The use of armed drones must comply with laws

The use of drones in armed conflicts has increased significantly in recent years, raising humanitarian, legal and other concerns.

Peter Maurer, the president of the ICRC, discusses the issues at stake and the importance of respecting international law.

Are these weapons lawful? Are they compatible with the obligation to take constant care to spare civilians? Who should be held responsible for possible violations of the law? ICRC President Peter Maurer discusses the challenges that have arisen from these developments, and the need for States to assess the humanitarian consequences of new technology and weapons before developing or deploying them.

**Are armed drones lawful?**

Under international humanitarian law – the rules of war, i.e. the
set of laws governing armed conflicts – drones are not expressly prohibited, nor are they considered to be inherently indiscriminate or perfidious. In this respect, they are no different from weapons launched from manned aircraft such as helicopters or other combat aircraft.

It is important to emphasize, however, that while drones are not unlawful in themselves, their use is subject to international law.

It is worth pointing out that not all drones are actually armed and used to fight. Unarmed surveillance drones can be used for a range of civilian purposes. They can, for example, help detect fires and therefore save lives. They can also be used to collect vitally important information for relief personnel working in areas affected by natural disaster. In the future, drones might also help deliver emergency aid in remote areas. Even most military drones are unarmed and used for surveillance, in particular for transmission of information on the location and identification of enemy targets.

However, most of the current debate has been generated by the use of armed drones for combat operations, in Afghanistan, Gaza or Yemen for example. Advocates of the use of drones argue that they have made attacks more precise and that this has resulted in fewer casualties and less destruction. But it has also been asserted that drone attacks have erroneously killed or injured civilians on too many occasions.

What does the law say about drones?

Drones are not specifically mentioned in weapon treaties or other legal instruments of international humanitarian law. However, the use of any weapon system, including armed drones, in armed conflict situations is clearly subject to the rules of international humanitarian law. This means among other things that, when
using drones, parties to a conflict must always distinguish between combatants and civilians and between military objectives and civilian objects. They must take all feasible precautions in order to spare the civilian population and infrastructure, and they must suspend or cancel an attack if the expected incidental harm or damage to civilians or civilian objects would be excessive in relation to the concrete and direct military advantage anticipated. Similarly, drones can in no way be used to carry prohibited weapons such as chemical or biological agents. On the other hand, from the perspective of international humanitarian law, any weapon that makes it possible to carry out more precise attacks, and helps avoid or minimize incidental loss of civilian life, injury to civilians, or damage to civilian objects, should be given preference over weapons that do not. Whether the use of armed drones does indeed offer these advantages will depend on the specific circumstances. This issue is the subject of ongoing debate due, among other things, to lack of information on the effects of most drone strikes.

If and when drones are used in situations where there is no armed conflict, it is the relevant national law, and international human rights law with its standards on law enforcement, that apply, not international humanitarian law.

**Is this to say that the use of drones is lawful in all situations?**

The answer depends on which body of law applies in each particular case, and therefore which rules have to be followed. It is crucial that each situation be considered on its own merits. The question of whether a particular situation amounts to armed conflict, and therefore requires the application of the rules of war, can be a source of disagreement, including between the ICRC and some States. The boundaries between various types of
situations of violence have become increasingly blurred. The geographic scope of application of international humanitarian law has become a matter of debate. It is important that we continue to discuss this, but in our view there is no “one size fits all” approach. The ICRC takes a casebycase approach in determining which body of law is applicable to which situation of violence and, consequently, which rules have to be followed. These rules determine the lawfulness of the use of drones in a given context. Generally, the ICRC first shares the results of its analysis with the States and other conflict parties concerned.

**Drones do not only kill. What about the alleged psychological impact they inflict by hovering above a place for hours or days on end?**

The potential psychological impact of drones is a concern that the ICRC shares with other humanitarian organizations. What is the level of stress induced by drones?

What are the consequences of their constant presence in the skies on the mental health of the people living in areas below? Unfortunately, firsthand information is not always available, especially when drones are used in areas where security constraints make it difficult to conduct an independent and thorough evaluation of their impact. Despite this, we strive to assess the effects and to determine whether the use of drones may have violated international humanitarian law – just as we would if any other weapon were used. In places where we are able to collect information, we strive to raise the issue along with other humanitarian concerns bilaterally with the authorities concerned with a view to reducing human suffering.
Who may be targeted under international humanitarian law?

In armed conflict lethal force may, under international humanitarian law, be used against combatants or fighters, and against civilians taking a direct part in hostilities.

What is much more complex is the situation that arises when a person participates directly in hostilities from the territory of a nonbelligerent State, or moves to the territory of a nonbelligerent State after having taken part in an armed conflict. The question is whether lethal force may lawfully be used against such a person and under what legal framework. Opinions diverge. The ICRC holds the view that international humanitarian law would not be applicable in such a situation, meaning that this person should not be considered a legitimate target under the laws of war. Advising otherwise would mean that the whole world is potentially a battlefield and that people moving around the world could be legitimate targets under international humanitarian law wherever they might be. Of course, the person described can be held accountable for his or her actions, and, in our view, human rights law would apply to any use of force that may be necessary.

The operators of drones may be physically absent from the battlefield. Who, then, is accountable? Are drone operators targetable under international humanitarian law?

Although the operators of remotecontrolled weapons systems such as drones may be far from the battlefield, they still run the weapon system, identify the target and fire the missiles. They generally operate under responsible command; therefore, under international humanitarian law, drone operators and their chain of command are accountable for what happens. The fact of their being thousands of kilometres away from the battlefield does
not absolve drone operators and their chain of command of their responsibilities, which include upholding the principles of distinction and proportionality, and taking all necessary precautions in attack. Drone operators are thus no different than the pilots of manned aircraft such as helicopters or other combat aircraft as far as their obligation to comply with international humanitarian law is concerned, and they are no different as far as being targetable under the rules of international humanitarian law.