on the African continent – has seriously hampered accountability for unlawful drone strikes.
- We should take the time to think ethically. It is about asking the right questions (e.g., can drones contribute to peace?) instead of being allured by shiny and fast technology and technological knowhow.

When asked about the use of drones by NSAGs in Niger in the next 10 to 15 years, one of the experts noted that when looking at the future it is important to consider the advanced technology already in use by non-state armed groups, such as IS. The speaker added that it is very hard to make such predictions as outcomes will depend on a variety of factors, including our relation to technology and how it will impact production. One participant also asked about the role of ethics in the African context, in particular with respect to the values these are based on which may have similarities across continents but are not necessarily the same. Here, another expert noted that values of progress/innovation and money always hover above all other values, and argued for a foundation of responsibility: actors should take responsibility for their own actions and we should be able to call upon that responsibility. ♦

Recommendations

The presentations and discussions with input from African states underscored that military drone use and proliferation are gaining more political traction, both nationally and regionally. Based on these conversations and wider research efforts, PAX provides these key recommendations for (aspirational) military drones users:

- States using armed drones should publish their rules and procedures to show full compliance with international law, including preventing, mitigating, and investigating all unlawful deaths, and more broadly all civilian harm.
- States must not be complicit in unlawful drone strikes, for example, by providing logistical support or data used to track down targets. All states should work on transparency through the sharing and publication of information that can contribute to the development of restrictive norms of behaviour, the prevention of harm and the strengthening of international law. Additionally, states that use armed drones in counter-terrorism operations must provide timely public information, on a case-by-case basis, on the legal and factual grounds on which specific individuals or groups are targeted and provide information on the number of casualties and their identities.

- States involved in drone strikes must conduct prompt, thorough, independent, and impartial investigations into all allegations of unlawful death or civilian harm and publish the results of each investigation in a timely manner.
- States must ensure that the rights of victims of drone strikes are upheld, including by ensuring effective access to judicial remedies and reparation.
- States must enact stricter controls on the transfer of military and dual-use drone technology. This includes standardizing categories of drones and related technology in export control regimes and treaties on national, regional, and international levels, and applying clear criteria to prevent irresponsible transfers.
- States should participate in a global debate in relevant international forums, including the UN General Assembly, the UN Human Rights Council as well as regional forums such as the African Union, so as to work towards broader understanding of, and support by states for, adhering to international legal principles around the use of lethal force with armed drones, and stricter control of transfers of drones and drone-related technology.

Further readings on military drones

- Geneva Centre for Security Policy (GCSP), *Regulating and Limiting the Proliferation of Armed Drones: Norms and Challenges* (2020), available under: <https://www.gcsp.ch/publications/regulating-and-limiting-proliferation-armed-drones-norms-and-challenges>.
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