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On the responsible use of armed drones: the prospective moral responsibilities of states

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ABSTRACT

In 2016 the United States and 44 other countries issued a Joint Declaration for the Export and Subsequent Use of Armed or Strike-Enabled Unmanned Aerial Vehicles (UAVs). This arms control agreement, the first to focus specifically on drones, includes a commitment to discuss how these are 'used responsibly' by states. However, the exact meaning of responsible use in this context remains uncertain. This article addresses the uncertainty by raising important questions for policymakers: regarding the use of armed drones, to whom does a state have a responsibility? What is the moral basis for that responsibility? What purpose is a state therefore responsible for pursuing? And what could it mean in practice for a state to take prospective moral responsibility for preventing injustice? These questions are discussed by reference to five objects of responsibility that a state committed to using armed drones responsibly should consider: (1) other states; (2) its own citizens; (3) the intended victims of drone use; (4) the unintended victims of drone use; and (5) its military personnel (including drone operators). The intention is to provide a structure according to which policymakers could better understand the meaning of responsible drone use and thereby improve drone-specific arms control.

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Introduction

What exactly does it mean for a state's armed drones to be 'used responsibly'? This phrase appears in the first and (to date) only international arms control agreement focused specifically on restraining the acquisition and use of armed drones. In late 2016 the US and 44 other states issued a *Joint Declaration for the Export and Subsequent Use of Armed or Strike-Enabled Unmanned Aerial Vehicles (UAVs)* (hereafter 'the Declaration').¹ The context for the Declaration, and a key driver of US leadership on gaining signatories, was an anticipated loss of US technological and market dominance. The essential concern was that many more states would soon acquire armed drones and possibly use them in unacceptable ways. Over the past two decades, the US government has acquired and maintained the world's largest fleet of armed drones and has used them more frequently than

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has any other state. Today, however, the development, production, acquisition and use of armed drones is increasing worldwide. According to one recent assessment, 24 states possess armed drones and 13 have used them, and military drone production has expanded beyond the United States to countries including Israel, China, India, Iran, Pakistan, Russia, South Africa, and Turkey.² The US government itself has used armed drones to strike targets in Afghanistan, Iraq, Libya, Pakistan, Somalia and Syria, and this article will later touch upon the ethical concern that US drone use has sometimes generated. With international drone proliferation now well underway, this appears to carry the potential for further concern when one considers other possible scenarios: Turkey conducting drone strikes against Kurdish rebels inside Syria, or China sending armed drones into Kazakhstan to hunt suspected terrorists among the Uighur Muslim population, or Russia using drones to kill enemies inside Caucasus state territories, or Israel sending drones to strike targets inside Iran (or vice versa).

Prior to the signing of the Declaration, the US Government had acknowledged the risk of drone proliferation as well as its own capacity to shape future patterns of drone use by being a model of state behaviour. In 2012, for example, Obama's chief counterterrorism adviser John Brennan said his administration colleagues were 'very mindful that, as our nation uses this [drone] technology, we are establishing precedents that other nations may follow', and he warned: 'not all of those nations ... share our interests or the premium we put on protecting human life, including innocent civilians'.³ Brennan asserted that Obama's drone-based counterterrorism strategy was 'legal, ethical, and wise', and he argued: 'If we want other nations to use these [drone] technologies responsibly, we must use them responsibly'.⁴ The exact meaning of responsible use remained unclear, but in Brennan's assessment it was apparently somehow a matter of legality, ethics and wisdom. His justification of US drone strike campaigns was offered in the context of growing international criticism, much of which involved concern about *lack* of responsibility. Two years previously, the United Nations (UN) Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions had issued a report condemning the use of armed drones to conduct so-called 'targeted killings', warning of 'the displacement of clear legal standards with a vaguely defined licence to kill, and the creation of a major accountability vacuum'.⁵

Subsequent criticisms of drone use have likewise focused on questions of legality, and on the applicability of international law regulating the resort to force, international humanitarian law, and international human rights law. The UN General Assembly, the European Parliament, the UN Human Rights Council, and the Parliamentary Assembly of the Council of Europe passed resolutions calling upon states to use armed drones in compliance with international law.⁶ However, these resolutions did not resolve the critical uncertainty about *which* international laws were applicable to drone use in certain circumstances. And neither did the US government's own policy, announced in early 2015, on permitting the export of drones to other countries in accordance with 'proper use' principles. Under the US Export Policy for Military Unmanned Aerial Systems, the government committed itself to ensuring that recipients of US-origin military drones would use these 'lawfully and responsibly'.⁷ The text emphasised adherence to 'applicable' laws, but the distinct and exact meaning of 'responsibly' was unclear.

The following year, the US government organised the Declaration as a basis for a common international approach to the export and use of armed drones. This agreement contained five principles, and the most relevant for present purposes are: (1) 'The

applicability of international law, including both the law of armed conflict and international human rights law, as applicable, to the use of armed or strike-enabled UAVs, ...'; and (5)

That in light of the rapid development of UAV technology and the benefit of setting international standards for the export and subsequent use of such systems, we [the signatory states] are resolved to continue discussions on how these capabilities are transferred and *used responsibly* by all States.⁸

The Declaration has since attracted criticism, unsurprisingly, for 'being led by the state whose use of drones has caused most concern, harm and controversy so far, and so who might not be considered in the best position to help define "responsible use"'.⁹ But the most serious problem, arguably, is the Declaration's vague and ambiguous language. In 2017, the UN Institute for Disarmament Research highlighted the specific meaning of 'responsible use' as 'one of the most pressing questions' in need of an answer,¹⁰ and 18 non-government organisations argued: 'If the concept of "responsible use" is to be part of this framework, specific work must also be undertaken to reach a common understanding of what this means'.¹¹ This work is important because more precise language in the Declaration would better enable it to have a genuine arms *control* effect.

Writing in 1952 about the uncertain meaning of the term 'national security', Arnold Wolfers argued that, 'if used without specifications', this term 'leaves room for more confusion than sound political counsel or scientific usage can afford'.¹² His warning was that policymakers' differing understandings of the meaning of security would lead them to talk past each other rather than to coalesce around a logically coherent (and therefore more effective) security policy. Today, in the field of arms control, a similar language problem arises with the notion of responsible use. Appearing in the text of the Declaration, this notion would be morally reassuring but for the fact that it is left undefined. A government signing this international agreement, and thereby committing to the principle that armed drones should be 'used responsibly', might claim to have afforded itself some moral cover for any subsequent export activities. However, without specifications on the meaning of responsible drone use – what the end-user of an exported drone may or may not do with it, and why – that moral cover is merely a façade with little capacity to gain moral purchase upon the ways in which armed drones can actually be used. At worst, if this language problem is not addressed, the Declaration risks becoming perceived as a sham exercise in legitimising the drone export business; a vehicle for proliferation rather than an instrument for justly restraining drone use.

The Declaration concludes with a call for other governments to support it, but the number of signatories has not increased since October 2017, and at the time of writing President Trump appears not to be championing it. Meanwhile, US officials have reportedly undertaken or considered departures from past practice, including increasing the tempo of drone strikes, expanding the geographic scope for drone strikes to occur in places the government considers 'outside of areas of active hostilities', delegating decision-making authority from the president to military commanders, lowering the thresholds required to conduct strikes against terrorism suspects, and increasing the involvement of the Central Intelligence Agency (CIA) in the use of armed drones.¹³ Are these things an example to the world of a state using armed drones responsibly? To arrive at a satisfactory answer to that question, any future international discussions on the

Declaration will need to establish in detail the meaning of ‘responsible use’. To that end, critical questions to be addressed should include: to whom does a drone-using state have a responsibility and why; what purpose is it therefore responsible for pursuing; and what could it mean in practice for that state to take responsibility for preventing injustice?

The word ‘responsibility’ has many meanings,¹⁴ all of which cannot be canvassed in one article. So the focus here is on the *prospective moral responsibilities of states* that intend to use armed drones. States bear moral responsibility as collective agents, in contrast to other agents that bear it on an individual basis (e.g. drone operators or drone unit commanders), and for present purposes a focus on states makes sense because only states can commit to the Declaration as an international agreement. The article also focuses on *moral* responsibility because this is broader than (though often related to) *legal* responsibility. A moral responsibility can exist without manifesting in formal law, and it will often be bound up more generally in ‘social practices ... of praising and blaming’.¹⁵ In most communities, as Merel Noorman as observed, ‘someone is considered to be acting responsibly when they adhere to prevailing norms and moral principles, and when their actions reflect shared values’.¹⁶ If we assume then that law and morality are distinct, a regard for the latter affords greater analytical scope to explore the meaning of ‘responsible use’ in the context of armed drones. Even so, the analysis here concentrates on prospective responsibility only, leaving the question of retrospective responsibility for another day. To be prospectively responsible is to assume and exercise a duty to prevent some wrong or injustice from occurring in the future, whereas retrospective responsibility tends to involve questions of liability, accountability and remedies for injustices that have already occurred.

In this article ‘responsibility’ is understood also as a directional phenomenon, so it takes the approach of considering various *lines* of prospective moral responsibility (which might sometimes complement or contend with each other) in the context of drone use by states. The direction of these lines can be hierarchical (upward or downward) as within a state’s own social system or non-hierarchical (outward) in extending beyond that system.¹⁷ Each line links a certain responsibility to a certain right (or legitimate expectation) as follows: a drone-using state (A) is responsible to another entity (B) for doing C because of B’s right to D. On the basis of this framework for conceptualising responsibility, the discussion hereafter includes five objects of moral responsibility that a state committed to using armed drones responsibly should consider: (1) other states; (2) its own citizens; (3) the intended victims of drone use; (4) the unintended victims of drone use; and (5) its military personnel (including drone operators). In each instance, the article outlines the moral basis for a state’s prospective responsibility, the purposes that should be pursued in exercise of that responsibility, and some responsibility-based policies a drone-using state could adopt to prevent injustice. The intention is to provide a structure according to which policymakers could think more deeply about the meaning and scope of ‘responsible’ drone use.

Responsibility to other states

For states signing an international agreement like the Declaration, perhaps the most obvious line of responsibility is that which they have toward each other. This is a non-hierarchical (outward) responsibility that exists on a reciprocal basis between formally equal units of the international system. One state’s moral responsibility to other states is based

upon, among other things, every state's right to non-interference (in its territorial sovereignty) and its legitimate expectation that the prohibition against military aggression in international relations will be respected. An argument that follows from this is that a state intending to use armed drones outside its own territory should, as a matter of prospective moral responsibility to other states: (1) be conspicuous in respecting sovereignty; and (2) use violence only for a purpose that is essentially defensive.

The territorial sovereignty of state A may be overridden, and military force used against it, if state B is acting in self-defence against an armed attack by state A (e.g. US drone strikes in Afghanistan after 2001) or if state B has authorisation from the UN Security Council to attack state A (e.g. US drone strikes in Libya in 2011). If, by contrast, state A consents to the use of force by state B inside state A's territory, no issue of sovereignty violation arises. However, where there is doubt about whether such consent has been granted, a drone-using state risks appearing to fail in its responsibility to respect other states' right to non-interference. Such a situation has previously arisen in the context of secretive CIA drone use inside the territory of Pakistan. The US government had not claimed to be waging war against Pakistan, the Security Council had not authorised the use of force against Pakistan, and some elements of the Pakistani government had publicly denounced drone strikes there.¹⁸ And yet anonymous US officials were quoted in media reports claiming that other elements of the Pakistani government had in fact secretly consented.¹⁹ At best, this apparent contradiction perpetuated uncertainty about whether the US government was violating another state's sovereignty, and at worst it prompted international suspicion that the United States was actually getting away with such violation.

Either way, it is difficult to characterise this confidently as an example of armed drones being used responsibly. The essential problem was secrecy: it suited the Pakistani government secretly to allow US strikes (against common enemies) inside Pakistan while publicly condemning them (in response to public protests), and for this duplicity to be sustained it was necessary for the US government to make its involvement in drone use there an official secret. A better, more responsible approach would be non-secrecy: to obtain a public declaration of consent by the state in whose territory foreign armed drones are to conduct strikes. A drone-using state could thus better demonstrate, as a matter of prospective moral responsibility to other states, that it is respecting states' right to non-interference. Conversely, if a state were unwilling for whatever reason to *publicise* its consent, the use of foreign armed drones in that state's territory would not be permissible.

Regardless of whether a state (publicly) consents to the use of foreign military force inside its territory, it is morally important for such force to be used for a purpose that is 'essentially defensive' (of self or others).²⁰ When a new international order was founded after World War Two, states joining the UN committed to a default posture of non-aggression as a means of preserving worldwide peace and stability. An armed drone, like any other instrument of violence, can be used for either aggressive or defensive purposes. However, the relative *ease* with which it can sometimes be used, compared to other methods of violence, carries a risk that drone-using states will be tempted toward pursuing purposes that are advantageous but essentially non-defensive. A concern commonly expressed over the past two decades has been that, because some armed drones can be controlled from a location far away from a strike zone, force can now be resorted to more easily because the downside risks seem to be lower. This capacity, increasingly

available to more states, could in turn underpin an unjust increase in the frequency of decisions to use force as a means of problem-solving in world affairs.

That increase would be unjust, specifically, if armed drones were used in ways that undermine the principle of non-aggression in international relations established in the 1945 UN Charter. Regarding the differentiation of aggressiveness and defensiveness, debate tends to centre on the permissibility of force used in 'pre-emptive' self-defence and on the definition of 'imminent' threats. A restrictive view (based on strict adherence to the Charter) is that imminence is immaterial because a state's right of self-defence may only be invoked and acted upon 'if an armed attack occurs'.²¹ A more permissive and widely-accepted view (based on customary international law) is that the right of self-defence may also be exercised against a real and imminent threat when the necessity of that self-defence is 'instant, overwhelming, and leaving no choice of means and no moment of deliberation'.²² Beyond that, some authors have argued that force may be used even when uncertainty remains about when and where a feared attack might occur,²³ but one concern with this approach is that 'preventive' war could be difficult in practice to distinguish from outright aggression.

When using armed drones against terrorists in foreign locations, the US government has defined 'imminence' extremely broadly, representing Al Qaeda and affiliated organisations as 'perpetual imminent threats'.²⁴ However, this has been criticised as stretching the concept of imminence 'beyond recognition'.²⁵ As Warren and Bode have argued, the US definition 'disassociates imminence from its common, temporal understanding of immediacy' and, when force is used accordingly, such force is made 'clearly preventive in nature'.²⁶ The undesirable consequence of an expansive interpretation of 'imminence' might be that it has a damaging influence on the international rule-based order.²⁷ If that order requires confidence in a meaningful distinction between defensiveness and aggressiveness, a drone-using state should be sensitive to international concerns about the relative ease with which armed drones can sometimes be used. As a matter of prospective moral responsibility to other states, it should therefore use drones for purposes that are more easily recognised as being essentially defensive, and this is best achieved by first defining 'imminence' narrowly rather than broadly.

Responsibility to citizens

Beyond international relations, a state also has a line of responsibility to its own domestic (civilian) population. A state government's moral responsibility to its citizenry is based upon a social contract: in return for the internal order and external protection that a state's governance apparatus provides, the population consents to be governed internally and to have foreign affairs managed on its behalf and for its benefit. One potential element of foreign affairs management is political violence directed at another state or a non-state actor, and in this regard the relevant right (borne individually by each member of a state's population) is the right to life. A state can thus be seen to have a hierarchical (upward) responsibility to ensure the 'collective safety and protection' of 'the sovereign people'.²⁸ An argument that follows from this is that a state intending to use armed drones against external enemies should, as a matter of prospective moral responsibility to its own citizens: (1) use violence in a way that tends to defend rather than endanger those citizens; and (2) obtain citizens' informed consent to be exposed to any risk of enemy

retaliation. Although these are important objectives with regard to the use of force generally, they are especially important in the context of drones. This remotely-controlled technology affords greater capacity for force to be used inconspicuously, so a drone-using state's agents might be tempted to engage, unnoticed, in excessive risk-taking.

In using armed drones, a state can intend to honour its responsibility to defend citizens at home against threats posed by enemies abroad. The US government, for example, has in this way set out to strike its enemies in places where it is waging war (Afghanistan, Iraq and Libya) and where it is not (Pakistan, Somalia and Yemen). In so doing, however, there has been a risk that violent actions taken with the intention of defending US citizens might provoke violent reactions by aggrieved victims.²⁹ As Brennan acknowledged in 2010, 'an action that eliminates a single terrorist but causes civilian casualties can, in fact, inflame local populations and create far more problems – a tactical success but a strategic failure'.³⁰ In other words: immediate defensive effort, which can seem low-risk to the user of force because it is initiated remotely, can actually contribute to longer-term endangerment. Distant enemies who are unable immediately to strike back against an 'available' combatant, and who are disinclined to abandon their cause, might instead turn to softer (civilian) targets inside the territory of the drone-using state. It is not necessarily the case that this endangerment risk will outweigh the defensive benefit. However, where the benefit being pursued by a state is not essentially defensive at all, the assumption of any associated downside risk dishonours that state's moral responsibility to its own citizens.

A distinction can be drawn between the use of armed drones against, on the one hand, enemies who are able and intending to threaten the drone-using state's home population and, on the other hand, locally-focused enemies of that state's foreign allies. Arguably, strikes against the latter have a greater potential to do more harm than good, perhaps by driving those erstwhile non-enemies into direct confrontation with the drone-using state. The relative ease with which drone strikes can be carried out might, according to Michael Walzer, tempt a state to 'broaden the list of enemies ... simply because we can get at them – even if they aren't actually involved in attacks against us'.³¹ But a state that does this, thereby attracting more enemies and more danger, risks failing in its responsibility to *defend* its home citizens. Since the start of US drone operations in Pakistan in 2004, the US government has from time to time perpetrated so-called 'good-will kills' of 'militants' who pose only a local threat, as a favour to the Pakistani government.³² Likewise, in Yemen, the timing and targets of certain US drone strikes there have been such as to appear to benefit only the US government's Yemeni and Saudi allies.³³ And yet these essentially non-defensive killings probably carried some risk of terroristic retaliation against the United States. As a matter of prospective responsibility to its own population, a drone-using state should instead run that risk only when the national self-defence benefit of a strike is clear and direct.

The risk of terroristic 'blowback' has been the basis of many criticisms of drone use.³⁴ Whatever the degree of that risk, a drone-using state arguably has another responsibility to the citizens it purports to defend: to obtain their informed consent to potential endangerment. A moral responsibility of this kind is analogous, for political purposes, to the consent requirement that pertains in medical ethics and clinical research ethics.³⁵ In the context of decisions to wage war, Emmanuel Kant insisted upon the requirement of citizen consent, observing that 'it is very natural that they will have great hesitation

in embarking on so dangerous an enterprise. For this would mean calling down on themselves all the miseries of war'.³⁶ Historically, citizens of democracies have, through elected representatives, formally confirmed a 'willingness to share the costs' of enduring wars.³⁷ And when a state's military personnel, recruited from the citizenry, are putting their lives on the line in pursuit of a national cause, public engagement is maintained by the accumulation of friendly casualties. However, in circumstances where citizens perceive that their government's external use of force comes at little or no cost to them, the democratic justification for action can diminish along with a public concern to demand information and restraint. If such perception does not match reality, and if a state does not trouble to obtain the informed consent of citizens who are actually placed at risk by its violent actions, then that state is arguably failing to use force responsibly.

A temptation not to honour (nor even recognise) this responsibility might be attributable to the special capacity that armed drones afford to a government: to use violence under conditions of secrecy that are greater than those available when other violent methods are used. But government secrecy is not conducive to the granting of *informed* consent by the governed citizenry. In practice, the informed consent of a drone-using state's citizens would need to be obtained by citizens' representatives who have access to relevant information and are outside the executive arm of government. However, in the United States and the United Kingdom, governments have been accused of using armed drones abroad, possibly in too risky a manner, without adequate scrutiny and meaningful constraint by elected representatives.³⁸ In 2011, the US Congress was not invited to authorise the US deployment of armed drones in Libya because, according to the Obama administration, there was no serious threat of US casualties nor any significant chance of conflict escalation.³⁹ Thus lawmakers had no formal opportunity to test and contest that claim on behalf of their constituents. Moreover, regarding counterterrorist drone strikes generally, the US government has resisted demands for congressional authorisation on the grounds that Congress bestowed upon the President in September 2001 a temporally unlimited authority to 'prevent any future acts of international terrorism against the United States'.⁴⁰ A better approach, arguably, would be for a drone-using state to involve citizens' representatives constantly and more deeply in decision-making and to keep them informed about benefits and risks. For example, as a matter of prospective responsibility to citizens under its protection, a state could guard against excessive risk-taking by allowing representatives to review any list of pre-identified targets,⁴¹ and/or by seeking fresh authorisation to commence a drone strike campaign in a new part of the world.⁴²

Responsibility to intended victims

A state's third line of responsibility is to the intended victims of its use of armed drones. This is either an outward responsibility owed by a state to an individual member of a foreign population, or an upward responsibility if an individual is one of a state's own citizens. All human beings, wherever they are, are presumed to bear a right to life. Therefore, a state has a responsibility (even to people it regards as enemies) to refrain from using deadly violence against a person unless or until their right to life is lost because of some relevant feature of that person. For present purposes, it suffices to identify that

feature as ‘dangerousness’, and this should be understood as a matter of either war or law enforcement. It follows that a state intending to make a person a victim of its drone use should first, as a matter of prospective moral responsibility, commit to only one of these two paradigms of permissible state violence and then constrain its actions accordingly. Thereafter, a responsible drone-using state should ensure it has a high level of reasonable (evidence-based) confidence that: (1) a given individual is a combatant who may legitimately be killed (the war paradigm); or (2) killing a given individual is necessary to prevent a concrete and imminent threat to others’ lives (the law enforcement paradigm).⁴³

The governments of many states have on various occasions affirmed the importance of complying with ‘international law applicable to the use of armed UAVs’,⁴⁴ but the critical problem remains that they often do not agree about *which* specific legal standards apply to certain kinds of drone use. These standards are important not simply because they are *legal* but also, fundamentally, because they reflect the moral responsibilities that states owe to would-be victims of drone use under different conditions. Disagreement about the applicability of law is essentially a problem of paradigm categorisation which, in turn, affects the permissibility of killing. If a drone strike is carried out as an act of war, international humanitarian law applies, and a person may be killed if s/he is a combatant. If a drone strike is instead essentially an act of law enforcement, international human rights law applies, and the moral scope for killing a person is much narrower. However, a problem of moral irresponsibility arises if a drone-using state acts on its own assumption that a drone strike falls within neither of these paradigms. This is because doing so runs the risk of unjustly violating someone’s right to life without recourse to any available framework for restraint and remedy.

Many scholars have highlighted the issue of paradigm categorisation in the use of armed drones, observing that the US government in particular has set out to ‘blur’ or transcend the war/law-enforcement distinction.⁴⁵ The war paradigm is the more permissive, so it might be expedient for a state to be flexible in deeming itself to be ‘at war’ when using armed drones. But the potential therein for abuse is clear, and injustice could occur where killings are carried out in circumstances which ought to have rendered them impermissible. It is therefore not good enough for a state wilfully to muddle the war and law-enforcement paradigms and then to give itself the benefit of the doubt. As a basic matter of prospective moral responsibility to intended victims, a drone-using state should instead choose and commit to a paradigm of killing that is plausible under the circumstances. It must either be the case, for example, that ‘terrorists’ are ‘threatening combatants’ to be killed in accordance with principles of military ethics, or that they are ‘dangerous criminals’ to be dealt with as a policing matter in accordance with principles governing the police use of lethal force.

If it is plausible to assign a drone-based killing to the war paradigm, the drone-using state has a prospective moral responsibility to kill an individual with a high degree of confidence that s/he is a combatant. The deliberate targeting of a known non-combatant would be illegitimate because it would unjustly violate a non-dangerous person’s right to life. To an extent, honouring the combatant/non-combatant distinction is facilitated by the fact that many armed drones are equipped with powerful video-cameras that provide their operators with detailed, overhead imagery of a target zone (and people within it) in near-real time. Even so, the technical ability to confirm the presence of a

particular person needs to be matched by reliable intelligence that that person really does pose a military threat. If someone is not distinguishing themselves from civilians by wearing a military uniform, intelligence to justify a drone strike should instead show that a person is 'directly participating in hostilities'.⁴⁶ The 'directness' of participation can be perceived differently, and a narrow view of it might afford the protection of non-combatant status to anyone who, for example, merely provides 'financial support, advocacy, or other non-combat aid' to an enemy organisation.⁴⁷ A narrow definition necessarily sets a higher standard for determination that a person is militarily dangerous, and it raises the threshold for violating the right to life. Therefore, such an approach should be preferred by drone-using states wishing to exercise a greater degree of prospective moral responsibility to intended victims.

In circumstances where a drone-based killing cannot plausibly be assigned to the war paradigm, it might instead be possible to approach it as a law enforcement matter. In which case, a drone-using state has a prospective moral responsibility to refrain from killing an individual unless this is the only way to prevent a concrete and imminent threat to others.⁴⁸ Such killing would need to serve a strictly preventative purpose and could not permissibly be a law-enforcement objective (e.g. execution) in itself.⁴⁹ The ordinary context for having recourse to law-enforcement ethics is a domestic one in which police may use lethal force only when their own lives or the lives of bystanders to an unfolding violent crime are in immediate peril. But whether lethal law-enforcement involves a police officer's pistol or a drone operator's missile, the critical issue is the necessity and proportionality of killing. In particular, in order for a targeted person's right to life to be duly respected, it needs to be clear that 'no less harmful means' of neutralising that person's dangerousness (e.g. capture or non-lethal incapacitation) is available.⁵⁰

When a state uses an armed drone, it might be tempting to claim that this ethical requirement is readily satisfied: the capture of an intended victim in a *remote* location is 'infeasible', so only a missile will do. However, a responsible drone-using state should distinguish between actions that are genuinely impossible to perform and actions that are merely high-risk (or more risky than one would like). Here it is worth noting that Osama Bin Laden was killed by US Special Forces (not in a drone strike) in 2011, suggesting that the US government judged that action to be worth the associated risk to its military personnel. An attempt to capture him instead would have been similarly risky, but this could not have been achieved using a drone alone. In addition, therefore, a drone-using state should recognise and allow for the extent to which it is *contributing* to the infeasibility of capture by *arranging* for its military personnel to be kept at a distance. In practice, as a matter of prospective moral responsibility to intended victims, this could mean that a responsible state will take steps to increase the feasibility of capture. In a domestic context, a police officer could shout out 'drop your weapon, hands in the air!' to someone as a non-lethal way of trying to stop that person's dangerous behaviour. But an immediate warning would serve no purpose in the case of using an armed drone that, obviously, cannot perform an arrest on the spot. A more practical suggestion is that the government of a drone-using state could publish its 'kill lists' and thus 'put enemies on notice that they are targets, allowing them to ... surrender'.⁵¹ If this were done, and if surrender did not occur, a subsequent drone strike would be easier to justify as a lethal law-enforcement measure of last resort.

Responsibility to unintended victims

Returning to the war paradigm, a line of responsibility exists also between a state and the unintended victims of that state's use of armed drones. A drone-using state might sometimes run the risk that, despite intending only to kill a dangerous person, it also incidentally harms innocent others. The responsibility to avoid this is an outward responsibility based, firstly, on a person's right to life. When someone is clearly not dangerous, that right is not lost in favour of military imperatives, so the killing of such a person may only ever be incidental rather than intentional. In addition, this line of responsibility between drone-using state and potential drone victims is based on a population's collective right to peace. This is not a right to a life never affected in any way by externally-imposed violence, but rather it is a right not to be deliberately subjected to an indefinite risk of violence. On the basis of these two rights, it follows that a state seeking to avoid making a person an incidental victim of its drone-based violence should, as a matter of prospective moral responsibility: (1) carefully anticipate and plan to minimise the incidental human harm resulting from the use of armed drones; and (2) intend that a population's collective exposure to the risk of incidental harm resulting from drone use will be temporary.

A killing that is not intended by the government of a state (because the victim was a known non-combatant) might nonetheless be intended by a rogue drone operator. Whatever the likelihood of such an event, a basic approach that a responsible drone-using state could adopt is to include in the training of all its drone operators the procedures for prosecuting and punishing any unauthorised wrongdoing. It might also provide some reassurance to would-be victims if those procedures were disclosed publicly.⁵² Beyond that, when it comes to the prospective moral responsibility owed by a state to unintended victims of its drone use, respect for the right to life should be exercised with regard primarily to the principle of proportionality. As manifested in international humanitarian law, this is the principle that prohibits attacks in war 'which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated'.⁵³ An example of this would be the aerial bombing of a single, low-ranking enemy combatant in a crowded place where 'collateral' damage is virtually assured. Armed drones, incorporating powerful cameras and precision-guided munitions, are sometimes commended for enabling better proportionality outcomes (i.e. less incidental harm) than can usually be achieved using other military methods and weapon technologies.⁵⁴ The choice to use drones *instead of* other (more incidentally harmful) methods of violence can indeed be made as a matter of prospective moral responsibility to unintended victims. However, making this choice does not dispose of the proportionality issue, because drone use itself needs then to be conducted in a morally responsible way. On this point, it is arguably not enough for a drone-using state merely to anticipate incidental harms, but rather it should also be proactive in minimising them.

Reducing the risk of unintended harm occurring in a drone strike could entail simply equipping a drone with a smaller munition; a narrower blast radius would endanger fewer bystanders in the vicinity of a person being intentionally killed.⁵⁵ In addition, unintended victims' right to life could be better protected by a drone-using state taking supererogatory precautions during the targeting process. This is especially required, perhaps, when that state enjoys far greater power and technological superiority over its enemy. Jessica

Dorsey, arguing for a common European Union position on the use of armed drones, has claimed that ‘States that possess a superior technology ... have a residually higher standard of responsibility in using such technology’.⁵⁶ This accords with David Rodin’s view that, in the context of military asymmetry, the strong must ‘take exceptionally rigorous steps to ensure that they do not harm non-combatants or expose them to risks of incidental harm in the course of military operations’.⁵⁷ A good example of such supererogatory precaution was President Obama’s insistence that, prior to any drone strike, ‘there must be *near-certainty* that no civilians will be killed or injured’, which he described as ‘the highest standard we can set’.⁵⁸ Putting aside the obvious objection that *actual* certainty is the highest standard, this appeared to be a genuine effort to use armed drones in a way that honoured the US government’s prospective moral responsibility to unintended victims. And it stands in contrast to President Trump’s apparent higher tolerance for incidental harm.⁵⁹

Beyond the immediate effects (intentional and incidental) of a drone strike, there might be longer-term harms attributable to continuous drone use that a responsible state should also aim to avoid. In addition to the right to life borne on an individual basis, populations as a whole arguably have a collective right to peace.⁶⁰ This is a right specifically to the *prospect* of peace, and it would be violated in circumstances where a user of force intended to keep exposing a population to the risk of unintended harm indefinitely. In a certain part of the world, there might be individuals who may legitimately be targeted in a drone strike, and a drone-using state might claim that this will always be the case there. However, if that state thus had no intention ever to stop running the risk of causing incidental harm to any civilians proximate to a targeted enemy, this would be a failure of prospective moral responsibility. Even if known civilians were never intentionally targeted in drone strikes, civilians in general would to some extent be continually exposed to the physical risk of being within a descending missile’s blast range. And they would be indefinitely endangered further by any imperfections of drone technology (malfunctions and misfires) and/or human judgment. Moreover, unintended victimhood might derive also from the sheer and constant fear of being struck. In Pakistan, for example, the psychological harm to civilians caused by seemingly ever-present US drones has been well-documented.⁶¹ There, the collective right to peace was arguably violated by a drone-using state causing a ‘siege mentality’⁶² among people who were made to think they could all suddenly become a victim; anyone, anywhere, anytime, and all the time.

Where armed drones are used for counterterrorism purposes, a particular concern is that a ‘war on terror’ (akin to a ‘war on crime’) could be a violent process that goes on forever.⁶³ If a state takes the view that neither terror nor crime can ever be entirely eliminated, the response process it engages in can become essentially one of managing a problem rather than solving or accepting it. The moral difficulty with this is that, as the harm resulting from violence is *prima facie* wrong, it can only begin to be legitimised by trading it away *temporarily* in favour of an expectation of a better peace emerging later. It is incontrovertible that violence is not *always* going to be a good thing, so the most basic limitation on it must be a temporal one.⁶⁴ It would be morally irresponsible therefore for a drone-using state to intend that, elsewhere in the world, its own violence and exposure of innocents to risk will continue indefinitely. A responsible approach would be for that state instead to commit to ceasing its violent problem-solving efforts if pre-defined success or failure criteria have been met within a limited time period.

Beyond that period, any further such efforts would need to be freshly justified and authorised.

Responsibility to military personnel

In general, when a state intends to use force in world affairs, the potential for victimhood extends also to members of its own military. Arguably, therefore, a state's prospective moral responsibilities include a downward responsibility to those it places at risk in pursuit of the state's military objectives. This is a reciprocal responsibility that arises in return for the rendering of obedient service and, for present purposes, it is worth considering the use of armed drones in relation to the legitimate expectations of military personnel in general and of drone operators in particular. In a military comprised of volunteers, some physical risks are assumed voluntarily, so military personnel who are within reach of the enemy's violence bear a right to life that is attenuated compared to that borne by civilians. Nevertheless, military lives have inherent as well as instrumental value, so it is reasonable to expect that these lives will not be squandered. As for the operators of armed drones, who can be situated well beyond enemy reach, exposure to physical risks is a non-issue. However, due to the unique way in which a drone-based killing is carried out, drone operators are potentially exposed to non-physical (moral) risks. If so, it is arguably reasonable to expect that these state-sanctioned killers' moral wellbeing is deserving of protection too. On the basis of these legitimate expectations, a drone-using state should, as a matter of prospective moral responsibility to military personnel: (1) use armed drones to minimise exposure of personnel to physical risks; and (2) use armed drones in ways that minimise drone operators' exposure to the risk of moral injury.

Thus far, the discussion has focused on how drone use should be restrained, but it is important also to consider why it should be required. Using armed drones instead of military personnel to achieve operational objectives can be a highly effective way for a state to honour its moral responsibility to protect and conserve military lives. Here, responsible drone use is essentially about using them *in order* to reduce or eliminate risk. In Western militaries at least, the era of regarding military personnel as 'cannon fodder' is long over, and this attitude has been replaced with a concern to protect the rights of those who render professional and obedient service to the state.⁶⁵ Military service has largely become merely a technical occupation (rather than a heroic vocation), such that the state-as-employer has a responsibility to safeguard its employees' occupational safety and health. Moreover, according to a contractarian understanding of the state and its people, a state's most important responsibilities are owed to 'the people who voluntarily put themselves in harm's way for the protection and defense of their compatriots'.⁶⁶ The state, through the appointed commander of military personnel, is duty-bound 'to minimize the risks ... soldiers must face, to fight carefully and prudently, and to avoid wasting their lives'.⁶⁷ And, according to Walzer, 'soldiers have every right to expect all this of him and to blame him for every sort of omission, evasion, carelessness, and recklessness that endangers their lives'.⁶⁸

It follows that a responsible state should choose to use armed drones if this would avoid using riskier, functionally equivalent, non-drone methods to achieve the same necessary military objective. For example, remotely-controlled drones could be used instead of piloted aircraft to provide close air support to friendly ground troops whose lives are

immediately endangered by nearby enemies. In advocating this choice, Bradley Strawser has referred to a 'principle of unnecessary risk (PUR)'.⁶⁹ He argues that, if a state can arrange for its military to use armed drones to carry out missions instead of 'inhabited' weapons system, with no loss of capability (including the capacity to act justly), then 'via PUR ... the state has a clear ethical obligation to do so'.⁷⁰ Setting aside questions about whether or why drone strikes might be (un)just acts, Strawser's is a compelling proposition with regard to the meaning of 'responsible' drone use. Critically, though, it should be the case that a state would have used non-drone methods of violence anyway, rather than a non-violent method of problem-solving. Otherwise, the choice to use armed drones would be harder to justify as an exercise of prospective moral responsibility to military personnel.

Once the choice is made to use armed drones for risk-avoidance reasons, it remains for a state to consider its responsibility to those members of the military who remotely operate these aircraft. A 'drone operator' is one of the two people directly involved in controlling the drone and its weapons: the sensor operator, who controls the mounted video-camera, and the pilot (seated adjacent) who controls flight. Typically, the sensor operator focuses the camera and aims the targeting laser before the pilot pulls a trigger releasing a missile from the drone, and the sensor operator then maintains aim as the missile descends. This activity, carried out on a secure military base potentially thousands of miles distant from the strike zone, entails no relevant physical risk. However, it is not altogether riskless, so a drone operator's occupational rights are still at issue, and a drone-using state has a corresponding prospective responsibility to protect these. One suggested possibility is that, aside from risking fatigue by working long shifts,⁷¹ drone operators in the US military are exposed to the mental health risk of developing post-traumatic stress disorder (PTSD). However, scientific studies conducted in recent years do not indicate that US drone operators are especially vulnerable to this condition.⁷² This is perhaps unsurprising, as PTSD diagnoses tend to be associated with a person feeling a loss of safety. An alternative possibility, not yet thoroughly explored, is that drone operators wielding violence on behalf of the state are more likely than other people to feel a loss of trust in their own personal goodness. This is the risk of moral injury.

The idea that killing can sometimes impose a heavy, debilitating and possibly unbearable burden upon a killer's conscience is not new. During World War One, for example, Bertrand Russell warned that

the use of force to coerce another man's will, even in those rare cases in which it is justifiable, produces a brutal and tyrannous state of mind, and is more destructive of inward peace than any misfortune that can be inflicted from without.⁷³

Today, according to Peter Asaro, the operator of an armed drone is involved in 'a unique form of the labor of killing ... [characterised by] long and persistent voyeurism'.⁷⁴ And, for several other authors, this capacity for a drone operator immediately to witness the grisly results of their violence, while never themselves facing mortal danger, is morally significant.⁷⁵ Killing in such circumstances might require moral courage, but it might also therefore carry a risk of moral injury. Here, it is worth noting that the US military provides support to drone operators beyond the realm of psychology. At Creech Air Force Base in Nevada, where around 900 operators work alongside embedded psychologists, there are also chaplains available to provide spiritual counsel.⁷⁶ This suggests that US drone

use is managed even at the level of personal morality. If so, it might be desirable for a drone-using state to move further in this direction as a matter of prospective moral responsibility to its drone operators. Specifically, a state could act to protect these military personnel against the risk of moral injury by allowing and facilitating strike-selective conscientious objection. An individual drone operator could then choose to remain within their moral comfort-zone by, for example, disobeying with impunity any order to conduct a drone strike that resembled an extrajudicial execution.

Conclusion

The 2016 *Joint Declaration* represents a worthwhile multilateral effort to bring about principled restraint in the state use of armed drones, but achieving this requires a comprehensive account of the Declaration's key concept: 'responsible use'. A state that signs this agreement cannot plausibly claim to be using drones responsibly without knowing exactly to whom and for what it is responsible. Arguably, a drone-using state needs to consider at least five lines of prospective moral responsibility that are directed outward, upward or downward. To other states, it is responsible for conspicuously respecting their sovereignty and using violence only for an essentially defensive purpose. Regarding its own citizens, a state has a responsibility to use armed drones abroad in ways that tend to defend (rather than endanger) the home population, and it is responsible for obtaining that population's informed consent to be exposed to retaliation risks. To the intended victims of drone use, a state is firstly responsible for committing to only one of the two paradigms of permissible state violence (war and law enforcement) and constraining its actions accordingly. Thereafter, a responsible drone-using state would act only on the basis of high confidence that a given individual is a combatant who may legitimately be killed (the war paradigm), or that killing a given individual is the only way to prevent a concrete and imminent threat to others' lives (the law enforcement paradigm). As for unintended victims, a drone-using state is responsible to them for carefully anticipating and planning to minimise the incidental human damage resulting from drone use, and it should intend that a foreign population's collective exposure to the risk of such harm will be temporary. Lastly, a state has a prospective moral responsibility to its military personnel to use armed drones (in place of functionally equivalent non-drone methods) in order to minimise their exposure to physical risks. And to drone operators in particular, it is responsible for minimising their exposure to the risk of moral injury.

It could be difficult in practice for a drone-using state to honour all these responsibilities simultaneously. At times, some will tend to complement or contend with each other, and opinions might differ about whether and why some responsibilities are more important than others in certain circumstances. For example, where a state uses drones with a primary regard for its downward responsibility to military personnel, this is potentially inconsistent with fulfilling that state's outward responsibility to unintended victims. Or, a state's choice to limit its drone use to essentially defensive purposes might be a good way of honouring its responsibilities both to citizens and to other states. For now, it is enough to identify where a state's prospective moral responsibilities lie so that, if trade-offs are to be made between them, this can be done with a clearer understanding of the advantages and disadvantages involved. By maintaining

sensitivity to their various lines of responsibility, governments can have a stronger moral foundation for choosing to use armed drones to a greater or lesser extent, in better ways, or perhaps not at all.

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