ARMED DRONES AND GLOBALIZATION IN THE ASYMMETRIC WAR ON TERROR

CHALLENGES FOR THE LAW OF ARMED CONFLICT AND GLOBAL POLITICAL ECONOMY

Fred Aja Agwu

Armed Drones and Globalization in the Asymmetric War on Terror

This book is a critical exploration of the war on terror from the prism of armed drones and globalization. It is particularly focused on the United States' use of the drones, and the systemic dysfunctions that globalization has caused to international political economy and national security, creating backlash in which the desirability of globalization is not only increasingly questioned, but the resultant dissension about its desirability appears increasingly militating against the international consensus needed to fight the war on terror.

To underline the controversial nature of the "war on terror" and the pragmatic weapon (armed drones) fashioned for its prosecution, some of the elements of this controversy have been interrogated in this book. They include, amongst others, the doubt over whether the war should have been declared in the first place because terrorist attacks hardly meet the United Nations' casus belli—an armed attack. There are critics, as highlighted in this book, who believe that the "war on terror" is not an armed conflict properly so called, and, thus, remains only a "law enforcement issue".

The United States and all the states taking part in the war on terror are obligated to observe International Humanitarian Law (IHL). It is within this context of IHL that this book appraises the drone as a weapon of engagement, discussing such issues as "personality" and "signature" strikes as well as the implications of the deployment of spies as drone strikers rather than the Defence Department, the members of the U.S. armed forces. This book will be of value to researchers, academics, policymakers, professionals, and students in the fields of security studies, terrorism, the law of armed conflict, international humanitarian law, and international politics.

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Routledge Research in the Law of Armed Conflict

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Challenges for the Law of Armed Conflict and Global Political Economy

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Be they nation-states or non-state actors, this book is in furtherance of the message in the north garden at the United Nations Headquarters in New York, expressed in the bronze statute by the Soviet sculptor, Evgeny Vuchetich, that envisions and symbolizes when "we shall beat our Swords into Plowshares".

Contents

Acronyms

AARMS	Academic & Applied Research in Military Science
ACSRT	African Centre for the Study and Research on Terrorism
AJIL	*American Journal of International Law*
AMU	Arab Mahgreb Union
AMISON	African Union Mission in Somalia
APT	ASEAN Plus Three
AQAP	Al-Qaeda in the Arabian Peninsula
AQC	Al-Qaeda Central
AQEA	Al-Qaeda East Africa
AQIM	Al-Qaeda in the Islamic Maghreb
ARF	ASEAN Regional Forum
ASEAN	Association of South East Asian Nations
AUMF	Authorization for the Use of Military Force
AWS	Autonomous Weapon System
CENTCOM	Central Command (United States)
CIA	Central Intelligence Agency
COIN	Counter-insurgency
CNN	Cable News Network
CVE	Countering Violent Extremism
ECOWAS	Economic Community of West African States
ECtHR	European Court of Human Rights
FATA	Federally Administered Tribal Areas (Pakistan)
GPS	Global Public Square
GPS	Global Positioning System
ICBMs	Inter-Continental Ballistic Missiles
ICC	International Criminal Court
ICRC	International Committee of the Red Cross
ICSR	International Center for the Study of Radicalization
ICTY	International Criminal Tribunal for the former Yugoslavia
IEDs	Improvised Explosive Devices
IHL	International Humanitarian Law
IMT	International Military Tribunal
ISIS	Islamic State of Iraq and Syria

ISIL	Islamic State of Iraq and Levant
JSOC	Joint Special Operations Command
LaWS	Laser Weapon System
MALE	Medium-Altitude Long Endurance (armed drone)
MAOB	Massive Air Ordinance Blast
MJTF	Multinational Joint Task Force
MTCR	Missile Technology Control Regime (1987)
NASA	National Aeronautical and Space Agency
NATO	North Atlantic Treaty Organization
NCEF	National Christian Elders Forum
OLC	Office of Legal Counsel (State Department)
POW	Prisoner of War
P.5	Permanent 5 (members of the UN Security Council)
RAN CoE	Radicalization Awareness Network Center of Excellence
RCEP	Regional Comprehensive Economic Partnership
SCC	Shanghai Cooperation Council
SLAR	Side-Looking Airborne Radar
THAAD	Terminal High-Altitude Area Defence
TPP	Trans-Pacific Partnership
UAVs	Unmanned Aerial Vehicles
UMS	Unmanned Systems
UNGA	United Nations General Assembly
UNHCR	United Nations High Commission for Refugees
WoT	War on Terror

Preface

The central argument in this book is that armed drones and globalization play quixotic roles in the war on terror (WoT). Both are at the same time harmful and beneficial in the prosecution of the war. In the case of armed drones, it must be recalled that there have always been, at every historical juncture in the development of the law of armed conflict, serious problems in the adoption of legitimate means and methods of warfare. In this era of the asymmetric war on terror, these problems have been exacerbated by the emergence of armed drones as new weapons. Human ingenuity in technological invention and application has once again proved to be far ahead of the development of the law of armed conflict. Without prejudice to the efforts in the Martens Clause (including the associated efforts by legal publicists and the drafters of the various Hague Conventions up to the four Geneva Conventions and the Additional Protocols) to preempt the use of obnoxious methods and means of warfare to violate the principles of humanity, the emergence of insurgent terrorists that do not set stock by the rules engagement as well as the armed drones used to counter them have increasingly disrupted settled expectations in the conduct of the conflict.

Drone strikes have become increasingly controversial by the day. In this controversial nature, armed drones have become proximate to nuclear weapons in terms of ambiguity as weapons of war. This same ambiguity is also presented by globalization. Thus, and this is reinforcing the central proposition of this book, although armed drones and globalization were supposed to leverage the war on terror, they have become quixotic tools for the exacerbation of this infernal conflict. Whereas armed drones are supposed to ensure a pin-prick isolation and liquidation of terrorists without much collateral damage, these weapons have rather in most cases exacerbated these humanitarian tragedies, especially in the case of signature strikes; thus, orchestrating what critics call "a terrorism industrial complex". This complex is created by the "blowback" consequences.

The same goes for globalization. Whereas the technologically shrunken world and the attendant global village were supposed to mean prosperity for all nations and peoples, the inherent distortions in the globalizing world have meant that mass poverty and inequality have caused many nations and peoples to take up the cudgel against globalization, both in the developed and

developing nations. Brexit is quite illustrative. Migration, which is a major component of globalization, has become stigmatized on account of its capacity to disperse terrorists, cause cultural contamination, and put pressure on public services, amongst other alleged complications. The consequence is that an otherwise globalizing world is witnessing a widespread relapse into nationalism and what *The Economist* calls "protectionism and nativism"; this situation has the danger of the world being deprived of the requisite general community coalescence that is required to tackle or prosecute the "war on terror". The situation in Syria is quite illustrative.

Again, in addition to being controversial weapons that cause complications for humanitarian principles in the war on terror, armed drones also pose serious challenges to the principles of self-defence, the observation of the rule of restricting battles to the frontlines, ethics of warfare, and chivalry in warfare, amongst others. These complications are direr with the prospect of the introduction of Autonomous Weapons Systems (AWS), which are robotic machines that lack the capacity for distinction and proportionality required in every armed combat. So, the "war on terror" may be raging today, but one of the most controversial realities surrounding it is that it is not yet fully regulated by international law. As a result of this situation, the "war" remains an intriguing one for the student of the law of armed conflict in particular and international law in general.

This book is a critical exploration of some of the objective scholarly perspectives on the war on terror, from the prism of armed drones and globalization. It is particularly focused on the United States' use of the drones, and the systemic dysfunctions that globalization has caused to international political economy and national security, creating some backlashes in which the desirability of globalization is not only increasingly questioned, the resultant dissension about its desirability appears increasingly militating against the international consensus needed to fight the war on terror. To underline the controversial nature of the "war on terror" and the pragmatic weapon (armed drones) fashioned for its prosecution, some of the elements of this controversy have been interrogated in this book; and they include, amongst others, first, the doubt over whether the war should have been declared in the first place because terrorist attacks hardly meet the United Nations' *casus belli*—an armed attack. There are critics, as highlighted in this book, who believe that the "war on terror" is not an armed conflict properly so called, and, thus, remains only a "law enforcement issue".

The second element is the armed drones' paradoxical narrative: a new species of weapon that is both a mixture of facts and fiction, fictionalized by the likes of Richard Clarke and Andrew Niccol, amongst others, to illustrate the fact that it is both today's weapon as well as the weapon of the future. Today's armed drone as an implement of warfare is a de facto implement, being (like the nuclear weapon) under no specific conventional law or treaty regulations. Hence, even when, like the nuclear weapon, its legality is ambiguous, its deployment in the war on terror remains legitimate as a pragmatic tool of self-defence against enemies that themselves do not play by the rules of engagement. But what is of more serious

concern is not so much the issue of the legality of the armed drone as it is of the international humanitarian anxiety that its use occasions. Some of the scholarly positions explored in this book believe that the United States is violating international law in the application of the armed drone; but the position of this book is that this is hardly true because there is no law to be violated to the extent that the law of armed conflict does not regulate the use of armed drones; neither does it regulate terrorist insurgencies. And because the law did not envisage the "war on terror", it simply does not regulate it.

What the United States and all the states taking part in the war on terror are obligated to observe (courtesy the Martens Clause and Article 3 common to the Geneva Conventions) is International Humanitarian Law (IHL). So, it is within this context of IHL that this book appraises the drone as a weapon of engagement, discussing such issues as "personality" and "signature" strikes as well as the implications of the deployment of spies (the CIA as an intelligence agency) as drone strikers rather the Defence Department, the members of the U.S. armed forces. This contradiction reinforces the double or Janus-faced nature of the war on terror (a duel straddling between law enforcement and an armed conflict). If the war on terror were to be characterized solely as law enforcement, only a spy agency like the CIA can partake in its prosecution because the members of the armed forces would stand disqualified by the law; but if it were termed an armed conflict properly so called, its prosecution would remain the exclusive preserve of the members of the armed forces as combatants, while a spy agency like the CIA would be off it. Unfortunately, the status of this "war" remains contentious and unresolved.

This book also explores the characterization of this "war" as a "global war" on terror by the George W. Bush administration; vis-à-vis the cautions attitude of the Obama administration to that conceptual inclination. It, however, notes that this characterization implicitly touches the question of battlefields or frontlines (the battlespace) as well as the geographical spread of the conflict. But although there may be contestations over whether or not the "war on terror" is war properly so-called, what is evident is that this conflict is an asymmetric duel in which the so-called weaker opponent thrives because of, as the authorities explored in this book clearly highlight, (1) the existence of bigotry, warped, or extremist ideologies; (2) the existence of sanctuaries in permissive environments that are receptive and supportive; (3) the easy access to weapons; and (4) the increasing situations where active and functional intelligence seem not only to be diminishing but sometimes overwhelmed by the masterminds of terrorism.

Against the foregoing, this book sums up that in the armed drone and the "war on terror", the main protagonist, the United States, is confronted with a "grey area" in the environment of armed conflict. This "grey area" is a challenge that the Law of Armed Conflict must confront and resolve in order to streamline the use of armed drones vis-à-vis international law. This is the same way that the contradictions in globalization must be confronted and resolves in order to end or lessen its propensity to create and spread animosities that make individuals and

groups susceptible to employing terrorist means to fight back. Nevertheless, it is not every work that is obliged to be dialectical in terms of proffering an alternative pathway or solutions. However, dialectical analyses are sometimes inevitable; so inevitable that it is, thus, difficult or impossible to escape them.

Hence, in the spirit of dialectics, I have tried, in the final chapter, to be part of the suggestion of ways to successfully prosecute the war on terror. But like Patrick Chabal and Jean-Pascal Dalox observed in their *Africa Works*, at page 163, this book is more of "a diagnosis" of the problem, a prognosis rather than a solution. The book is more of a prognosis than a guide to finding all the solutions to the problem. It does not have such overweening ambition or pretention to prescribing the solution to the entire problems. Rather, it draws attention to the challenges, the serious predicaments in the deployment or use of armed drones as well as other challenges to the successful prosecution of "the war on terror", like the challenges posed by the tendency to allow the contradictions in globalization to continue to fester; or even to retreat from globalization. So, this book ultimately leaves the task of proffering far-reaching solutions to the global policy establishment, the professionals, and the technical/scientific as well as socio-political and further legal researches in the Law of Armed Conflict and Globalization.

I must express my immense debt of gratitude to Dr. Micah Zenko of the United States Council on Foreign Relations for his contributions, directly and indirectly, in the making of this book. Although I had started the work before meeting Micah in May 2014 in New York, during a Council of Councils meeting, I must confess that his presentation during that meeting, alongside Dr. Marcel Dickow of the German Institute for International and Security Affairs, offered me some new vistas and tremendous insight. Over one year later in December 2015 when I was scrounging for additional relevant literature, I wrote Micah and he gave me some inestimable leads. Micah, I thank you. The researching of this book took place when there was unprecedented dearth of academic materials in the Library of the Nigerian Institute of International Affairs (NIIA), with the Institute at the cusp of failing to renew its e-library facilities, and with its computers down owing to disuse and power challenges. It was Mrs. Pamela Ogwuazor-Momah, one of the Senior Librarians in the Institute that came to my rescue, pressing her personal laptop to service. Pamela, I thank you too.

For several days while researching this book, I was at the Library of the United States Information Service (USIS) in Lagos. Those visits enabled me to access vital literature, including some of the most recent academic journal that had entries on the subject matter of this book. For his unstinting assistance at USIS, I especially thank Messers Abudu Kester. I thank my publishers too. I do not know everybody in Rutledge by name and, thus, cannot mention each and every one of them here, more so because of spatial constraints. But I must nonetheless not fail to thank Brianna Ascher for the hard work she put in to make this book a reality. I must also appreciate her colleague, Mary Del Plato, for her contributions. Like every other member of the Routledge team that I was privileged to work directly

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1   Introduction

Asymmetric Warfare: A Terminological Simplification

Geometrically speaking, asymmetry denotes inequality. It is asymmetrical when the sides in a shape, pattern, or relationship are unequal.[1] Asymmetric relationships are sometimes detonative of congenital or irreversible inequality, like in filial relationships, which can be captured in the imagery, "John is the father of Bill", a filial relationship between a father and a son.[2] Asymmetry pervades the physical and social realities of nature. In contemporary security environments, for example, although the nature and threat of inter-state armed conflicts remain unchangeable, real and omnipresent, what has really changed about armed conflicts today is in their physiognomy, the emergence of asymmetric conflicts, defined by the entrance of non-state actors—the sub-national insurgent groups.[3] Thus, "an asymmetric conflict typically involves two actors, one "strong" and one "weak".[4] It is characterized, as Robert Sloane put it, quoting Robin Geiss, by "significant inequality in arms, disparate distribution of military strength and technological capability in a given conflict".[5]

So, being intrinsically characterized by "power disparities", asymmetric warfare has always been a combat that is historically "a logical choice for a weaker military opponent".[6] However, asymmetric engagements manifest an uncanny situation in which the strength of the so-called weaker opponent "is paradoxically rooted in its own weakness", a paradox that is reflected in the Chinese leader,

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1 See Paul Proctor (1978, ed.), *Longman Dictionary of Contemporary English*, Paper Edition, England, Longman Group Limited. pp. 52, 474.
2 See Robert L. Barnhart (1974, ed.), *The World Book Dictionary*, Vol. 1, A–K, Chicago, Doubleday & Company Inc. pp. 131, 783.
3 Ibid., p. 6.
4 See Giuseppe Caforio (2013), "Officer and Commander in Asymmetric Warfare Operations", *Journal of Defence Resources Management*, Vol. 4, No. 1(6), p. 25, note 1.
5 See Robert D. Sloane (2011), "New Battlefields/Old Laws: Shaping a Legal Environment for Counterinsurgency", Proceedings of the Annual Meeting (American Society of International Law), Vol. 105, March 23–26, p. 371.
6 See Stephen C. Small (2000), "Small Arms and Asymmetric Threats", *Military Review*, November–December, No. 6, p. 34.

Mao Zedong's submission "that the insurgent is like a fish that swims in the ocean of the people",[7] the people here are, metaphorically, a shield for the insurgent to evade square and direct targeting. It is in the sense of this people connection, the fact of insurgents hiding in the civilian population, that in asymmetric warfare, terrorism is an adjunct; thus, firmly presenting a situation in which "a militarily weak force uses limited resources to offset the strengths of a more powerful military force".[8]

The implication of the terrorism genre of warfare being asymmetry is that it is also basically of a low-intensity nature.[9] And being a low-intensity conflict means that this form of warfare does not entail direct confrontation; for the army keeps on stalking "another illusory" or elusive enemy, thus, making nonsense of its predilection and dependence on conventional "mechanization and advanced technology".[10] Although highly mechanized or technology-driven weapons have led to such anti-terror brands of warfare as "electronic warfare", "precision-guided weapons warfare", and "information warfare",[11] the terrorists as adjunct categories in asymmetric conflicts have largely remained resilient. It is in this resilience that asymmetric warfare remains a nightmare that challenges the foundation of conventional "doctrinal development and force structure"[12] in every military organization; so much so that, before 9/11 and their entanglement with counter-terrorism operations, that is, after the bitter experiences of the United States (in Vietnam) and France (in Southeast Asia), both countries and, indeed, every other country's conventional military, viscerally detest the likelihood or possibility of future involvement in wars of asymmetric nature, be it counter-insurgency or counter-terrorism.[13]

As a matter of fact, in Vietnam, although for the insurgents, there were actually "some rhyme or reason" behind their (the North Vietnamese and the Viet Cong[14]) guerilla/terrorist tactics, they, indeed, made a mess of the conventional, the doctrinal, and the force structure known to the United States' military. The doctrinal and force structure known to countries are predicated on "conventional battles", defined in part as "combat between forces several hundreds of meters apart, whose observation is generally unimpeded by all objects".[15] In conventional mode of combat, "technology offers much promise" as it makes it possible

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7 Loc. Cit.

8 Ibid., pp. 33–34.

9 See Daniel S. Challis (1987), "Counterinsurgency Success in Malaya", *Military Review*, February, No. 2, p. 56.

10 See Thomas J. Kuster Jr. (1987), "Dealing with the Insurgency Spectre", *Military Review*, No. 2, p. 21.

11 See Stephen C. Small (2000), "Small Arms and Asymmetric Threats" . . ., p. 33, op. cit.

12 See Daniel S. Challis (1987), "Counterinsurgency Success in Malaya" . . ., p. 56, op. cit.

13 Loc. Cit; see also Thomas J. Kuster Jr. (1987), "Dealing with the Insurgency Spectre". . ., p. 21, op. cit.

14 See Michael Maclear (1981), *Vietnam: The Ten Thousand Day War*, England, Thames Methuen, p. 368.

15 See Stephen C. Small (2000), "Small Arms and Asymmetric Threats" . . ., p. 35, op. cit.

for the battle to be "dominated by the combatant whose weapon can hit the enemy without the enemy being able to hit back".[16] It is this technological superiority that countries possess and use to their maximum advantage "when weapon sights and improved munitions take their toll on less technologically sophisticated opponents"[17]—the guerillas, insurgents, and terrorists who consequently avoid conventional combats.

In asymmetric warfare, the insurgents embark on a shifty strategy; in which they implicate the enemy in ground wars, but avoid engagements that would allow that enemy "to draw on its technical superiority".[18] Because it is in the character of guerilla warfare/terrorism that it is not patterned towards any conventional doctrine, groups like the Viet Cong "were not pursuing any military victory" but keen in causing doctrinal disorientation to the Americans.[19] Michael Maclear vividly presents an American soldier's frustrating description of the hit and run tactics of the non-conventional Viet Cong:

> It was hit and miss. Like hunting a humming bird. You would get to one village; nothing there. Another village—and nothing there. The enemy, the humming-bird that we were after, was just buzzing around. You secure a village, you search it, and you leave, and the village reverts to the enemy.[20]

The U.S. military were, thus, "operating against an enemy they seldom saw"; so much so that they became paranoid and "the minute they got beyond their very, very tightly circumscribed circle of familiarity, it was a foreign, alien—in the sense of 'other'—world".[21] In fact, "the military mission became to inflict casualties and the primary reason for existence became to minimize your own casualties"; and in this reflex for survival, "blowing things up, burning huts" in "frustration of being ignorant and not knowing where the enemy was"[22] became the order of the day. And so, the Americans became so frightened or embedded in fear that "in some cases, it led to outlets of violence against the population in general".[23]

This was the kind of situation that Stephen Small had in mind when he wrote that "as evidenced by the Vietnam War, military responses [to asymmetric conflicts] devolved in ham-handed affairs conducted in close proximity to civilian settlements", and that these are "solutions in the postmodern age [that] lead only to morally pyrrhic victories".[24] Ham-handed military responses to asymmetric

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16 Loc. Cit.
17 Loc. Cit.
18 See Sheila Macrine (2016), "The Psychology of Radicalization", *The Counter Terrorist*, June–July, p. 12.
19 See Michael Maclear (1981), *Vietnam: The Ten Thousand Day War* . . ., p. 368, op. cit.
20 Loc. Cit.
21 Ibid., p. 381.
22 Ibid., p. 380.
23 Ibid., p. 381.
24 See Stephen C. Small (2000), "Small Arms and Asymmetric Threats" . . ., p. 34, op. cit. Parentheses mine.

warfare lead to pyrrhic victories because the proximity to civilian settlements means that these military operations take place in urban terrains; even though "since ancient times, urban combat has been brutal", resulting in an inability to minimize collateral damage.[25] The arbitrary firepower implicit in ham-handed military operations in urban terrains makes it pretty difficult if not impossible to sort out the enemy combatants from noncombatants, both in the heat of the operations as well as "in the wake of the damage done".[26]

Materially, the duel between David and Goliath was not only a classical case of an asymmetric (even though a direct confrontation) warfare, it was also a confrontation between low tech and high tech; for while the Philistines had mastered the art of iron forging against which the Israelites had no chance, the latter only possessed "hard-edge blades", the stuff that bronze weapons are made of.[27] In this biblical duel, David stayed out of the range of the fearsome sword of the Philistine giant, deploying his tactical surprise of pulling out his sling and felling the Philistine while still being taunted by the giant.[28] So, whereas "symmetric warfare has been identified as two opposing adversaries disposing of armed forces that are similar in all aspects such as force structure, doctrine, asset, and have comparable tactical, operational and strategic objectives"; "asymmetric warfare—as opposed to symmetric warfare—means that the opposing party is unable or unwilling to wage the war with comparable force, and has different political and military objectives than its adversary".[29]

It is in this lack of the capacity for conventional force comparable to the nation-state that terrorist insurgent resort to under-hand or crude tactics like attacking civilians, using crude or dirty weapons, refusing to wear appropriate or identifiable insignia, refusing to bear arms openly and, of course, refusing to conduct operations according to the rules of armed conflict. And unlike the Nigerian Governor Kashim Shettima of Borno State who averred that the Boko Haram's attacks on "soft targets are signs of the terrorists' weakness and their desperation to tell their terror co-travelers around the world that they are not yet finished";[30] the attacks on soft targets are actually no weakness on the part of the terrorists but rather their inherent strength, the modus operandi that helps them offset their inability to engage in conventional battles.

Terrorists' attack on soft targets is, therefore, a paradox to the extent that it is strength in their otherwise weakness. It is essentially because of the evasive and criminal nature of the operations of terrorists that drones (both armed and

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25 Ibid., pp. 34–35.
26 Ibid., p. 34.
27 See Josef Joffe in "Asymmetric Warfare: Since David Fought Goliath, the Weak Have Been Able to Vanquish the Strong", *Time* (New York), September 24, 2001, p. 47.
28 Loc. Cit.
29 See Bordas Maria (2014), "Current Issues of International Law in Regulating Counter-Insurgency and Counter-Terrorism", *AARMS*, Vol. 13. No. 4, p. 571.
30 See Kashim Shettima in "Boko Haram: Reasons Military Must Spare Nobody", *The Nation* (Lagos), Wednesday, February 15, 2017, back page.

unarmed intelligence-oriented ones) have been devised to take them out from their hovels or safe havens without, at least, theoretically speaking, risking hitting the "host" state or incurring unacceptable collateral damage. This is principally what makes the use of drones in asymmetric warfare (whether counter-insurgency or counter-terrorism) very attractive. Like drug cartels and other transnational criminal threats, terrorism is part of the "nonparadigmatic" groups eluding existing taxonomies in armed conflicts that have continued to proliferate owing partly to the fact that the foreign policy of interventionism (by the West) often provokes ethical responsibilities and resentments.[31]

Terrorists—who can erupt in forms ranging from asymmetric "combatants" to pure criminals—are elusive and difficult to eradicate with conventional forces.[32] In the terrorist brand of asymmetric conflict/warfare, the nation-state is between the devil and the deep blue sea in the choice of using either conventional or "unconventional" weapons. This is because in the absence of conventional combats and the futility or ineffectiveness of "conventional" weapons, the application of electronic warfare against terrorists (through precision-guided munitions like smart bombs or armed drones), has the danger of destroying unintended targets and leading to unacceptable collateral damage that fuels the rage of the terrorists, causing "blowbacks"—the tendency for the terrorists (in their deeply ingrained memory of hurt intermixed with their traditional motivation) to seize such mistakes as justifications for increased violence.[33] Unfortunately, the "low-collateral-damage munitions" and the nonlethal-capability-small arms, though essential for combating terrorism with little or no unintended consequences or collateral damage,[34] has proved ineffective for reining in the terrorism genre of asymmetric warfare.

Forms of Asymmetric Warfare

Different forms of armed conflicts are representative of asymmetric warfare in the sense of such armed conflicts being entirely unconventional warfare in nature or sharing the same ingredients or characteristics of irregularity. These varied forms (designated with different phraseology) include "insurgency, irregular warfare, unconventional warfare, revolutionary warfare, guerrilla warfare, terrorism", etc.[35] Asymmetric warfare of all forms share the same similarities: these include, "committing terrorist attacks, pursuing radical aims, and intimidating civilians, etc.".[36] Although asymmetric warfare can be traced back to the biblical duel between David and Goliath, and although it had existed throughout human

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31 See Stephen C. Small (2000), "Small Arms and Asymmetric Threats" . . ., p. 35, op. cit.
32 Ibid., p. 36.
33 Ibid., p. 35.
34 Ibid., p. 36.
35 See Bordas Maria (2014), "Current Issues of International Law in Regulating Counter-Insurgency and Counter-Terrorism" . . ., p. 572, op. cit.
36 Loc. Cit.

history, it was not until the end of the Second World War that the phenomenon became accentuated, so much so that conventional warfare has become an exception while asymmetric warfare has become the rule.[37] Until now, the situation had been the other way round.

There are additional two categories of classification of symmetric warfare—the classification in fact and in law. These categories include "factual asymmetry", which Robin Geiss referred to earlier as characterized by significant inequality in arms, a disparate distribution of military strength and technological capability in a given conflict, and "legal asymmetry", in which one belligerent in the conflict "enjoys less or even no status under the traditional law of war".[38] The implication of "legal asymmetry" will be dealt with in due course here under the rubric of drones in International Humanitarian Law (IHL). It is because of the combination of these two attributes (factual and legal asymmetry) that asymmetric conflicts have the consequences of (1) eviscerating the idea of a distinct battlefield; (2) blurring the distinction between civilian and military objects; and (3) redefining what qualifies as military advantage.[39]

Unique Features of Asymmetric Warfare

Asymmetric conflicts eviscerate the idea of a battlefield and blur the distinction between civilian and military objects; which was why in his declaration of the war against terrorists, the United States President George W. Bush spoke about the global war on terror in terms of the battlefields being the entire world. It is because asymmetric conflicts blur the distinction between civilians and military objects that, in Afghanistan, civilian casualties were very high in 2010; for the Taliban, in what some analyst described as "lawfare", adopted the tactics of deliberately exploiting the rules in adopting civilian garb to render themselves, at least temporarily, illegitimate targets.[40]

Asymmetric conflicts also redefine what qualifies as military advantage, explaining why in the Gaza war of 2008–2009, Israel was not trying to retake territory, as in some old wars; rather, in the absence of this kind of conventional military objective, it focused simply on attempting to kill or capture as many of the enemy (rocketing southern Israeli cities) as it could, thus, making the whole thing, according to some opinions, quite counterproductive.[41] As distinct from unconventional or asymmetric warfare (especially the war on terror variant), conventional military advantage, as it were, aims to take territory, except in a war of self-defence that aims to return the situation to the status quo ante; aside from a situation of permanent aggression that may call for an occupation

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37 Loc. Cit.
38 See Robert D. Sloane (2011), "New Battlefields/Old Laws . . .", p. 371, op. cit.
39 Ibid., p. 372.
40 Loc. Cit.
41 Loc. Cit.

of territory.[42] Some of these issues will be returned to and clarified shortly in due course, especially while discussing issues like the use of armed drones in self-defence, asymmetric conflicts in vanishing frontlines, and IHL in asymmetric conflicts (the terrorist campaigns variety), etc.

But it is important to clarify that one of the unique features of asymmetric warfare is that it is not amenable to the same variables that determine victory in conventional warfare, variables like strength, resoluteness, initiative, and luck.[43] In other words, it is not usually the strongest that prevails because asymmetric warfare has its own special rules, "different from those of the conventional war".[44] However, even though both the insurgent and the counter-insurgent operate in one space and time, most of the rules "applicable to one side do not work for the other"; for instance, "in a fight between a fly and a lion, the fly cannot deliver a knockout blow and the lion cannot fly".[45] In the war on terror, the terrorist can be denominated into a fly that can fly by dint of its hit and run strategy; but the nation-state is the lion than cannot fly; even though it can deliver its knockout blow with its armed drones.

Why Drones in Asymmetric Warfare?

Because it is not absolute lawlessness, warfare is defined by rules of engagement. But since it is a hostile intercourse between belligerents as national groups or between a national and a sub-national group(s), the outbreak of war (the moment the law of peace ceases) and the attainment of belligerent status are both attended by the application of the law of armed conflict by all the parties.[46] Unfortunately, these rules are only applicable in conventional warfare. Unconventional or asymmetric warfare, especially at the level of counter-terrorism, is another kettle of fish. By dint of its unconventional nature, the parties to asymmetric warfare hardly play by the rules; this is why the sub-national groups as terrorists can use such dirty weapons as the Improvised Explosive Devices (IEDs), while national groups like the United States can use armed drones for targeted killings. Although the use of these weapons in conventional warfare cannot be absolutely discounted, drones are unusual weapons of war that are forged as an instrument to achieve an unusual objective of targeted killing in an unusual warfare—asymmetric warfare.

At the moment, and as far as targeted killings in the war on terror go, drones are fashioned to deal with unusual actors in unusual armed conflicts. When he

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42 See Fred Aja Agwu (2005), *United Nations System, State Practice and the Jurisprudence of the Use of Force*, Lagos, Malthouse Press Ltd., p. 79.

43 See David Galula (1964), *Counter-Insurgency Warfare: Theory and Practice*, New York, London, Frederick A. Praeger Publishers, pp. x–xi.

44 Ibid., p. xi.

45 Loc. Cit.

46 See Julius Stone (1954), *Legal Control of International Conflict: A Treatise on the Dynamics of Disputes and War-Law*, Sydney, Maitland Publications Pvt. Ltd., pp. 304–305.

spoke on the U.S. counter-terrorism policy at the National Defense University, President Obama provided the "context that the United States has taken lethal, targeted action against the al-Qaeda and its associated forces, using remotely piloted aircraft commonly referred to as drones".[47] According to the U.S. President, despite the United States' "strong preference for the detention and prosecution of terrorists, sometimes this approach is foreclosed" because:

> Al Qaeda and its affiliates try to gain a foothold in some of the most distant and unforgiving places on Earth. They take refuge in remote tribal regions. They hide in caves and walled compounds. . . In some places—such as parts of Somalia and Yemen—the state has only the most tenuous reach into the territory. In other cases, the state lacks the capacity or will to take action. It is also not possible for America to simply deploy a team of Special Forces to capture every terrorist. And even when such an approach may be possible, there are places where it would pose profound risks to our troops and local civilians—where a terrorist compound cannot be breached without triggering a firefight with surrounding tribal communities that pose no threat to us, or when putting U.S. boots on the ground may trigger a major international crisis.[48]

What President Obama underlined here is that the capriciousness in the modus operandi of the terrorists—their evasiveness—creates the possibility of confrontation with the territorial state in circumstances that incur innocent civilian casualties; and that this situation unavoidably makes the resort to armed drones an imperative. But the question may be asked, what about Osama bin Laden; was he not a terrorist and yet not killed with armed drones? President Obama explained that Osama bin Laden being successfully taken out through a Special Forces operation was only a matter of luck, even though it was also a testament to the meticulous planning and professionalism of Special Forces too. According to him:

> . . . our operation in Pakistan against Osama bin Laden cannot be the norm. The risks in that case were enormous; the likelihood of capture, although our preference, was remote given the certainty of resistance; the fact that we did not find ourselves confronted with civilian casualties, or embroiled in an extended firefight, was a testament to the meticulous planning and professionalism of our Special Forces—but also depended on some luck. And even then, the cost to our relationship with Pakistan—and the backlash among the Pakistani public over encroachment on their territory—was so severe that we are just now beginning to rebuild this important partnership.[49]

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47 See the "Full Transcript of President Obama's Speech on Counterterrorism Policy" at the National Defense University, Fort McNair, available at http://news.yahoo.com/full-transcript-president-obama-speech-counter-terrorism-policy-18 . . . (last visited on May 24, 2013).

48 Loc. Cit.

49 Loc. Cit.

This intervention by President Obama clearly encapsulates the obvious circumstances that make the United States' application of drone strikes in the war on terror quite inevitable. In sum, the risks are not just that the United States will in the absence of armed drones, lose or jeopardize the safety of its troops and incur casualties among the civilian populace when Special Forces are sent in, there is also the danger of ruffling diplomatic feathers as was the case in Pakistan when American Special Forces upended the rules governing self-defence against predatory individuals by breaching the territorial integrity of that country to kill Osama bin Laden. Apart from the benefits that the use of armed drones gives to the United States, there are, nevertheless, some downsides—like the risk of creating new enemies, the ambiguous legality of the strikes in international law, the question of accountability, and the question of ethics or morality—all of which President Obama also acknowledged in his counter-terrorism policy speech under reference.[50] This book examines these and other downsides in the use of armed drones in the war on terror, including its implications for international humanitarian law as well as chivalrous considerations.

50 Loc. Cit.

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