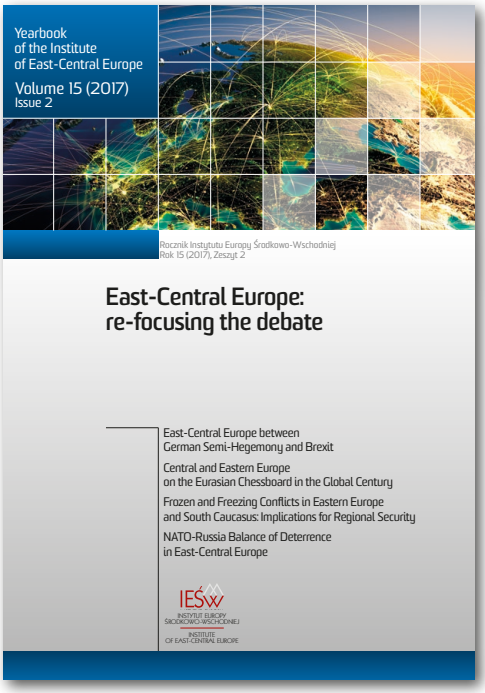

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Drones in War: The Controversies Surrounding the United States' Expanded Use of Drones and the European Union's Disengagement

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Drones in War: The Controversies Surrounding the United States' Expanded Use of Drones and the European Union's Disengagement*

Abstract: The administration of President Donald Trump has embarked on a mission to redefine the guidelines for the deployment of drones, thereby altering significantly the policy set by his predecessor. Though early in Trump's presidency, his administration has failed to establish a clear doctrine on the use of drones for military use. By creating such a doctrine, the United States (US) as a military behemoth would have the opportunity to set the terms of the debate and create the necessary international attention and cooperation on establishing universal guidelines on drone warfare. Other major powers, most notably the European Union (EU), have lagged the US on this issue. By reference to the lessons drawn from the US engagement with armed drones, this paper sheds light on key issues that will inform the debate on the international armed drone use regime. It then queries the prospects of the EU and its member states joining the efforts geared toward establishing internationally recognized armed drone use regime. Recommendations on how the US and the EU could collaborate in this domain follow.
Keywords: Unmanned Aerial Vehicles (UAVs), drones, warfare, terrorism, EU, North Atlantic Treaty Organization (NATO)

Introduction

In the early months of his presidency, the Trump administration has embarked on a mission to redefine the guidelines for the development and deployment of unmanned aerial vehicles, also known as drones.

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There are several questions and issues that define the debate on the use of drones. The most contentious of them include whether governments have the legal authorization to use armed drones, and how combatant status is defined under current international law. Another issue that deserves attention in the same debate is the "culture of secrecy" that surrounds the deployment of armed drones. In his second term, in a major speech in May 2013, Obama promised significant improvements in openness and scrutiny of US drone strikes. In contrast, the Trump administration has since reversed that policy, thereby reopening a turf war between the Central Intelligence Agency (CIA) and the Pentagon. This policy shift is problematic since it loosens the rules of engagement on targeted killing outside conventional war zones. Considering that other major actors on the international scene, including the EU, have lagged the US on matters related to armed drone use and the use of armed drones has proliferated worldwide, the loosening of the rules of engagement may have far-reaching consequences for safety and security globally. Greater engagement of the EU in the debate on armed drone use and the regime is in this context imperative; however, progress is slow. In 2014, the European Parliament (EP) passed a resolution on the use of armed drones.[1] On several occasions, the need to set an armed drone use regime was pointed out by the EP. Still, the EU-level debate on this issue is nascent.

The US is the unquestionable leader in UAV technology; it is the leader on the drone market, and constantly expands its experience with the use of drones for military purposes. The EU lags in all these domains. However, since the use of armed drones remains largely unregulated and as advances in technology push the price of armed drones down, thereby making them available to an increasing number of state and non-state actors, it is imperative that an armed drone use regime be established. The salient question is "if" and "when" a coordinated US-EU effort at devising a harmonized armed drone use regime is feasible. The objective of this paper is to address this issue. The argument is structured as follows. First, a few points on the features

1 EP, 'European Parliament resolution of 27 February 2014 on the use of armed drones', Resolution 2014/2567(RSP), Strasbourg, February 27, 2014, http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2014-0172+0+DOC+XML+V0//EN [2017-09-17].

and the evolution of the drone market are made. By means of outlining what is at stake, in the next section the intricacies and contentious issues related to armed drone use are discussed. In the following part, the reasons behind the EU's relative "disengagement" are discussed. Finally, the prospect of a US-EU joint effort at devising an armed drone use regime is outlined. Conclusions and recommendations follow.

1. Features and Evolution of the (Armed) Drone Market

Armed drones were first used in the Balkans wars in the 1990s. The utilization of this weaponry has dramatically increased since then. Drones have been used regularly in Afghanistan, Iraq and Libya. The U.S. under President Obama had also built up a network of about a dozen drone bases abroad, ranging from Niger to Kuwait. In October 2016, the Pentagon announced that Specially Designated Global Terrorist (SDGT) Farouq al-Qahtani (also known as Nayf Salam Muhammad Ujaym al Hababi), a senior al-Qaeda leader in Afghanistan, had been killed in a drone strike in Kunar, Afghanistan. In February 2017, a high-level al-Qaeda leader in Syria, Abu al-Khayr al-Masri was killed in Syria.[2] This has been part of a greater international response in the sub-Sahara region.

Originally developed for military purposes, drones increasingly are making their way into the civilian sector, constituting a sizable and growing market with an expanding range of applications. While it is difficult to define the dynamics of this market, estimates suggest that in the EU alone, civil drones could make up to 10% of the EU aviation market and generate about 15 billion EUR per year. Given the fact that the civilian-use drone industry is research-and-development (R&D) intensive, the European Commission's estimates suggest that by 2020 the drone industry could generate about 150,000 jobs, creating spillover to related high value-added industries.[3] A similar case could

2 H. Agerholm, 'Donald Trump gives CIA power to carry out its own drone strikes', *The Independent*, March 14, 2017, http://www.independent.co.uk/news/world/americas/donald-trump-cia-power-drone-strikes-military-a7628561.html [2017-07-07].

3 M. Juul, 'Civil drones in the European Union', EPRS Briefing, October 2015, European Parliamentary Research Service (EPRS), http://www.europarl.europa.eu/RegData/etudes/BRIE/2015/571305/EPRS_BRI(2015)571305_EN.pdf [2017-08-18].

be made for the US drone market. The major difference is that—unlike in the EU—the US drone market is driven mainly by developments in the military drone sector. In the 2017 budget proposal alone, the US military has allocated about $4.61 billion for drone-related spending, including drone research and development.[4]

Military drones fall into two broad categories: those that are used for reconnaissance and surveillance purposes, and those armed with weapons for military purposes, i.e., armed drones. A total of 78 countries now deploy surveillance drones. More than 20 countries either have or are developing armed drones.[5] In part, the exponential growth in the use of drones over recent years is to be attributed to the fact that unlike manned aircraft, drones can fly long missions, e.g., a British Zephyr drone can fly non-stop for nearly 340 hours[6]. In addition, drones can be armed, which suits their use for military operations; they are also less costly and have no (immediate) military casualties. Although the cost per flight hour varies by drone type, Predator and Reaper drones cost about $2,500-3,500 per flight hour, while larger armed systems, such as the Global Hawk, cost about 10 times as much.[7] Given the extraordinary demand for UAVs, hundreds of companies are currently developing small and large-scale drone technology. Teal Group's 2015 market study estimates that UAV production will soar from the current worldwide UAV production of $4 billion annually to $14 billion, totaling $93 billion in the next 10 years. Military UAV research spending would add another $30 billion over the decade.[8] Other estimates are even more bullish, suggesting the global

4 Center for the Study of the Drone, 'Drone Spending in the FY17 Defense Budget', *Features*, February 15, 2016, Bard College Center for the Study of the Drone, http://dronecenter.bard.edu/drone-spending-in-the-fy17-defense-budget/ [2017-09-17].

5 W.J. Hennigan, 'A fast growing club: Countries that use drones for killing by remote control', *Los Angeles Times*, February 23, 2016, http://www.latimes.com/world/africa/la-fg-drone-proliferation-2-20160222-story.html [2017-09-17].

6 Airbus, 'Zephyr, the High Altitude Pseudo-Satellite', *Portfolio*, 2016, http://defence.airbus.com/portfolio/uav/zephyr/ [2017-09-17].

7 M. Southworth, 'What are Drones?', http://fcnl.org/images/issues/afghanistan/Drones_Questions_and_Answers.pdf [2013-11-23].

8 Ph. Finnegan, 'UAV Production Will Total $93 Billion', August 19, 2015, Teal Group Corporation, http://tealgroup.com/index.php/teal-group-news-media/item/press-release-uav-production-will-total-93-billion [2017-09-17].

market for drones can be expected to reach $22.15 billion by 2022.[9] Moreover, according to a new report from Statistics MRC, while the military market for drones is only a subcategory of that market, military usage is expected to grow. Indeed, the dynamics of the military drone market is increasing, and as the price of drone technology falls, armed drone use proliferates.

For instance, in February 2016, a Nigerian military crew used a Chinese-built Rainbow drone against Boko Haram, an extremist militia allied with Islamic State, in northeastern Nigeria's remote Sambisa Forest. Although the news did little to alter the regional balance of power, Nigeria thus joined the small but fast-growing club of countries utilizing armed drones for targeted killing. While some countries, including Russia and Iran, have designed and built their own missile-firing drone fleets, India and Jordan, reportedly bought theirs from Israel.[10] "It is a good illustration of how this technology has gone global, what was recently considered abnormal is the new normal of technology and war."[11] Over time, such developments could significantly alter the balance of power in certain regions. Therefore, undertaking initiatives to control drone usage *now* could hedge against this worrisome trend in the future.

Drone technologies are expected to accelerate as a European export product, while Asia and the Pacific are expected to see the most regional growth in the global drone market.[12] Israel reigns as the world's top exporter of military drones, accounting for 60 percent of international drone transfers in the past three decades. China has taken the lead in selling armed drones and is not far behind in overall military drone sales.[13]

9 Ch. Diamond, 'Global drone market expected to surpass $22B by 2022', May 3, 2017, *Defense News*, https://www.defensenews.com/air/2017/05/03/global-drone-market-expected-to-surpass-22b-by-2022/ [2017-09-17].
10 W.J. Hennigan, op. cit.
11 Ibid.
12 Ibid.
13 J. Hsu, 'China Profits as US Hesitates on Selling Armed Drones', *Discover Magazine*, June 30, 2017, http://blogs.discovermagazine.com/lovesick-cyborg/2017/06/30/china-profits-us-hesitates-selling-armed-drones/#.WZmg_4-cEiR [2017-08-20].

> "Drones are already high on the list of European priorities: France, Greece, Italy, Spain, Sweden, and Switzerland are working on the 'nEUROn' drone; Germany and Spain on 'Barracuda'; the UK is developing the technology demonstrator 'Taranis'; France and the UK in 2016 agreed to invest £1.5 billion in a new combat drone; France, Italy, and Germany began a drone partnership in 2015."[14]

Advancements in drone technology, related developments on the drone market, a corresponding increase in deployment capacities, and a growing number of state and non-state actors in the field have left regulators worldwide unprepared, thus leaving the field largely unregulated. This is perhaps one of the greatest challenges that besets the still nascent debate on armed drone use. Undeniably, to produce valid outcomes in the form of a workable drone use regime, several – otherwise contentious – factors will have to be considered in that debate.

2. Armed Drone Operations: Contentious Issues

As the use of armed drones intensifies and the debate on a prospective armed drone use regime is only about to start, several questions regarding their use and implications are raised. These questions revolve around the following issues: secrecy and transparency related to the use of armed drones; legality of their use and accountability of the implications of their use; control over unauthorized use of armed drones and access to drone technology by non-state actors; mental health issues of military personnel operating armed drones; ethical dimensions of the evolving nature of combat; extraterritoriality[15] and collaboration[16] with host countries' authorities; the issue of "blowback", and finally, the international armed drone use regime. In the following sections, a few of these highly contentious and complex issues will be discussed briefly.

14 U.E. Franke, 'A European approach to military drones and artificial intelligence', *ECFR Essay*, June 23, 2017, http://www.ecfr.eu/article/essay_a_european_approach_to_military_drones_and_artificial_intelligence [2017-09-15].

15 Cf. J. Pejic, 'Extraterritorial targeting by means of armed drones: Some legal implications', *International Review of the Red Cross*, Vol. 96, No. 893, 2014, pp. 67-106.

16 Cf. The Guardian, 'Italy to allow US drones to fly out of Sicily air base for attacks on Isis', *The Guardian*, February 22, 2016, https://www.theguardian.com/us-news/2016/feb/22/italy-us-military-drones-isis-libya-sicily-base [2017-08-18].

Secrecy, Transparency, Accountability

Although the US had presented a public move during the Obama administration to bring US drone policy more out of the shadows, the US continues employing armed drones and executing targeted killings in several locations, including Afghanistan, Pakistan, Yemen and Somalia. This practice presents serious international legal questions. The Obama administration had proposed, and had taken steps towards, the Pentagon taking over much of the drone operations from the CIA, thereby making the drone strikes regime more transparent. Under the drone policy of the Obama administration, the CIA could locate a suspect, but the armed forces would execute the actual strike. Unlike the Pentagon, the CIA does not need to divulge drone strikes or any resulting civilian casualties. The day after President Trump took office, his administration returned this authority to the CIA. The powers Trump has granted to the CIA restore much of the authority it once had, unravelling the 2013 presidential policy guidance of President Obama and returning the former level of secrecy to drone operations.

The US has been a leader in driving the UAV revolution and its use in the field. According to a 2015 unclassified report, the US Department of Defense now has well over 7,000 aerial drones,[17] compared to just 50 a decade ago. In 2012, the US Air Force trained more UAV pilots than jet pilots for the first time in history. This increase in expenditure has played itself out in the battlefield. President Bush ordered about 50 drone strikes, but under Obama's watch, there had been roughly 500 strikes. In addition, while Bush had used armed drones mostly in Pakistan, Obama deployed them in Yemen, Libya and Somalia.[18] By at least one measure at this point in his presidency, Trump has been more interventionist than Obama, i.e., in authorizing drone strikes and special operations raids in non-battlefield settings, namely, in Pakistan, Yemen and Somalia.[19]

17 Z. Keck, 'China Is Building 42,000 Military Drones: Should America Worry?', *National Interest*, May 10, 2015, http://nationalinterest.org/blog/the-buzz/china-building-42000-military-drones-should-america-worry-12856 [2017-09-17].

18 D. de Luce, 'Obama's Drone Policy Gets an "F"', *Foreign Policy*, February 23, 2016, http://foreignpolicy.com/2016/02/23/obamas-drone-policy-gets-an-f/ [2017-09-17].

19 M. Zenco, 'The (Not-So) Peaceful Transition of Power: Trump's Drone Strikes Outpace Obama', *CFR Blog*, March 17, 2017. https://www.cfr.org/blog-post/not-so-peaceful-transition-power-trumps-drone-strikes-outpace-obama [2017-07-20].

During President Obama's two terms in office, he approved 542 such targeted strikes in 2,920 days, i.e., one every 5.4 days. From his inauguration through today, President Trump had approved at least 36 drone strikes or raids in 45 days, i.e., one in every 1.25 days. These include three drone strikes in Yemen on January 20, 21 and 22, 2017; the January 28, 2017 Navy SEAL raid in Yemen; one reported strike in Pakistan on March 1, 2017; more than 30 strikes in Yemen on March 2 and 3, 2017; and at least one more on March 6, 2017.[20]

Legality, Extraterritoriality, International Collaboration and Blowback

There still are no internationally agreed rules on targeted killing outside conventional war zones. Restricting the use of drones worldwide will likely reduce future conflicts. Whether drone use is *legally authorized* depends on the location and purpose of a given strike. In specific "declared" combat zones, i.e., Afghanistan, drone use has *clear rules of engagement*. According to the UN Charter, countries can use force for self-defense. Since the US had solid international legal footing for attacking Afghanistan after 9/11 in self-defense, critics have argued that in areas where the US is not involved in armed conflict, it cannot lawfully resort to military force. The US Congress authorized the use of military force after 9/11, which allowed the president to target those who "planned, authorized, committed, or aided the terrorist attacks" of 9/11 – which interpreted to mean al-Qaeda. Still, some observers have questioned whether drone strikes are justified under the post-9/11 authorization and suggest, therefore, that they would require additional congressional authorization. In less clear cases, such as undeclared combat zones, e.g., US drone use in Pakistan or Yemen, the US is expected to work with the government of the country in which it operates drones, abiding by a key exception to the Article 2(4) of the UN Charter prohibition on the use of force.

The Pakistani government has, at times, reacted angrily to what they view as unilateral actions by the US on their territory, which is a significant lapse in meeting the requirement of the use of force being carried out with the consent of the "host" state. Such long-term damage to alliances and to US national interest in this case is known

20 Ibid.

as "blowback", i.e., incidents that arise later as a latent result of actions taken today. Whereas the CIA in the 1980s was "secretly" arming the mujahedeen fighters, led by Osama Bin Laden, against the Soviets in Afghanistan, it is well-known that some of these so-called freedom fighters later crafted the deadly attacks of 9/11. Today, this "blowback" could later appear in Libya, Somalia, Pakistan or Yemen, that is, residents of these countries might internalize the distress and hatred stemming from the hundreds of drone strikes that have taken place in their country over the last decade. This is especially true considering the scale and toll of the drone strikes. Specifically, while the Obama administration estimated in July 2016 that ill-aimed drone strikes had killed as many as 116 civilians in Libya, Somalia, Pakistan and Yemen between 2009 and 2015, independent analysts suggested the toll was three times as high.[21] Critics of the targeted drone program question whether what the military calls "collateral damage," casualties involving women, children or other civilians, creates more militants than it kills. In other words, valid concerns have been raised that drone strikes may have led to an increase in the number of recruits to terrorist organizations in areas exposed to drone strikes. To present the issue differently, could the spread of jihadist organizations and militant attacks throughout the world serve as evidence that drone-executed targeted killings are exacerbating the problem?

Health Issues

While the British and US Reaper and Predator drones are physically in Afghanistan, control of them is via satellite from a US Air Force base outside Las Vegas, Nevada. This is likely a game-changer. The use of this type of weaponry and technology allows the point of critical human decision-making to move physically *off* the battlefield and, increasingly, chronologically away from the time of kinetic action. Compared to other weapons' systems and military strategies, drones have particular advantages, such as the ability to loiter over targets for long stretches of time, to strike particular targets and to eliminate

21 The Guardian, 'Obama claims US drones strikes have killed up to 116 civilians', *The Guardian*, July 1, 2016, https://www.theguardian.com/us-news/2016/jul/01/obama-drones-strikes-civilian-deaths [2017-09-17].

the risk of casualties and prisoners of war. Therefore, these capabilities lower the threshold for policymakers to resort to using force.

Perhaps as war-making becomes safer for one side at least, i.e., because of the removal of soldiers from the actual horrors of war, and mobilization less difficult, there is a very real danger of losing the deterrent that is such horror. Several critics, however, have indicated that perhaps this danger is indeed overblown.[22] A 2010 study of Air Force personnel found that 17 percent of Predator or Reaper drone operators, and 25 percent of Global Hawk operators, show signs of what the Air Force terms "clinical distress". This broad term includes depression, anxiety and other symptoms that interfere with job performance and/or disrupt family life. For comparison, about 28 percent of US soldiers returning from Iraq are diagnosed with clinical distress, according to the Air Force.[23] Although a repeat survey administered in 2012 showed lower levels of "clinical distress", the implications are the same.[24] The rapidly evolving technology comprising weapon-deploying drone operations along with shifting conflicts across the globe may result in a continuously changing operational environment, leading to fluctuations in the sources and rates of distress relevant to the provision of mental health care.[25] Advocates of manned aircraft systems argue that the human element enhances the operator's situational awareness, instinct, and ability to make a judgment based on one's senses and intellect. For drone operators, *their reality* is that the precision and accuracy of these drone attacks are as good as the intelligence on the ground. Many drone operators have seen close-up video of collateral damage, unnerving and unsettling to them and contributing to this combat stress.[26] As one drone operator put it, "we always wonder

22 D. Chow, 'Drone Wars: Pilots Reveal Debilitating Stress Beyond Virtual Battlefield', *Livescience*, November 5, 2013, http://www.livescience.com/40959-military-drone-war-psychology.html [2017-09-17].

23 Ibid.

24 W. Chappelle, T. Goodman, L. Reardon, W. Thompson, 'An analysis of post-traumatic stress symptoms in United States Air Force drone operators', *U.S. Air Force Research*, 46, 2014, U.S. Department of Defence, http://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1045&context=usafresearch [2017-09-17].

25 Ibid.

26 A. Khan, 'As Drone Use Surges, Pilots Report High Stress Levels', PBS, December 19, 2011, http://www.pbs.org/wgbh/pages/frontline/afghanistan-pakistan/kill-capture/as-drone-use-surges-pilots-report-high-stress-levels/ [2017-09-17].

if we killed the right people, if we endangered the wrong people, if we destroyed an innocent civilian's life all because of a bad image or angle."[27] Even if the end result appears to be a success, it leaves a hint of doubt as to how accurate their confirmation of the weapons and hostile individuals were.

Legality of Drone Use: From Domestic to International Legal Concerns

There is also a substantial debate taking place over the issue of *combatant status*, of which targeted assassinations of suspected "combatants" test the legal limits of a US administration's power. While the US government maintains that drone strikes have undermined the al-Qaeda leadership, critics have argued whether the strikes are compatible with the principle of distinction under international law. According to Article 48 of the Additional Protocol to the Geneva Convention.[28]

> "In order to ensure respect for the protection of the civilian population and civilian objects, the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives."[29]

The United Nations (UN) Charter prohibits carrying out the targeted killing of individuals on foreign soil outside of armed conflict, except for extraordinary circumstances. The latter are understood to involve imminent threats of physical violence where no other alternative exists but to employ lethal force. In December 2013, a UN General Assembly resolution, "Protection of Human Rights and Fundamental Freedoms while Countering Terrorism,"[30] urged the UN member states to ensure that any measure taken or means employed to counter

27 H. Linebaugh, 'I worked on the US drone program. The public should know what really goes on', *The Guardian*, December 29, 2013, http://www.theguardian.com/commentisfree/2013/dec/29/drones-us-military [2017-09-17].

28 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977.

29 J. Henckaerts, L. Doswald-Beck, *Customary International Humanitarian Law: Rules*, Cambridge: Cambridge University Press, 2005.

30 UN, 'Protection of human rights and fundamental freedoms while countering terrorism', Resolution 63/185 adopted by the General Assembly on 18 December 2008 [on the report of the Third Committee (A/63/430/Add.2)], https://www.un.org/sc/ctc/blog/document/ares63185-protection-of-human-rights-and-fundamental-freedoms-while-countering-terrorism/ [2017-09-18].

terrorism, including the use of drones, comply with their obligations under international law, including the UN Charter, human rights law and international humanitarian law, in particular the principles of distinction and proportionality.[31]

3. Why Is There No EU Stance on Armed Drone Use?

The EU and its member states have not made any explicit and binding contribution to the debate on armed drone use yet.[32] In 2014, the EP passed a resolution[33] that introduced the so far absent question of the use of drones for military purposes to EU-level debate. The resolution highlights the ethical and legal contingencies related to the use of drones in extraterritorial lethal operations. The resolution calls upon the EU to act, i.e., to develop an appropriate policy response at both the European and global levels, in line with the principles of human rights and international humanitarian law.

The potential that the exponential growth of the drone market creates and the implications of the use of drones for civilian and military operations have not passed unnoticed since. Indeed, in 2015, France, Germany, Greece, Italy, the Netherlands, Poland and Spain signed a letter of intent with the European Defense Agency (EDA), tasking it to draw up a study on the joint production of the Medium Altitude Long Endurance (MALE) aircraft, thus paving the way for an "EU drone". It was agreed that MALE could be used either to strike military targets or for surveillance activities such as monitoring migrant boats in the Mediterranean Sea.[34] The MALE project notwithstanding, no substantial progress in the EU armed drone use regime has been attained since then. In June 2017, a workshop titled "Towards an EU common position on the use of armed drones" was held at the Euro-

31 K. Yousaf, 'International law compliance: UN adopts resolution against use of drones', *The Express Tribune*, December 20, 2013, https://tribune.com.pk/story/648078/international-law-compliance-un-adopts-resolution-against-use-of-drones/ [2017-09-17].

32 Cf. J. Dorsey, Ch. Paulussen, 'A common European position on armed drones? Charting EU member states' views on questions of counterterrorism uses of force', *Global Affairs*, Vol. 1, Issue 3, pp. 277-283.

33 EP, 'European Parliament resolution of 27 February 2014 on the use of armed drones', Resolution 2014/2567(RSP), Strasbourg, February 27, 2014, http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2014-0172+0+DOC+XML+V0//EN [2017-09-17].

34 Ibid.

pean Parliament. The briefing produced on this occasion outlines the need to develop a common legal framework that would regulate the use of armed drones among the EU member states.[35] At the same time, the content of the briefing points out that "there is currently no agreement between member states to pursue the matter at the EU level."[36]

To understand the relatively slow progress in the EU debate on the use of armed drones, it is necessary to reflect on the nature of the EU defense sector and to highlight that, after all, the EU, unlike the US, does not have a truly common defense policy. In this view, any likely progress in an armed drone use regime will be a function of the progress in the debate on the EU defense union. In other words, in the absence of a streamlined effort to boost joint EU security and defense capacities, it will be impossible to have a joint stance on the use of drones.[37]

Attempts at enhancing cooperation in security and defense in Europe date back to the 1950s when the French Assembly rejected the project of establishing the European Defense Community in 1954.[38] The Single European Act, by reintroducing the notion of political cooperation, and the Maastricht Treaty, through its provisions on Common Foreign and Security Policy (CFSP) of the EU and its member states, revived the debate on the prospect of cooperation in that field and laid down a nascent framework for cooperation. The subsequent treaties led to the establishment of the Common Security and Defense Policy (CSDP). Today, matters related to defense and security in the EU are subject to a complex regime of special competences, stipulating the division and encroachment of powers among the member states, the Council and, increasingly, the European Parliament. CSDP is an integral part of CFSP. The details are regulated by provisions in the Treaty on European Union (TEU).[39] Given the historically determined

35 European Parliament, 'Towards an EU common position on the use of armed drones', *BRIEFING AND WORKSHOP*, 2017, http://www.europarl.europa.eu/RegData/etudes/STUD/2017/578032/EXPO_STU(2017)578032_EN.pdf [2017-08-18].

36 Ibid.

37 Cf. B. Oliveira Martins, B. Backhaus, 'Why and how the EU should act on armed drones', *Global Affairs*, Vol. 1, Issue 3, pp. 259-267.

38 EUR-Lex, http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM%3Aa19000 [2017-09-03].

39 EUR-Lex, 'The EU's Common Security and Defence Policy, http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:ai0026 [2017-09-03].

hesitant approach of the EU member states to pooling their powers in security and defense, defense matters remain predominantly the subject of intergovernmental-level decision-making. In other words, the participation of the European Commission and the EP in the decision-making procedure is limited, whereas their involvement in any legislation activity is excluded. CFSP, and so CSDP, is defined and implemented by the European Council (consisting of the heads of state or government of the EU countries) and by the Council (consisting of a representative of each EU country at the ministerial level). The president of the European Council and the High Representative of the Union for Foreign and Security Policy represent the EU on matters of common foreign and security policy.[40]

A significant revival in the debate on the EU's security and defense capacities was recorded following the entry into force of the Treaty of Lisbon. Specifically, the establishment of the post of High Representative and of the European External Action Service (EEAS) should be mentioned here. In this context, the role of Frederica Mogherini, who has been the High Representative since 2014, should be stressed, as she has had a tremendous impact on defining and refining the meaning of the treaty provisions regarding her post. Following the initiative of Mogherini and her team, in June 2016, the EU Global Strategy (EUGS) was published. The salience of that publication derives from the fact that it breaks with key assumptions on the EU's role in the world set out in the 2003 European Security Strategy (ESS) and paves the way towards more active engagement on safeguarding the EU. The idea of principled pragmatism contained in the EUGS heralds more straightforward and more direct engagement of the EU and its member states in security and defense. Indeed, following EUGS' publication, which interestingly, nearly coincided with the Warsaw NATO Summit of July 2016, in September 2016, Germany and France proposed the establishment of a European defense union.[41]

This proposal was on par with two documents stipulated by EUGS and published in the fall of 2016 by the Council of the European Un-

40 EUR-Lex, http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM%3Aai0020 [2017-09-03].

41 A. Rettman, 'France and Germany propose EU "defence union"', *EU Observer*, September 12, 2016, https://euobserver.com/foreign/135022 [2017-09-06].

ion and the European Commission, including, respectively, the Implementation Plan on Security and Defense[42] and the European Defense Action Plan.[43] In the context of the discussion on a prospective EU armed drone use regime, the communication by the European Commission is particularly important since it makes direct references to drones. Notably, it puts forward concrete proposals on how to boost EU-funded research that "could support technologies for the development in Europe of Remotely Piloted Aircraft Systems (such as drones), as well technologies to support the monitoring and security of EU borders, including to enhance border protection and maritime security (including maritime and air support assets for the necessary maritime and air security operations)."[44] To this end, the establishment of the European Defense Fund was proposed.[45] Through a "capability window", the prospective fund, would enable bypassing the existing obstacles in funding joint EU-level projects aimed at boosting military capacities and, therefore, would promote the pooling of national resources in research. Specifically, the fund "would secure joint financing of the development and procurement of strategic capability priorities. These would be jointly agreed by Member States and could include dual-use priorities which are relevant to the implementation of EU policies [such as drones that could be used for border surveillance]. This 'window' would focus on the post- R&T [research and technology] phases, including prototypes as well as the development and procurement of products and technologies."[46]

In the same communication, the use of drones is also discussed in the context of the existing EU aviation regime, including the Sin-

42 Council of the European Union, 'Implementation Plan on Security and Defence', *Note*, November 16, 2016, Brussels, 14 November 2016 (OR. en) 14392/16, https://eeas.europa.eu/sites/eeas/files/eugs_implementation_plan_st14392.en16_0.pdf [2017-09-10].

43 European Commission, 'European Defence Action Plan', Communication from the Commission to the European Parliament, the European Council, the European Economic and Social Committee and the Committee of the Regions, Brussels, 30.11.2016, COM(2016) 950 final.

44 Ibid., p. 8, ft.

45 European Commission, 'A European Defence Fund: €5.5 billion per year to boost Europe's defence capabilities', *Press release*, Brussels, 7 June 2017, http://europa.eu/rapid/press-release_IP-17-1508_en.htm [2017-08-18].

46 European Commission, 'European Defence Action Plan', Communication from the Commission to the European Parliament, the European Council, the European Economic and Social Committee and the Committee of the Regions, Brussels, 30.11.2016, COM(2016) 950 final, p. 9.e.

gle European Sky (SES) and Single European Sky Air Traffic Management Research (SESAR). The document outlines that the "use of RPAS (drones) for security purposes requires their effective integration into the aviation system based on, amongst other things, a coordinated civil-military effort, including of R&D programmes. In this respect, the civil/military coordination mechanism between the EDA, the European Aviation Safety Agency and the SESAR Joint Undertaking should help to better exploit the results of military research activities in the context of the SESAR 2020 programme and the associated safety rules and standards."[47]

Given the increasing variety of threats to safety and security that the EU confronts, the debate on the prospect of enhancing cooperation in the field of defense intensified. Simultaneously, it was estimated that "the lack of cooperation between Member States in the field of defense and security is estimated to cost annually between €25 billion and €100 billion. About 80% of procurement and more than 90% of Research and Technology are run on a national basis. Up to 30% of annual defense expenditures could be saved through pooling of procurement"[48] The thrust of the debate on the EU defense union is defined by the question of EU military capabilities independent of those of the US within the NATO framework. In other words, it all boils down to market share. Not surprisingly, the debate on the EU defense union has two key protagonists: France and Germany. For Germany, as many experts argue, it is mostly a question of how to keep the EU together[49] and, hence, ensure a European Germany in a united Europe. For France, which under Macron makes open reference to economic nationalism, it is very much a question of the prospect of growing France's domestic defense industry and exploiting the synergy and spillover it creates. Notably, France's defense industry employs about 400,000 people, while the value of its annual arms trade

47 Ibid., p. 18.

48 European Commission, 'Commission debates future of European defence', *Press release*, May 24, 2017, http://europa.eu/rapid/press-release_IP-17-1427_en.htm [2017-08-18].

49 C. Major, 'Credible EU Defense Means Rethinking Sovereignty', Strategic Europe, Carnegie Council, June 15, 2017, http://carnegieeurope.eu/strategiceurope/71260 [2017-08-18].

is about 35.5 billion EUR, making France the leader in the defense industry in Europe.[50]

At this point, the question is why should the EU and its member states engage with the armed drone use debate? There are several angles from which this potent question could be addressed. From the perspective of the "normative power Europe"[51] debate, the EU as a "force for good"[52] has an ethical obligation to engage in a debate as salient as the one concerning targeted killings, authorization of the use of armed drones, and the resulting human rights-related issues. Clearly, this ethical dimension has very tangible legal implications. As Schweiger argues,

> "Despite fierce public critique, governments of EU member states have not objected to the ongoing practice of armed drone attacks. Whatever the reasons for this silence may be, in international law such non-reaction is not a mere absence. The silence of governments functions in particular ways and has become part of the current interpretative struggle about changing international principles regarding the right to self-defense and 'targeted killing.'"[53]

Finally, given the safety and security implications of armed drone use, if the EU's claims to its leading role on the international scene are to remain valid, it is necessary that it join the US administration in promoting international debate and consensus on an armed drone use regime. For this to happen, consensus at the EU level is needed first.

4. Towards a US Drone Doctrine?

The US is certainly not the only power using drones. China is a growing power in military technologies, including drones. France is

50 A. Roth, 'The size and location of Europe's defence industry', *Blog post*, June 22, 2017, Bruegel, http://bruegel.org/2017/06/the-size-and-location-of-europes-defence-industry/ [2017-08-18].

51 I. Manners, 'Normative Power Europe: A Contradiction in Terms?', *JCMS: Journal of Common Market Studies*, Vol. 40, Issue 2, 2002, pp. 235-258.

52 The term was first used in the 2003 Security Strategy, adding thereby to the already unfolding 'normative power Europe' debate. Cf. E. Barbe, E. Johansson-Nogués, 'The EU as a Modest "Force for Good"': The European Neighbourhood Policy, *International Affairs*, Vol. 84, No. 1, 2008, pp. 81-96.

53 E. Schweiger, 'The risks of remaining silent: international law formation and the EU silence on drone killings', *Global Affairs*, Vol. 1, Issue 3, 2015, pp. 269-275.

the leader in drone production in Europe. The point is that the spread of drone technology makes it accessible to a growing number of countries and non-state actors. In this context, the really serious questions include: what happens when an overwhelming majority of countries use armed drones? Which principles apply to devising an effective international armed drone use regime? How can unauthorized use of armed drones be effectively limited? Several experts foresee that virtually every country will be able to build or acquire drones capable of firing missiles within the next 10 years.[54] It is feasible, therefore, that armed drones will be used for targeted killings, terrorism and the government suppression of civil unrest. Efforts to establish multilateral agreements to limit armed drone sales have been weak. The US and more than 40 other countries signed a declaration establishing five guiding principles for the export and use of armed drones,[55] but the signatories have been reluctant to ratify it. Several countries with significant military industries, including Russia, China, France, Israel and Brazil, failed to sign the declaration. It is worth noting that several of the signatory countries are currently developing their own armed drone capabilities and will likely try to reach the status of exporters at some stage. [56] Simply put, if no effective armed drone use regime is put in place, the scenarios related to armed drone use can become ever more dramatic.

Both the US and the EU stand to benefit from recognizing this dangerous trend and promoting the need to build consensus over the need to develop a comprehensive international armed drone use regime. Although the US government has started to make efforts to establish policies and to engage in the growing debate over drone use, more needs to be done. Most likely, it will require a focused effort on the part of President Trump. The ability to set the terms of the debate and to create the necessary international attention and cooperation would be enhanced if presented in a major presidential speech.

54 P. Tucker, 'Every Country Will Have Armed Drones Within 10 Years', *Defence One*, May 6, 2014, http://www.defenseone.com/technology/2014/05/every-country-will-have-armed-drones-within-ten-years/83878/ [2017-09-17].

55 Stratfor, 'The Unstoppable Spread of Armed Drones', *Stratfor Worldview*, October 25, 2016, https://worldview.stratfor.com/article/unstoppable-spread-armed-drones [2017-09-17].

56 Ibid.

This would initiate an important debate in Congress, and of course, internationally. There are several issues that President Trump needs to address: The first is revising current international law to cover the development and use of these new technologies, i.e., war actions vs. covert actions. The Trump administration could take the lead here by shifting the responsibilities regarding drone use to the Pentagon. However, this is unlikely considering he has returned drone operations back to the CIA. Under this arrangement, most drone attacks are covert, designed to kill enemy targets without leaving American fingerprints, and carried out without consideration of public opinion or the approval of Congress. Greater transparency is appropriate as it would unmask drone attacks to public view and would eliminate the secrecy of such actions. The second issue involves establishing clear delineations between the military and civilian intelligence agency use of such technologies, and the proper role for Congress and the president regarding drone use. The Trump administration could establish clear guidelines on the use of drones for military use, just as state governments have been doing with regard to civilian use of drones. Although this may be unpopular within certain military circles, this would raise the confidence of political leaders in other nations who have been hesitant to set such guidelines absent actions taken by the US government. The EU has been largely silent on the legality of US policy regarding drone use, although there is some evidence, in private, of pushback because of the secrecy of US operations.[57] While there is currently no agreement among the EU member states to pursue the matter at the EU level, the recent debate has drawn attention to the common rules on exports of armed drones and drone technology that already exist. A more coordinated and pronounced strategy behooves the EU. In light of two recent developments, negotiations concerning the United Kingdom leaving the EU and the 2016 presidential election in the United States, transatlantic relations are also changing. Perhaps, the role of NATO could thus become more pronounced in the debate on an armed drone use regime. The third issue, and perhaps the most important one, involves the coordination of "development

57 L.Tayler, "EU should press Obama on drone secrecy", *Human Rights Watch*, March 27, 2014, www.hrw.org/news/2014/03/27/eu-should-press-obama-drone-secrecy [2015-07-13].

and use" doctrines by the US and its allies. The UN would be seen as the natural choice as a venue for creating these guidelines, but enforcement is an issue. Given President Trump's disdain for UN inclusion in military matters, it is unlikely that it will be the starting point. Perhaps NATO would be a logical and more reasonable means to initiate the global conversation on a doctrine guiding the development and use of drones, which could spur the EU to take immediate action as a NATO partner. The US has a preeminent position within NATO and a global military presence. By taking the initiative now, President Trump has the opportunity to provide the momentum necessary to motivate other leaders and nations to establish an effective doctrine. The debate on an armed drone use regime, however, does not end here. The efforts to control drone usage could be challenging in the face of China's relative promiscuity when it comes to selling drones. Therefore, international powerbrokers, such as the US and possibly the EU, in the near term may be best suited to include Chinese leaders in determining such policy.

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