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Are drones morally acceptable according to Just War Theory?

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*Ai miei genitori,
Che con sacrificio mi hanno reso il giovane uomo che sono,
Spero di ripagarvi, anche solo in parte,
vedendo le mie aspirazioni diventare realtà.*

Abstract

Technological development has marked the last decade with an ever-increasing level of technology applied to warfare. Since the Cold War, we saw with the development of informatics, weapons day by day, becoming more precise, more accurate, and less dependent on the human factor. The investment in research and development is a key factor for a nation to be a leader in armament and keep the pace with its adversaries as well as its allies.

Since the '90s a new technology has been introduced in the skies of the battlefield, the UAV (Unmanned aerial vehicle) commonly known as "drone". Initially used for missions of reconnaissance, for the first time during the war in Yugoslavia, with the start of "The War on Terror" and the military campaign in the Middle East, drones have started to be used according to new standards and new objectives. Under the supervision of CIA, during the presidency of Bush, and after with the presidency Obama, drones have started a campaign of targeting bombing against suspect terrorists in Afghanistan, Pakistan, and Yemen. This resolution has been a target of intense critics concerning legal and moral principles. Indeed, academics have criticized the conduct of the government for the violation of moral principles constituting the "Just War Theory" and fostering concern about the use of drones and the implications of their activity in the bombing areas, on a political, economic and social field. All these concerns have been amplified by the lack of transparency and accountability shown by the White House and by the agencies coordinating and executing the air-attacks on the groups of insurgents amplifying the suspects of the immorality on the way in which drones are used in a conflict.

In my thesis, after having introduced the argument of Just War Theory I will evaluate the drones according to each principle of Jus in Bello and Jus ad Bellum. The reasoning line will be based on the traditionalist view, but each principle will be discussed also from a personal perspective, modifying and supporting new views about the approach to the theory alternating more "classical" or more "revisionist" interpretation of the theory. The basic concept will be the validity of killing using drones. What matters is the respect of some principles like proportionality and discrimination, other principles may result as secondary. The result will be the preference for some principles over others, having as consequence the "renounce" to the application of some principles in order to obtain the employment of "superior" principles.

The reasoning will be on both theoretical but also concrete scenarios according to the subjects. The "War on Terror" offers a concrete example of the use of drones, instead, scenarios of interstate conflict using drones should be based only on the hypothesis and on the application of theories of deterrence and symmetric warfare.

During the discussion of each principle, all the critics done by the academics on drones will be reported, according to the principle that is under analysis. After having reported those critics, there will be my answer that will try to dismantle the critics and will build a framework of compatibility between drones and Just War Theory.

The answer will be based on the analysis of cases and on theoretical reasoning. Each principle needs to be read up on, contextualizing on cases already happen and on possible scenarios in which the opposing sides are both states, while until now one of the fighters was an insurgent group.

The discussion will be based on data that will support the adherence of drones with Just War Theory, but also on data that will show critique points on the use of drones. These data will be useful to elaborate a final opinion on the subject. The three most important agencies to whom I will refer for the data that I have collected are The Long War Journal, New American Foundation, and The Bureau of Investigative Journalism, all of them very well-known data collectors.

Another point is the consideration of the principle of humanity. This concept of respect for human life will be based on a comparison of the impact of the war campaigns and of drones' strikes over the civilian population. The objective is to demonstrate that drone warfare is less damaging than other forms of war and less impacting on the civilian population.

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Last, I want to remember my beloved uncle Giuliano, I'd like to think that you still watching over me.

Introduction and Objectives

The recent conflicts around the world have been characterized by new and different features. The symmetric wars seem to be less adopted and to be substituted by asymmetric warfare. Western and non-Western countries are facing phenomena of insurgency that in many cases have been a great concern for armies, that in theory were superior but, in fact, the guerrilla strategy has been proved to be effective, causing substantial losses to the regular armies.

The warfare scenario is always changing, presenting new and old challenges. The change of scenarios has always challenged the human, changing the rules and the approach to warfare. Philosophers and later academics have tried to distil principles available and functioning in every situation to regulate and limiting the violence of war, building rules based on common moral principles shared by everyone, characterized by legitimacy, fairness, chivalry and proportionality. These rules have found in the western culture, in the middle age philosophers like Saint Thomas Aquinas and the rules of Christianity. But the principles have evolved adapting to the time and scenarios, allowing conflicts unjust on principles but just by the majority, because of ideologies searching for moral bases to justify imperialists campaigns. The willingness of domain has been justified in many ways; the crusades have been justified as a pilgrimage for the faith with weapons to allow to the Christians to arrive in the Holy Land to pray on the holy sites¹. Or again the colonization has been justified also as an act of civilization in the underdeveloped part of the world², as a fight against the backwardness, and to diffuse the Christian religion. Another example is the case of the two world wars, that have seen the nationalism, in the first and second world war, and the racism, for the second, as the main topics that have fomented the war.

The end of the Cold War has caused a revolution, in the perception of the world but also in the interaction among states, in the world equilibria. The initial hope was that all the conflicts were finally come to an end, as Francis Fukuyama proclaimed³, thanks to a hegemonic peace, and the disappearing of any reason of conflict due to the end of the contraposition of the two ideologies, liberalism and communism, and the final victory of the first one.

What has not been predicted is the change of war, the change of scenarios, and reasons for conflict. Samuel Huntington speaks of “clash of civilizations”⁴. Indeed, the parts facing on the field have

¹ Gary Dickson Thomas F. Madden Marshall W. Baldwin; *Crusades, Christianity*, Encyclopaedia Britannica.
<https://www.britannica.com/event/Crusades>

² Erin Blackemore; *What is colonialism? The history of colonialism is one of brutal subjugation of indigenous peoples*. National Geographic, <https://www.nationalgeographic.com/culture/topics/reference/colonialism/>

³ Francis Fukuyama, *The end of History and the Last Man*, Free press, 1992.

⁴ Samuel P. Huntington, *The clash of civilizations? The debate*, Simon and Schuster, 1996.

drastically changed, but what is changed is also the war, in its own nature with no more armies facing one against the other, but rather guerrilla's groups facing professional armies.

The so-called "insurgents" take advantage of the civilian among whom they hide. Most of the time they are motivated by religious ideologies but also dedicated to criminality. So, the western countries that have and are facing this threat have developed new technologies trying to compensate for the disadvantages faced and avoiding those strategies that have given to the insurgents' argumentations for their fight.

A new characteristic that is emerged is part of the continuously developing of technology, I'm particularly referring to drones. Drones have brought an important change, not only for the militaries, that have found in them an extremely useful and efficient tool, thanks to their capability to be operative for longer times, much longer than the military jets piloted in the first person by a human, but also because they are extremely silent, difficult to be detected and are extremely powerful and precise. But the introduction of drones in the battlefields has also provoked a strong incentive for the academics to think about the future of war and on the moral implications of using drones rather than humans.

The critics have been primarily focused on the way drones are used, hitting and eliminating hypothetical dangers and causing "collateral damages". On this issue, for example, some academics have theorized the possibility to regulate and restrict⁵ the use of drones.

My thesis will face the issue of drones. Starting from the general concepts of "just war theory". Indeed, is necessary to analyse the problem starting from the rules constituting a moral war. It is difficult to discuss of the morality of war but considering the rightfulness of war and the right way to fight is still the only way to moderate the scale of war, and the "just war theory" remains the best way to face these issues⁶. So, the first part will be a summary of the principles composing the Just War Theory. , I will, therefore, analyse specifically every principle. This investigation has as main objective to evaluate if drones are compatible with the *Jus in Bello* and *Jus ad Bellum*.

I will do so considering how the single principle is put into effect in reality, I will consider the criticisms of drones concerning the supposed violations that UAVs commit and the way the violation is done. Some criticisms focus on the civilian deaths caused by drone bombing or more precisely the civilian victims that the American government admitted having caused which may not correspond to reality. Indeed, as reported by the journalist Scott Shane, President Obama has "embraced a disputed method for counting civilian casualties", which "in effect counts all

⁵ Allen Buchanan and Robert O. Keohane have proposed this possibility in a paper "Toward a Drone Accountability Regime".

⁶Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, Preface.

military-age males in a strike zone as combatants"⁷. All adult male casualties are assumed guilty to be militants "unless there is explicit intelligence posthumously proving them innocent.". Moreover, another issue is the dehumanization, in the sense that it doesn't seem fair to use an unmanned plane to execute air attacks, or again that the human pilot may approach bombing as a video game. After having reported the argumentations referring to the violation of the principle by drones, I will answer defending their conduct and the principles and the strategies at the back of this new element in warfare.

I will analyse the qualitative and quantitative data collected by journalists and NGOs to sustain the compatibility of drones with the Just War Theory, specifically the amount and the impact of this new frontier of warfare on the civilians. The defence will consider the way drones are used in the actual scenarios of counterinsurgency. Is necessary to do so with the precise idea to evaluate the way force is used. Is also necessary to consider possible alternatives, in other words, if manned aircraft can perform differently. The comparison is necessary because manned aircraft are morally acceptable, so drones to be morally incompatible with Just War Theory need to be a much less "efficient" tool and incapable to remain inside the boundaries set by the Just War, and I will demonstrate that this is not the case. The principles will give the opportunity to imply some very interesting topics related to the modern scenarios of conflict, inevitably modifying also the approach to the moral theory. Indeed, as I will expose during the thesis some traditional principles and the traditionalist approach to them needs to remain but is also true that the scenarios and the nature of warfare are such that some of the principles can be overwhelmed by others, or some principles may have lost the same level of importance compared to others.

What I'm supposing is that drones per se do not violate any principle, in particular, the principles of *Jus in Bello*.

A principle can be violated by human action and not by a weapon, as any weapon can be used morally or not, drones can be used according to the moral rules or not, this divergence is caused only by the choice of politicians authorizing the militaries and refusing to be accountable for their decisions.

In this thesis, I suggest that the morality of drones cannot be judged from a general perspective questioning whether this kind of weapon is immoral per se. Rather, as for other conventional weapons, this assessment should be done on the basis of JWT. A drone, in the same way as a rifle, can be used in self-defence from aggression and can be employed in a way that is consistent

⁷ Scott Shane, The moral case of drones, New York Times, <https://www.nytimes.com/2012/07/15/sunday-review/the-moral-case-for-drones.htm>

with Jus in Bello's principles of discrimination, proportionality and necessity. While – just as other even conventional weapons – the use of drones can violate these principles as a result of a decision made by leaders of one of the fighting sides.

1. The theoretical bases of the Just war theory

Humans have experienced war since the beginning of civilization. In contemporary with this constant event has known practices of regulation aimed to avoid the most terrible consequences. In this sense, the states' regular forces have known a strict regulation of the use of force, but despite this, have not avoided events of extreme violence avoiding the observance of the so-called military necessity but rather pursuing revenge, hate or desire to raid, perpetrated also by well-trained forces and not just militants or bandits. These failures should not be considered as the absence of morality in war, but as a failure in its regulation.

Since the Christianity age, but also before, the war was regulated. War was regulated according to the religious calendar, according to good reasons and in the recognition of the fact that some subjects could have been killed lawfully. In the beginning, Christianity seems itself as a pacifist religion, but during the falling of the Roman Empire, there was the concrete necessity for the Christians to defend themselves from barbaric populations invading the Empire. In this period, one of the most famous theorists of Christianity, Saint Augustine⁸, theorized the fact that self-defence was acceptable, and the effort to keep the peace was achievable through also the use of force against those who could try to destroy the peaceful equilibrium. Following this framework, the military was a defender of peace, a necessity for order, its duty was to defend the harmless from violence, also using force.

Probably one of the most famous theorists of Just War Theory has been Saint Thomas Aquinas collecting in *Summa Theologicae* a series of justification to wage war and the appropriate behaviour to have in war, creating those that are considered the bases of the modern Just War Theory. Indeed, for the first-time war became more ethical and juridical and less related to religion, despite the rules described by Saint Thomas were for good Christians.

Just War Theory has been much of the International Law's foundation. Indeed if we think to International treaty they always refer to constitutive principles fundamental in Just War, such as proportionality, necessity and the resolution to war only in case of legitimate defence as established in art.51 of the UN charter, and principles of good faith in the relations among states (as I will show describing the principles of Just War Theory, the Good Faith is fundamental for engaging war not for gaining but only to re-establish an equilibrium precedent to the conflict). Moreover, jurists like Grotius established concepts such as legitimate authority and just cause, principles that have been introduced in documents such as the Hague and Geneva Conventions.

⁸Saint Augustine Saint augustine, *De Civitate Dei*, 413-426 A.D.

Is necessary to point that the terminology is in part misleading, indeed “Just War”, seems to intend that on a certain time there will be a “perfect war”, morally right, such a concept is fade away with the concept of religious war in western philosophy, at the most it is possible to speak of acceptability, indeed can be considered the lesser evil in some situations. Despite remains an evil it can be considered a lesser one, necessary to defend principles and conditions of living.

The "Just War criteria" are a set of rules, commonly recognized to be at the base of lawful war, morally acceptable. Even if these criteria are violated, or the political leaders lie on them, these are the symptoms that any way they are recognized as valid, because the violators try to hide the truth or to find false justifications and lying upon them is a risk that must be taken to pursue a certain political objective.

Such an effort has been interpreted as a way to contain war, so as a sincere way to limit the violence to whom the civilian and militaries may be victims, others highlighted the manipulation of the theory used only to justify the murder of other humans for objectives different from peace but power and hegemony. On this issue, Tony Burke (2007) talked of the “formal rigidity” of the theory affirming that it put in front of the human massacre, the procedures and intentions, as a justifiable reason to the horrific consequences of war⁹ and at the same time criminalize behaviour that is considered immoral by the Just War Theory but they reduced the waste of human life.

The moral framework of war can be distinguished into two main groups, the “*Jus ad Bellum*”, which are the condition to go to war, and “*Jus in Bello*”, which is the set of rules to follow during a conflict.

When we talk of “*Jus ad Bellum*” we should consider the existence of some criteria which need to be respected, if we want to engage in a just conflict¹⁰. In order we have:

- 1- Just cause
- 2-Legitimate authority
- 3-Public declaration
- 4-Just intent
- 5-Proportionality
- 6-Last resort
- 7-Reasonable chance of success
- 8-End of peace

⁹ Burke, A (2007), *Beyond Security, Ethics and Violence: War against the Other*, London, Routledge, p.163.

¹⁰ Childress, James F. (1978). "Just-War Theories: The Bases, Interrelations, Priorities, and Functions of Their Criteria". *Theological Studies*, page 427- 445.

At the base of these principles, there is the idea to refuse conflict and to avoid war as an instrument of resolution of the discords, and the principles above have the purpose to limit, as much as possible, the use of force¹¹.

The just cause is the base for legitimacy in war. The Un Charter in Art. 2.4 postulates that all states should abstain from the resolution to the use and threat of using violence. The values at the base of just cause are changed in the centuries, religion or honour were considered just causes, but now the contemporary morality and international law consider only the self-defence from an aggression as just cause, the defence of others from aggression and the protection of innocents from aggressive, repressive and violent regimes, all of them in practice involve, somehow, the protection from an aggressor. A state to engage in war needs to prove to do it for good reasons, excluding any kind of self-interests purposes. The discussion on the good reasons to engage into war expanded up to the point that if the war in Afghanistan done by the US has been an answer to an aggression and so self-defence, those done after in Iraq and Pakistan are perceived as pre-emptive attacks so out of the principle of Just cause and so illegitimate because not justified by an attempt of self-defence, according to some critics, those operations respond to a desire of hegemony over the Middle-East. The answer to terrorists' attacks, so waging war against terrorists can be considered as a legitimate answer to a threat, as a just cause, to protect the safety of citizens and to put an end to the climate of fear that terrorism aims to reach¹².

The legitimate authority requirement is the result of a historical period in which private could enlist an army, legitimate authority was designed to concentrate the power of authority in a single entity able to control, select and moderate the use of violence. Indeed, according to Pufendorf the right to initiate war belongs to the state sovereign¹³. The power to declare war is assigned differently according to the country. But anyway, we are talking of legitimate states in which this power is checked and balanced by formal and informal counterparts. In the so war on "terror", the terrorists are not a legitimate authority operating differently from a legitimate authority of a state, lacking the structure, the political power, etc. Terrorisms¹⁴ as such delegitimate any kind of force because it violates the fundamental principle of discrimination and aiming to create disorder and fear among the population only for political reasons. The juridical status and the effective power of terrorists have always put into question the legitimacy

¹¹ "Just War Theory | Internet Encyclopaedia of Philosophy". www.iep.utm.edu.

¹² Mooney Brian T., Imre R., (2008), *Responding to Terrorism: Political, Philosophical and Legal Perspectives*, Routledge, p.228.

¹³ Quoted in Fabre, Cécile (2012), *"Cosmopolitan War"*, Oxford University Press, p.143.

¹⁴ M.Walzer, *Terrorism and Just War*, Springer Science + Business Media, 2006

of declaring war to them despite the evident disparity of power among the two sides, as was the case of the US and Al-Qaeda.

The public declaration seems to be just a mere formality but has a declaratory effect which can be used to clarify the position of the government in its commitment to fight, putting the counterpart to consider an alternative solution to the conflict. The public declaration increases the awareness of the fighting sides, of the civilians and of the international public opinion that from the moment of the declaration will be informed of the conflict and react consequently. Moreover, the public declaration has as objective the one to avoid secret wars, increasing the accountability of governments and the requests of the society to be involved in the foreign affairs of the government.

The Just intent is a requirement extremely important to limit the scale of the conflict. The parts during the conflict can forget their initial intent of fighting and pursuing new objectives. The Just intent has the function of "*memento*" to use with the scope to restore the status quo *ante bellum*.

Indeed Restoring the initial situation is a condition necessary to avoid any kind of purpose that even after the war may provoke revenge and uprising to resolute to a new war, moreover acquiring resources or properties belonging to an adversary would transform a war of defence and just into a war for spoliation and "pillage". The Just intent is applicable when the conditions that will occur with no resolution to war would be worse than starting a conflict, in a sense war should appear as the lesser evil.

Proportionality¹⁵ is a restraint to the scale of war. States notoriously can underestimate the costs of war, under the financial and human point of view. Proportionality in this sense has the task to limit violence and to keep "rationality" into the counterparts. Proportionality is a principle present in both *Jus in Bello* and *Jus ad Bellum* indeed is necessary to determine when the force can be used and then the scale and the intensity of force to use against the opponent. In case of invasion, a country has the right to repel the attack but not to occupy the enemy territory and for what concerns the amount of force to use, proportionality limits up to the point to avoid an escalation of the use of weapons disproportionate with the reasons of the war.

Last resort¹⁶ is, in my opinion, one of the most important requirements. It leverages the principle that a conflict has unpredictable results and the costs of human lives are extremely difficult to control so it reminds to the unpredictability of war. Moreover, has a legitimacy role, indeed represent the use of violence as the only instrument left, all the alternatives have been sifted and

¹⁵ David Luban, Just War, and Human Rights, source: Philosophy & Public Affairs, Vol. 9, No. 2; Wiley, Page 175-176

¹⁶ Martin L. Cook, The Moral Warrior, State University of New York Press, Albany, 2004, Page 28-31.

the resolution to violence is the only alternative remained. This act of avoidance gives the legitimacy of good faith to have tried to avoid violence. Indeed, diplomatic agreements should be preferred to any conflict to avoid violence but as one of the two parts is unwilling to find an agreement, violence becomes the alternative for the part trying to remain in the framework of morality. Moreover, as I will show you further, most of the concerns over the drones are that they are decreasing the standard of the last resort, or rather making easier to decide to target objectives, so eliminating the last resort and recurring to violence even when not necessary. Reasonable chance of success is probably one of the less morally based principles, and the more realistic, is based on the assumption that if I have to cause death and violence, at least I should have a reasonably high level of possibilities to achieve my objective, without sending to certain death the soldiers of my home country; in other words, is necessary that the conflict would achieve a final result that satisfy the reason of the conflict, if, instead is clear since the beginning that the conflict has no possibility to be won, is better to avoid death of militaries and civilians and find a compromise with the enemy, this approach has been found for example with the Conference of Munich in which the Republic of Czech-Slovakia was divided by the Nazis without any opposition, because, on much other reason, the chances for the Czechs to win a war against Germany were very few, so the government decided to avoid a war, saving their citizens from an immediate war, but condemning them to an oppressing and bloody regime. Lastly, end of peace is a requirement that asks to consider if when the war is finished, the peace achieved will be better than the one before, more stable and prosperous, avoiding any future recrimination and request that may cause another war.

When we move from *Jus ad Bellum* to *Jus in Bello*, we switch from a political level to a more technical level that involves the military personnel. Indeed, the principles of *Jus in Bello* are principles that need to be respected during the war. Because of the direct involvement of militaries in the conflict they have a direct and personal responsibility to respect the principles but also the government deciding to wage war has normally the responsibility to decide the rules of engagement¹⁷ and as for the case of drones, that we are going to see later, the political leaders authorize specific attacks, having a direct impact on the decisions of a military campaign. It is easily understandable that in the first part of rules is impossible to violate any moral rule of Just War Theory by a weapon. Indeed, these rules proclaim when a war starts for "good reasons", for defending its own from aggression or defending someone else, respecting also

¹⁷ The "Rules of engagements" are the directives in which are defined the conditions, the degree and the systems in which the use of force can be used in a war theatre by the military forces.

other rules, mentioned above. Anyway, if there's any violation it can be attributed only to the decision-makers.

A tool can give opportunities and more chances to achieve goals, but these decisions are based on political responsibility. Therefore, my argumentation will later focus on the second group of principles, those belonging to the "*Jus in Bello*", that are a group of rules that needs to be respected during the conflict by the opposing sides. In this set of rules, politicians, still having a role in decision making, also in the military campaign, authorizing the so-called "rules of engagements", but they are also sided by the military personnel who takes, decisions, related to a tactical aspect of war, and also influencing the strategic campaign through their activity of advisors in the high-ranking groups of decision-makers.

So, it's under the responsibility of officers to form a military force that respects some boundaries of rules, to decide what tactics or weapons to use, to establish a set of rules among the troops and how to treat the civilian involved in the conflict, so is fundamental for them to have knowledge of the rules of the *Jus in Bello*.

The two most important rules in *Jus in Bello* are discrimination¹⁸ and proportionality.

Discrimination refers primarily to the principle of distinguishing among groups of people according to their belonging to a specific social or political category. The central characteristic to distinguish is the status of a combatant. Being a combatant in a conflict means having lost the immunity from violence, making yourself vulnerable to the deliberate use of force, which must be considered valid even if you are not into the frontline. The civilians instead have the privilege of immunity from the violence which cannot be considered invalid in wartime. In the case of Guerrilla or urban fighting, is extremely difficult to discern between combatants and not, what is important is a good faith and the commitment to avoid any collateral victim among the civilian non-combatants. What the Just war theory cannot accept is the use of civilians as "human shields" or deliberate tactics aiming to kill the highest number of civilians among them, under these considerations is more acceptable than the soldiers will be put to a greater risk to achieve an objective to reduce the risks for civilians.

Proportionality is the second requirement in the principles of *Jus in Bello*, which is based on the idea that the use of force against a target should be adequate to the value of the military objective. The dimension of proportionality is a tactical one that focuses on the target and the proper instruments to use against it. For example, it cannot be considered proportional to bomb a district to hit a sniper on a roof. This concept of proportionality has been made also more

¹⁸ Jeff McMahan, *The Morality of War and the Law of War*, Page 21-22

achievable thanks to the technological achievement that has increased the precision of the weapons with "surgeon attacks".

All these principles have anyway found cases in which they were challenged not just by non-adherence, but on a theoretical and moral level. For example, the humanitarian intervention, have trumped the sovereignty power because of a supposed superiority of the Human rights over those of a state. Or again the concept of "pre-emptive attack" theorized during the Bush's administration, consisting in an attack which anticipate a future possible threat, so different from a "preventive attack" in which there is a concrete threat ready to hit; let's say an enemy positioning its divisions along the home country's border. The "pre-emptive" attack is an expression of hegemonic power, able to hit whoever, whatever, whenever, in case any possible challenger is emerging in a regional scenario. These cases have put under discussion some of the most important values of the Westphalian system over which has been constructed the international system of laws.

Another principle that Henry Sidgwick¹⁹ contemplates is the utility. The utility is a principle connected with the aim of the victory. Any act necessary to win is useful, so lawful, and any war's act not necessary to win is unlawful. This principle is chosen with the specific aim to limit the use of violence. Normally we should use two criteria to decide what is excessive: 1- As mentioned before, Victory or "the military victory"; 2- Some notions of proportionality, evaluating the necessity to cause damages. The analysis of Sidgwick subordinates the value of human life to the value of the victory for the opposing sides. This reduction is due to the consideration of soldiers in a war. Assuming their integrity is behaving during a conflict, it would seem unreasonable to condemn a soldier for killing an enemy in war, none of the sides would condemn a soldier for killing his enemies. So, for the achievement of victory killing is necessary, and so human life is subordinated to the task of war for the fighting sides. There is also a fourth principle, considered among the most important principle in the Just War Theory which is the Principle of Humanity.

The Principle of Humanity was born from the principle of avoiding useless sufferings to soldiers and civilians during the conflicts, prohibiting certain kind of weapons that do not simply kill but provoke sufferings to people, completely useless to the end of the war, except to cause terror and bend the morale and the resistance of the enemy. From these considerations are born the UN conventions on conventional weapons of Genève of 1980 that limits the use of certain weapons because excessively damaging (violating the principle of proportionality) or having indiscriminate effects (violating the principle of distinction). The principle of Humanity

¹⁹ Michael Walzer, *Just and Unjust Wars*, cap. VIII, page 165.

balances the principle of necessity, that is normally used to justify military conducts during a conflict, moreover, the human principle is the union among the principle of proportionality and distinction, consequently is not part of the more traditional principle of *Jus in Bello* but has been elaborated to highlight the obligations of fighting sides towards the non-combatants. These two principles bound the conflict inside certain limits allowing and prohibiting certain conducts. Respecting the principle of humanity is also necessary as a steppingstone to guarantee a more durable peace after the war, avoiding claims and desires of revenge. Respecting the principle of Humanity means remaining coherent with the precedent *Jus ad Bellum's* principles of Just intent and end of peace.

1.1 Inter Arma silent leges

The sentence giving the title to this paragraph describes a situation described by the status of necessity. This sentence should mean that during a war there is no-law, anything is justifiable. This is only a cynic view that forgets not just those International Treaties done to reduce any kind of useless violence but also forgets the Natural Law. Natural Law pushes everyone to consider a certain kind of behaviour unjustifiable and "naturally" it limits our behaviour inside certain boundaries. However, the status of necessity is a justification aiming to reduce time, lives and money to end as quick as possible a conflict. In a sort of distorted interpretation of "the aim justifies the means". Indeed, one of the elements often discussed by academics is the element of the "double effect". The double effect describes a situation in which a military decision affects not just the enemy's army but also the civilians. For example, in the case of bombing an industrial area; if the firms produce tanks, destroying those structures would have an impact on the future capabilities of the enemy, so it is acceptable. But bombing an industrial area, it means killing the workers of the firm and even civilians living in the area close to the industries. According to Walzer²⁰, killing civilians working in a military factory is acceptable because they are contributing to the war, and to feed the military power of their nation, but killing the civilians living around the factory is not acceptable. Indeed, the militaries should provide an extremely high level of precision to their operation avoiding as much as possible any civilian death. This is one of the reasons why, is admissible attacking military factories producing weapons, or anyway, producing something that distinguishes the militaries from the civilians, and not producing goods consumable also by the civilians, like food, clothes, medicines. The militaries may be encouraged to execute such operations, to bend the resistance

²⁰ Michael Walzer, *Just and Unjust war*, cap. IX, page 185.

and the morale of the enemy, using the civilian pains as a lever against their military and political opponents. But the unnatural nature of these behaviours is frequently registered in the behaviour of the soldiers, avoiding certain behaviour, preferring to risk more, etc., because of their consideration of what is acceptable or not, what is human and what is not. The problem of avoiding the double effect is the fact that it is almost impossible to see military commanders deciding to risk the lives of their soldiers to save the lives of civilians belonging to the enemy's side. The most moral behaviour that it could have is to avoid systematic behaviours aiming to spread terror attacking civilians. A case presented by Walzer is the siege²¹. In the end according to Walzer, the besieging side should always allow the besieged side to evacuate the civilians trapped in the city or to guarantee food to the civilians that during a siege are the most vulnerable component because according to Walzer the commander attacking a city has the responsibility upon the civilians involved in the battle. Walzer comes to the point that the commander of the attacking party has no right to starve the civilian even if they politically agree to refuse to surrender.

Despite we can generally agree that civilians shouldn't be involved we cannot give the moral responsibility to the commander commanding a siege. As has been the case for Leningrad, the attackers, in the end, have been defeated. When a commander commands to attack a city and to siege it, it takes a risk; the time at his disposal is limited, and giving advantages to the enemy is against its interest because in the future he can be the one to be besieged if he fails to win. The besieged side has the responsibility, and the same is for the civilians. If you want to refuse to leave the city because of your attachment to your place you cannot pretend to be safeguarded by the enemy on your life and properties. If you are the commander of the army defending the city, you know what is going to happen, you may have different options, even leaving the city to the enemy if you give more value to the life of the civilians than to the strategic value of owning an important city. Why the besieger should renounce to its strategic advantages and the besieged not? The defending side has more responsibility for the lives of its citizens and not the opposite. Let's say that the attacking army sends food inside the city. What guarantees to the attackers that the food will be given to the civilians and not to the soldiers? Let's say that the attackers have the chance to check to whom the food is going to, so let's say to old, women and children, those that normally are not enlisted in the army. But we cannot have any certainty that those categories are not fighting. In contemporary times, women fight as well as men and in desperate time also the children old enough to hold a gun are recruited. But the most important argumentation is the fact that the attacker has no certainties to win the battle and has no chance

²¹ M. Walzer, Just and unjust wars. Cap.X

to allow to the enemy any kind of advantage because if he fails to win soon or later he is going to be the one to be attacked and to defend itself in one of its city. The moral laws remain but we should always consider that there is a lot to be won, and none of the parts is going to waste any advantage.

1.2 Jus Post Bellum

The concept of *Jus Post Bellum* is one of the most recent elements of the Moral law. Has emerged as an attempt to regulate and analyze the duties that victorious factions have over the defeated and the rights that the last one holds. The *Jus Post Bellum* is described as "a new category of international law currently under construction"²². This branch has emerged as a result of international missions of peacebuilding and intervention inside countries. So, is logical the question asking: "What are the moral obligations of the countries towards those that have been an objective of an International operation?". As can be imagined, as for the *Jus in Bello* and *Jus ad Bellum*, the *Jus Post Bellum*, is not properly regulated, so it is not described the moment in which this part of moral conduct becomes operative. Generally speaking, is possible to say that as the conflict ends, with a peace agreement, prolonged ceasefire agreement or a drastic de-escalation of the conflict. Those that have the right and the duty to manage the post-conflict are those countries that have fought and won the war, as directly responsible and the United Nation with a greater emphasis on the Security Council. Part of the rules belonging to the *Jus post-Bellum* refers to the humanitarian law, human rights and the rules over the occupation, so those elements belonging to the well-being of the civilians living in the country just occupied as a result of the end of the war. Larry May²³ identified some principles of *Jus Post Bellum*:

1. Rebuilding
2. Retribution
3. Restitution
4. Reparation
5. Reconciliation
6. Proportionality

All these principles are the result of a Synthesis of International principles of International law.

The rebuilding is the result of a communitarian effort of assistance to avoid a humanitarian crisis

²² Inger Österdahl and Esther van Zadel, "What Will Jus Post Bellum Mean? Of New Wine and Old Bottles" (2009) 14 Journal of Conflict and Security Law 1; in "The concept of jus Post Bellum in International law, Eric De Brabandere"

²³ Larry May, *After the war ends: A philosophical perspective*, Cambridge University Press, 2012.

that might have repercussions on a broader states' community. Retribution is not vengeance but a simple punishment only if necessary, for specific violations always discriminating between politicians, soldiers, and civilians. Restitution, Reparation, and Reconciliation are elements converging in the same direction, which is to re-establish a status existing before the war avoiding future recrimination and claims. The principle of proportionality guides all the Just War theory basing all the guidelines of resolutions and approaches to war. All the principles refer to the civilian population. The attention is pointed toward the civilian who needs to restore normal life.

2. Just cause

Let's now start to analyse the principles that form the Just War Theory. Principle by principle, we will see if they differ the compatibility of drones with Just War Theory, starting from the just cause.

As has been previously said the UN charter declares that the resolution to force is admissible only in case of defence or in case of mutual defence, in other words defending a partner that has been attacked. Is that sufficient? What provokes a certain uncertainty about the relation between drones and just cause, considering the membership of this principle to the group of *Jus ad Bellum*?

So, the principles of *Jus ad Bellum* are discussed, principles whose violation is generally addressed to leaders and politicians and not technicians, so militaries, that instead are responsible for the principles of *Jus in Bello*.

Drones have been used in particular for the context of counterinsurgency and counterterrorism. Indeed, these are scenarios that have caused the greatest concerns and critics.

First is emerged the critique that drones are armed and used for targeted strikes operations "different from war". Indeed, these operations have been done by a western and modern nation, the US, against a group of militants, justifying this act, as a "war on terror".

An important analysis mining the morality and legality of UAV's use is done by Harry van der Linden in *Drone Warfare and Just War Theory*²⁴.

In specific, the argumentation on the immorality of drones starts by attacking the *Jus ad Bellum* argumentation to the missions of drones in Pakistan. Van der Linden refers to the Obama speech at the National Defence University²⁵, in which the President addressed the operations of drones in Pakistan as "war". So, if such operations were war activity it seems reasonable to analyse if they respect the principles of addressing war. What is disputed is the justifiability of the act of war, the principle of just cause.

Indeed, citizens and militaries would be responsible for every war that their own country starts because they are living in a democracy and the responsibility of decision weights on the shoulders of everyone. According to the author, there is a violation of the just cause in the air incursions with drones in Pakistan because the threat of terrorism is limited, the Just War principle of just cause approaches with the magnitude of the threat so if the threat is not large enough engaging into a war, evidently, has no justification. What is of central importance, for the author, is the magnitude not the

²⁴ Harry Van der Linden, *Drone warfare and Just War Theory*.

²⁵ A full text can be found on the New York Times online under the title "Obama's Speech on Drones," May 23, 2013, accessed October 23, 2013. <https://www.nytimes.com/2013/05/24/us/politics/transcript-of-obamas-speech-on-drone-policy.html>

nature of the threat. Indeed, the war in Afghanistan first, which has weakened Al Qaeda, and the deep differences in the power of the opposing side was too deep to justify a war in Pakistan. What has justified the conflict and the military intervention was a sense of retribution deriving from the 9/11 and all the terrorist attacks but the fact that war has been done to avenge an attack demonstrates that is not been performed to prevent a possible future larger-scale threat, and that goes far beyond any conceptualization.

Anyway, the author was not only opposing the idea of a military campaign of drones' attack but also to any kind of intervention in Pakistan even a terrain one. The supposed incapacity of the enemy to be a concrete danger refers also the principle of self-defence. When the answer to a threat is beyond proportionality and just cause, the unanimously recognized principle of self-defence is ignored and bypassed. Moreover, the preference of the administration in striking the low ranked militants than the high ranked and only the 10%²⁶ of the strikes was against Al Qaeda, all the rest were against local groups, with local aims and not necessarily directed against the US, it should be a demonstration of violation of the principle of the right intention, supporting the Pakistani government against opposing groups, increasing its influence and its hegemony in the area, so for principle far from morality.

In another article²⁷ Buchanan and Keohane, observe that the violation of the just cause is the result of the low costs implying the employment of drones. Because of their intrinsic capacity to reduce risks to the military personnel piloting and reducing the deployment of ground troops. This reduced risks and encouraged the resolution to force despite the absence of a threat of such gravity to require the use of force.

After the falling of the Berlin Wall, we have seen day by day an ever-increasing number of operations sustained by the UN, or not, with the intent to answer to specific situations of great danger, in countries facing civil war, famine, and violence.

What has been presented is that drones violate the principle of the just cause because the war against terrorism was “unfair”. But the rightful principle of just cause has been elaborated on specific historical time in which war was mainly done by states against other states, and the principle of self-defence was aiming to avoid any future conflict among states. But the world scenario has changed, and the nature of the threat has changed, and despite the moral principle should remain valid, they need to be expanded, allowing a moral behaviour to preserve moral principles even more important.

²⁶ Drone Wars Pakistan: Leaders Killed, NEW AMERICAN FOUNDATION (last visited May 15, 2014), natsec.newamerica.net/drones/pakistan/leaders-killed; in *Drone Warfare and Just War Theory*.

²⁷ Allen Buchanan and Robert O. Keohane, *Toward a Drone Accountability Regime*.

The observations done by Van der Linden, Buchanan and Keohane are founded, there is no doubt that, drones increase on a certain measure the resolution to the use of force and that the difference of military power is drastically pending to the side of the western power engaged in the counterinsurgency operation.

Moreover, the resolution to force is verifiable by the increased number of drone strikes, from Bush to Obama's presidency. The first targeting campaign has been done by the CIA during the Bush administration in 2002 and then a series of sporadic strikes in Pakistan between 2004 and 2007, and then a more substantial series of bombing in 2008²⁸. As soon as President Obama took office in 2009 drones' strikes became an important feature of the Presidential policy, by December 2013, 322 strikes have been done (Figure 1) through the President's authorization, demonstrating an impressive preference in the resolution to the UAV's instrument, accelerating also its use oftentimes until 2011.

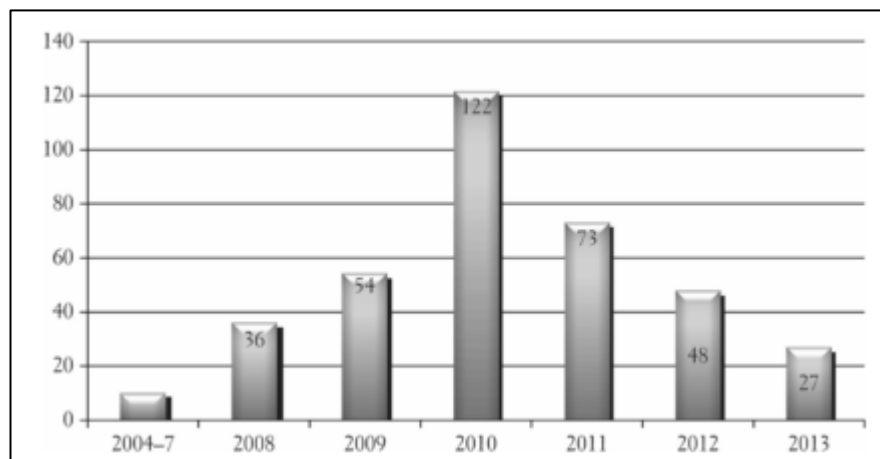


FIGURE 1²⁹

The Drones' campaign in 2010 reached its highest peak, provoking in Pakistan from 2004 and 2013 between the 2080 and 3428 victims, adding to this the unauthorized raid aiming to kill Bin Laden and the failed NATO's strike that in 2011 provoked the death of 24 Pakistani soldiers, aggravating the relation between Pakistan and US causing the eviction of the CIA in the use of the airbase of Shamsi in Balochistan. The US ambassador in Pakistan itself requested more cautious in choosing targets and suggested greater involvement of the Pakistani authorities in the striking missions³⁰. As the campaign started to decrease in Pakistan it accelerated in 2011 in Yemen.

The mistake, or at least what the critics are not considering is the entire scenario of the conflict.

²⁸ D. Rothenberg, P. Bergen; *Drone wars: Transforming Conflict, Law, and Policy*; Cambridge University Press, 2014.

²⁹ Data taken by New America by December 31, 2013

³⁰ Entous, Adam, Siobhan Gorman, and Julian E. Barnes, "U.S. tightens drone rules," *Wall Street Journal*, November 4, 2011. taken by, *Drone Wars: Transforming Conflict, Law, and Policy* (p.39). Cambridge University Press.

We should consider the conflict in its complexity. The nature of the threat is important as much as the dimension. Guerrilla is a warfare phenomenon that changes everything. Quoting Mao Zedong: “Concentrate a big force to strike at a small section of the enemy force remains a principle of field operations in guerrilla warfare.”³¹.

Essentially, guerrilla exploits the great force of a regular army taking advantage of its limited mobility, attacking by surprise the weakest point of the enemy. To this intrinsic characteristic of guerrilla on the battlefield, we have to add the basic point of terrorism, adopting the guerrilla warfare on a world scale, targeting entire societies, hitting the civilians. With extremely limited resources and few members, a terrorist group can damage a nation using terrorist tactics. Having taken the vision of this lets directly answer to the concern about the just cause.

What Van der Linden says about the disproportion of strength is evident, but what is evident is also the difficulty of a country to face the insurgency warfare. Terrorism endangers the entire nation in its lifestyle and security. A nation has the right to prosper in peace while the terrorist method is completely immoral. If we take for given the immoral nature of terrorist combatants and their liability, we can suppose that soldiers fighting against terrorists are moral combatants and not liable. If a state doesn't want to use drones need to deploy ground troops, but that implies to put in danger moral and not liable fighters, fighting a war that can cost a number of lives disproportioned to the real military power of the terrorist side, as Vietnam teaches.

Moreover, after having taken into account the difficulty of fighting terrorism we have to keep in mind that fighting terrorism is not just a direct cost in fighting on the field but also a cost deriving from the prevention of terrorist attacks and the psychological damages that terrorist attacks imply. Has been calculated that terrorism has cost 180 billion dollars³² between 2004 and 2016. Such costs weights on the future of communities, that for sure are the one who enjoys the best standard of living in the world, but it generates naturally the desire to eliminate such a constant threat that the inferior comparative strength, is capable of big damages.

Law enforcement is also extremely difficult to be executed. Indeed, we are talking oftentimes of areas, where the insurgents operate in which the state is incapable to enforce the law because is a scenario of a failed state, or at least the area of interest where the terrorists operate, like the FATA³³ region in

³¹ Mao Zedong, *On guerrilla warfare*, 1937.

³² *The cost of terrorism in Europe*, Rand Corporation, <https://www.rand.org/randeurope/research/projects/the-cost-of-terrorism-in-europe.html>

³³ FATA stands for “Federally administrated tribal areas”

Pakistan. Also, Buchanan and Keohane declared³⁴ that often times policing in those areas seems impossible, due to the absence of a state capable of imposing law, and moreover due to the characteristic of the area, rural areas extremely underdeveloped giving the chance to militias to fight with great advantage over forces, like the police, who is structured to fight minor and common criminality, the result is the effective impossibility of capturing and put in trial terrorist groups.

What can do a country to face a danger that despite its minor capacities can be a danger? Repress it. But if the police are incapable to fight it, because lacking the training, equipment, etc., what should a country do? Deploy the army. But as previously explained the soldiers fighting terrorists “deserve” less to die because non-labile of the violence that provoked the breaking out of the conflict, it would be preferable to deploy and avoid risking their lives as much as possible. Is in this perspective that drones are the alternative.

Let’s consider the problem of the just cause under the perspective of a “just conflict”. Previously we said that doing war against terrorism can be right because it can be the only instrument effective against this kind of threat. Let’s say, that taking as reference the traditionalist interpretation of the theory, attacking the terrorists is incompatible with Just War Theory because war is admissible only as a defence operation against a direct attack. Are drones guilty for a declaration of war? Is evident that is not so. The beginning of a war is the result of a political decision taken by decision-maker. Indeed, as said by Buchanan and Keohane, the military advantage and the low-cost that are implied on using drones reduces the costs of starting a war, but these considerations are not determining the morality of military action. The Just cause implies a “good reason” if that good reason is missing whatever is the relative military advantage, or the costs that the operation implies, the military action is incompatible with the Just War Theory. In the case of military power comparison, states have always a greater power. In brief, just cause works on a moral field, while the costs analysis belongs to a strategic consideration. Drones do not hold any responsibility for the violation of just cause.

³⁴ Ibidem, Allen Buchanan and Robert O. Keohane, *Toward a Drone Accountability Regime*, p16

3. Legitimate Authority

The legitimate authority requires that the subject that fights is recognized and considered as the only subject who deserves to take a decision like starting or at least facing a conflict, in case of defence. The legitimate authority holds the power of using military force.

The justified authority able to write and impose rules and behaviours, on a natural perspective is not necessarily the result of specific consent, as Hobbes may have declared, but rather the result of a situation of enmeshment since the birth. A person born in a system naturally established community, working on different levels, establishing a different set of rules and the related responsibilities and privileges. The justification for the existence of authority is the simple verification that communities have the intrinsic capacity to resolve problems among individuals, through social connections. The common good of the community and of individuals is found into the creation of the common authority³⁵.

As previously said the concept of legitimate authority is born to bound the power of resolution to force to the only authority of the state. But the modern scenarios of warfare have shown that legitimacy is not strictly necessary to move war. The challenge to state power in countries who are facing insurgency creates a problem of a detachment of a part of the society from another, who does not recognize himself with the authority considered legitimate.

However, what matters in the international context is that the terrorist groups are not recognized as a legitimate authority and as a legitimate equal. The fact of lacking legitimacy, does make the terrorists more immoral? According to me, no. What makes terrorists immoral is the method of terrorism, so a misapplication of discrimination and proportionality. What is more probable is a benefit of the legitimacy of the terrorist when a western country declares war to it, indeed insurgents demonstrate to be a concrete threat for a country, which is an important achievement for an organization who aims to subvert the political system. Is an achievement that gives “importance” among those movements of insurgency.

Let’s discuss it point by point. Let’s assume that a group fights the so-called legitimate authority without using the terrorism strategy. The fight of such a group can be moral as much as the fight of a legitimate authority if the moral principle for whom the insurgents are fighting is right.

³⁵Melissa Moschella, Robert George, *Natural Law*, in International Encyclopedia of the Social & Behavioral Sciences (Second Edition), 2015

Indeed, the authority may still hold the power that its role presumes but it may have violated the natural law present into the “heart of men” using an illegitimate law.

I said that is more probable that the declaration of war by a country to a terrorist group can increase the legitimacy of the insurgents. This can be true on the measure of the scope and on the rhetoric of the terrorists. Indeed if a western country reaches the point to be obliged to start a war against the terrorists, deploying troops and resources, it means that the threat is consistent and strong, and consequently in the circle of terrorists, the insurgent group that threat a state increases its reputation as an effective and dangerous group committed to its cause.

This assumption is founded on the theory of the academics who have actually founded the Just War Theory. Indeed, Saint Thomas Aquinas theorized that law (and so the governance) needs to be piloted by the reason, respecting the natural, and needs to be equal and always aiming to the common good. Missing these features mean a degeneration into a “*lex tyrannica*”³⁶ who keeps only the coercivity and the formality of a fair and moral law. The result is that not respecting the unfair law is right, it does not mean to breach any moral principle and on a certain measure, is also right to fight the tyrant³⁷.

According to this vision, the fight can be right, against the legitimate authority, or that is considered so in the name of a higher principle. Indeed, a lot of fights have been founded on the opposition to a regime who violates principles of freedom and auto-determination. Just to mention an example we should mention the Italian partisans who fought the Nazi occupation of Italy and the fascist regime; they were considered “bandits” and rebels by the fascists and Nazis, but now we can say that their fight was aiming to principles that were overwhelming the principle of legitimate authority. In the end, a group of militants can have the right to fight a regime, internationally recognized as the legitimate authority in a country, to impose human principles that can sometimes impose only with a lesser evil like war.

What delegitimizes terrorism is its strategy of terror. Terrorism is defined by the United States as an organized form of violence against non-combatants targets, motivated by political aims³⁸. Terrorism intrinsically targets civilians, violating the principle of discrimination systematically and with intention. The central argument for the incompatibility of terrorists with the Just war Theory is the systematic aggression of civilians, the lack of legitimate authority is something that

³⁶ It means a “tyrannical law”

³⁷Stefano Perfetti, *Scientia, Fides, Theologia, Studi di filosofia medievale in onore di Gianfranco Fioravanti*, Edizioni ETS Page 242

³⁸ U.S. Code § 2656f. Annual country reports on terrorism, Cornell Law School, <https://www.law.cornell.edu/uscode/text/22/2656f>

goes on the second level of consideration because is evident that targeting on purpose civilian is far more wrong than initiating war without legitimacy.

After having taken a deeper focus on the topic of legitimate authority, let's analyse if drones can violate the principle of legitimate authority. According to the Field Manual of the United States Army, each side, in insurgency and counterinsurgency tries through its governance to obtain the legitimacy among the population³⁹. So, the policies that are chosen by the authority determine the development of the conflict, the success and the possible failures.

The attempt of the authority to legitimize itself coincide with the effort of the terrorists to drive a wedge between the authority commanding and the society obeying provoking an overreaction of the government, that may be perceived as an illegitimate and unproportionate use of force, and provoke the perception among the population that the state use an illegitimate force against the threat.⁴⁰

Drones, as we have seen in the evaluation over the compatibility or not of drones with just cause, in this sense might break the consensual relationship between the people and the government as a tool used on purpose with excessive force to face a threat of insurgency. Indeed, drones as a tool and as a weapon may provoke in a conflict in which are involved civilians, collateral damages. We will discuss this issue specifically in the next chapter when we will face the discussion on the principle of humanity. Indeed, it will be necessary to evaluate the impact on the civilians on a different point of view for being able to declare the incompatibility of drones with moral conduct in warfare.

I will not do this analysis because according to me there would be a misinterpretation of the use of legitimate authority and its real meaning in the Just War theory.

The topic of legitimacy in this sense combines itself with other topics of Just War Theory like proportionality. But the questions that may emerge on the undermining of legitimate authority as a result of the decision to use drones it does have no context in the real meaning of the legitimate authority.

Above I have mentioned the legitimate authority as a principle used in the Just War Theory, that differs with the one used on a strategic field. Indeed, despite being connected, they are used to justify and to approach a problem in a different way and in a different context.

³⁹ Army Field Manual 3-24: Counterinsurgency, United States. Department of the Army, 2006-12.
<https://www.hsdl.org/?abstract&did=468442>

⁴⁰ Legitimacy and Drones: Investigating the Legality, Morality and Efficacy of UCAVs. Steven J. Barela. Ashgate, 2015.

The legitimate authority in the Just War Theory is used as a principle in the *jus ad bellum*, as explained, determines who holds the right to determine the action, to whom belongs the right and the duty to decide over war. It needs to determine whether or not a state has the responsibility for a certain action. Instead, the legitimate authority to face terrorism is a concept belonging to the strategy of counterinsurgency. Is a concept that needs to determine the internal necessity of a government not only to suppress the dissent but also to gain consensus among the population.

So, drones may indeed change the level of legitimacy granted to a government by the civilian population but that's is a result of a political decision taken during the war, so *in bello*, while the principle of legitimate authority focuses in a time framework in which war is not already started and defines who have the power and the responsibility to make a decision.

So, we assist to a misunderstanding of the environment of application of the principle. Apparently, the same concept has a different application on the scenario of a conflict. This difference is the result of a different period of application of the theory in the reality of warfare, who makes them two different arguments also for the different field of application, one is the moral field, the other is strategic.

There can be a loss of legitimacy when a government applies a strategy that violates principles that the government pretends to be of its own. Indeed, a democracy defends principles of peaceful coexistence; violating such principle starting a conflict with no real reasons, delegitimize a government and its role because it behaves against those principles that should defend.

In the end, drones have no implications with legitimate authority, they belong to two different arguments, without the interaction of one another. Indeed, legitimate authority is an issue of identity while drones are a tool, or a strategy chosen after the beginning of warfare and belonging to a system of strategies. Violating the principle of authority in the Just War Theory means taking a decision on starting a war without having the decision power and the legitimacy on doing so, and in this context, drones have no words.

4. Public Declaration

The principle of public declaration sounds more related to a declaratory effect. Indeed, strictly related to the principle of legitimate authority can be related to the necessity to publicly declare the intention to fight. The declaration has different implications, first, avoiding “secret wars”.

In a democratic country, the electors will know the behaviour of a government and will have the power to judge according to what has been done, second, the declaration has a strategic implication, indeed from that moment the enemy will know the intention of the opposing side to resist. Is a signal, an expensive signal for a government, politically expensive because it involves the future of a country and the future of the government.

Declaring war is expensive in the long-run but also in the short-run. In the long-run for what concerns, economic and human expenses, and in the short-run for what concerns the causes for whom the war is declared and the enemy that the country is facing.

The “war on terror” has started in 2001 after a terroristic attack. That attack was aggression, that required a strong action in those countries considered as bases and home of the terrorist organization, Al Qaeda, that programmed the attack, so President Bush started the military campaign in Afghanistan.

The public support for the war in Afghanistan was strong even if it was based on revenge for the terroristic attacks of 9/11. Indeed, in the 2001 80% of Americans express themselves as supporters of American intervention in Afghanistan⁴¹. But with time, losses and not fully satisfying results the opinion and sustain for the conflict declined. The result is the necessity to use tools able to reduce the costs of the war. Since 2001 the perception over the war has changed as represented in figure 2. It is evident the support for the military campaign that has been protracted for 18 years, have halved the support for the conflict. If at the beginning those against the conflict were only 18% of the population, those that initially were supporting the conflict as a necessity, have probably changed their idea. Nevertheless, there is a good amount of the population supporting the conflict around 52%. But at the same time, a majority of the interviewed has expressed its concern about the safety of the United States. Indeed, according to 53%, the safety of the country is unchanged, or it got worse.

Is also necessary to evaluate these data with the flows of the American troops in Afghanistan.

⁴¹ David W. Moore, *Eight of 10 Americans Support Ground War in Afghanistan*, Gallup, 1 November 2001.
<https://news.gallup.com/poll/5029/eight-americans-support-ground-war-afghanistan.aspx>

Indeed since 2011 the military contingency in Afghanistan has been reduced constantly, with alternate announce of disengagement from the conflict⁴². This constant retreat, even if not supported by the result of the eradication of Taliban and Al Qaeda may have determined the reduction in the support for the conflict but a substantial stabilization of the opinion on the subject.

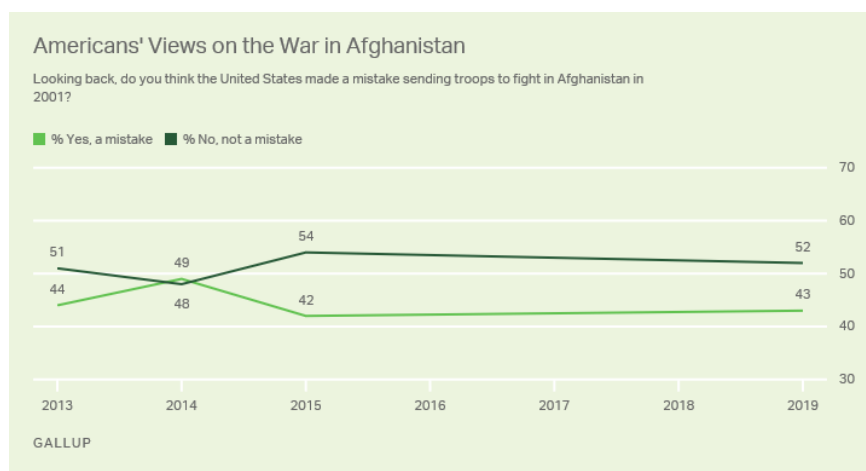


FIGURE 2⁴³

In this scenario, drones have seen a constant increasing use. Indeed as reported by an high ranked official of the administration said: *“Not just in Afghanistan, but in Iraq and Syria, it’s very evident what his approach is, which is to make sure we’re doing everything necessary to disrupt and ultimately defeat terrorist networks while significantly reducing the role of the U.S. military in terms of the ground presence and also reducing the resources associated with that presence,”*⁴⁴. A strategy that shows the will of the US government to operate with lower involvement of troops. In this idea, drones became an important tool that as precedingly said has become central in Obama’s presidency.

What is changed is also the area of operation. Indeed, Al Qaeda operates in many countries, with operative branches and cells almost everywhere, not only Afghanistan but also Somalia, Pakistan, Qatar, Indonesia, etc.

In particular, the safe havens in Pakistan have allowed the militants of Taliban and Al Qaeda to move through the two countries avoiding the attacks of the coalition led by the US of ISAF, and the fact to be a rural area allowed the insurgents in Afghanistan to put in great difficulty the

⁴² Carol E. Lee and Felicia Schwartz, *Obama to Slow Troop Withdrawal From Afghanistan*, The Wall Street Journal, 7th July 2016. <https://www.wsj.com/articles/obama-to-slow-troop-withdrawal-from-afghanistan-1467817803>

⁴³ Rj Reinhart, *U.S. Views Mixed on War in Afghanistan*, Gallup, 11 Sept. 2019. <https://news.gallup.com/poll/266546/views-mixed-war-afghanistan.aspx>

⁴⁴ C.E.Lee and F. Schwartz, *Obama to Slow Troop Withdrawal From Afghanistan*, The Wall Street Journal, 7th July 2016. <https://www.wsj.com/articles/obama-to-slow-troop-withdrawal-from-afghanistan-1467817803>

coalition. This has led the US to bomb also in FATA, considering those groups supporting the Afghan insurgents as an extension of Al Qaeda, with the Pakistani support, in most of the occasions, even if not all the time.

Despite these great difficulties, the war in Afghanistan is still going on. The “declaration of war” has been done 18 years ago against a precise enemy, in a precise country, but we know that through drones strikes, the US has started a campaign also in Pakistan, Yemen and Saudi Arabia. But there has never been a declaration of the government only statements of necessity to fight against terrorist groups.

The US policy has been based on military force, striking the enemy threat with the army, aiming for the complete destruction of the terrorist group. What has become necessary was the intervention of the home country through its own forces trained, armed and prepared by the US against the insurgents. Up to now, the results have been extremely poor. Indeed since the starting of the mission in Afghanistan in 2001 the government of Kabul and US have been incapable to kill the Taliban and Al Qaeda, and indeed as reported, the rural areas are under the control of Taliban who is organizing and administrating a parallel government to the one internationally recognized⁴⁵.

The question resulting from the conflict that we saw above is whether “the declaration of war” against terror, after 18 years is still valid, and gives validity to fight in different countries, all over the world, without the conformity to principles like the public declaration. What can be complained to the US is: Is the policy of the US conform to the standards of Just War Theory for what concerns the public declaration? This question is done considering also the role that drones are having in the actual role of US policy on engaging a war.

It needs to be highlighted that the question above is sufficiently important to be itself a research question for an entire thesis, but I will manage to answer in due time.

Al Qaeda throughout its affiliations and alliances is present in a great number of countries⁴⁶. Through its affiliations the terroristic group is present in the Maghreb⁴⁷, attempting to overthrow the Algerian government. In Yemen and the Arabic Peninsula⁴⁸ Al Qaeda has a strong presence,

⁴⁵ Jackson, Ashley and Weigand, Florian; *The Taliban's war for legitimacy in Afghanistan*, (2019), LSE.

file:///C:/Users/Emanuele/Desktop/tesi/testi%20per%20la%20tesi/Jackson_Weigand_2019_Taliban_Afghanistan.pdf

⁴⁶ *Mapping Militant Organizations*. “Al Qaeda.” Stanford University. Last modified January 2019.

<https://cisac.fsi.stanford.edu/mappingmilitants/profiles/al-qaeda>

⁴⁷ Ibidem. Section: Interactions- Relations with other groups

⁴⁸ Ibidem.

but also in Somalia, with the sadly famous, Al Shabaab⁴⁹. In the end, the terrorist organization is present in all the contemporary areas of conflict and has cells all around the world.

As a consequence, the US has engaged against the terrorist organization through secret missions and drones' strikes. Indeed, already since 2002, the US has started its striking campaign in Yemen, and since then the US has performed 329 drone strikes⁵⁰. In the general conflict of Afghanistan, the strikes in Yemen were aiming the Al Qaeda branches in the world. Indeed, the target was Abu Ali al Harethi, member of Al Qaeda since the '90s and leader of the terrorist group in Yemen⁵¹.

Again, the US has even performed strikes against affiliates to the Islamic State in Libya⁵². In this case, there are the UN resolutions against the ISIS, as the resolution of Security Council 2253⁵³ and the related resolution 2249⁵⁴, but in the end is an operation done, in another continent respect of the one where the main effort against the ISIS is focused.

The confusion on the situation of the war on terror is due to the nature of the threat. Indeed, the counterinsurgency as a response to the phenomenon has the same characteristics of the threat, is diffused and with low intensity. Indeed, when we think of war, we think to a conflict well specified, where the actors are well known. Fighting a war among states is "easy" in this sense. Once one of the fighting sides reaches some objectives the war is over. The objectives may be limited, as defeating the enemy's army obliging the opposer to surrender, or the complete annihilation of the opposing nation as has been for Germany in the Second World War.

But in both cases, the enemy is well known, ideologically and geographically. Both things allow an adversary to calculate the force to use and the weak points to target.

Terrorism and nations behave completely in different ways in war. First, terrorists are not geographically present in specific places. Indeed, they occupy and control areas, but they occupy and not own a certain place, that means that destroying and attacking certain areas mean attacking civilians and innocents, without undermining the power of the militant group. Moreover, these fighters, do not own firms and industries where they produce their own weapons and wealth but

⁴⁹ Ibidem.

⁵⁰ *Drone Strikes in Yemen*, report by the bureau of investigative journalism, <https://www.thebureauinvestigates.com/projects/drone-war/yemen>

⁵¹ Ibidem. The section presenting the full data about the strikes perpetrated in Yemen by the US. https://docs.google.com/spreadsheets/d/1lb1hEYJ_oml8lSe33izwS2a2lbiygs0hTp2Al_Kz5KQ/edit#gid=977256262

⁵² Eric Schmitt, *U.S. Drone Attacks ISIS Fighters in Southern Libya*, The New York Times, 20th September 2019. <https://www.nytimes.com/2019/09/20/us/politics/drone-isis-libya.html>

⁵³ United Nation Security Council, *S/RES/2253 (2015)* <https://www.un.org/securitycouncil/s/res/2253-%282015%29>

⁵⁴ United Nation Security Council, *S/RES/2249 (2015)* https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_res_2249.pdf

rather, they obtain their resources through illegal activities and the equipment in the black market and smuggling. This means that for the nations fighting the terrorists become more difficult to find a precise target that in a normal war is easy to find. Anyway, when there is a specific territory under the control of a terrorist group the counterinsurgency activity can be easier but when terrorists hide among the population the difficulties become extremely high. In this sense terrorism is diffuse, diffuse in a nation, among the civilian population, but also is diffused in entire regions of the world, is cross bordering. In the end, terrorism has no borders within being delimited.

Making war to a phenomenon with no borders, with no limits, is extremely difficult. Indeed, meant for the US extremely high costs for what concerns the applications of hegemonic power. Indeed, according to my opinion, the counterinsurgency policy is the demonstration that the US was willing to impose its terms all over the world. This not necessarily without just cause, but surely demonstrates those capabilities and willingness that only a hegemon can have to impose its own conditions. Anyway, these conditions can't be established without the risk of violating moral principles of behaving, like the public declaration.

The public declaration as previously said works on the concept of legitimate authority. Is necessary a subject of an internationally recognized subject to respect this principle. But the nation attacked by terrorists can defend itself attacking the terrorist group who lacks the legitimate authority. Consequently, if there is no legitimacy for terrorists the public declaration is not strictly necessary.

Declaring war on a terrorist group can be difficult. Indeed, is the result of a political decision, the lack of a national identity leaves the defending country the chance to understand how to approach the enemy. Indeed, the political terrorism that has interested Europe and Italy since the 70s did not require the same military escalation, that because was an internal problem. But also, because the military capabilities of terrorists were way lower than Islamic terrorists of today.

The counterinsurgency cannot be done as a conventional war. Indeed, is based a lot on the control of the territory, on the collaboration of the locals and on the collection of information, to get to know where the enemy is. Well, of course in the conventional warfare there are these activities but in counterinsurgency, they are more required for being able to distinguish between civilians and militants.

Anyway, the public declaration exists not only for the enemies but also for the citizens that get aware of the will of the government to fight an enemy. In this sense, the US government have started a series of air campaign in countries initially not involved in the conflict.

Is that Justified? Does that conform to the Just War Theory?

The answer is no. Indeed, the air campaign has been the result of a unilateral decision or the result of bilateral decision with the countries interested by the phenomenon of terrorism, like is happening in Pakistan. The lack of public declaration has allowed the government to start military campaigns without answering to a public opinion, alienated by war⁵⁵, and in this sense, drones have given their contribution. The absence of strong military contingencies has reduced the risks for militaries involved, decreasing also the public debate on the losses caused by war and the consequential debate on the necessity to fight.

However as previously said⁵⁶, Al Qaeda has allies and affiliates. These alliances are born after 2001. Indeed, terrorism has collected recognition among extremists through violence. The affiliations and the pledges of loyalty are the results of decisions taken by the heads of insurgents aware of the consequences. Declaring war to an entity legitimate or not implies on a certain extent declaring war to all those entities allied and connected, first for a principle of ideological connection among the terroristic organizations, second because the militant groups support each other with economic and logistical support. Indeed, for example, the militants of the so-called Islamic State have trained in the camps of Al Qaeda in Pakistan, before the breaking of the relation among the two organizations.

So, the principles that counterpose the US and Al Qaeda are common to all the other terroristic organizations. So, they are equally enemies of the US and they are both possible threats to the US's security. But need to be limited, indeed terrorists are present in a large area with failed governments but also with fully recognized and sovereign states. Persecuting all those militant groups mean to subvert the equilibrium of so many states, that would make war disproportionate and impossible to be done. Moreover, the power of declaring war whatever and whoever does not belong to Just War Theory but belongs only to the will of the country and its determination to impose its hegemony and securing its power position.

⁵⁵ Harry Van der Linden, *Arguments against Drone Warfare with a Focus on the Immorality of Remote Control Killing and "Deadly Surveillance"*, Butler University, 2016

⁵⁶ Ibidem. Mapping Militant Organizations. "Al Qaeda." Stanford University. Last modified January 2019.
<https://cisac.fsi.stanford.edu/mappingmilitants/profiles/al-qaeda>

For what concerns the issue of the time, in the Just War Theory there are not precise indications over that issue. If the beginning of the war is clear, the point is officially defined by the public declaration of the government, the end is not defined nor regulated by a specific principle of Just War Theory. War ends with the peace treaty and the fight's end before with an armistice. Nevertheless, we know that the government should have a good prospect of victory and it should aim for peace. These principles can be achieved at their best conditions only with a striking victory, obtained quickly. However, such a condition despite being desirable and preferable not necessarily is achievable. Indeed, conflict should be always done with good expectations of victory, but the real capabilities of the enemy and the one of the home army can be misrepresented and misinterpreted. Inevitably the result can be a prolonged time of conflict. I don't think that a prolonged time of war is necessarily a break of Just War Theory, there can condition according to whom "surrender", for the case of Afghanistan that would have meant retreating the US troops from the field, would have been more expansive for the civilians. Indeed, we can imagine that the retreat of Americans and of the coalition in earlier stages of the war would have meant the victory of Taliban and Al Qaeda, with systematic retaliation on the population and on the opposers of the extremists. This example of consequence would have meant a moral responsibility for the US not concerning the Just War Theory but the defence of human rights.

In the end, the US has perpetrated its foreign policy with no geographic restrictions, taking advantage of countries' weakness and using its prime world power as a "picklock" to commit its policies unpunished. The absence of a declaration of military resolution is a demonstration of lack of interest in responding to public opinion or rules, what mattered was the security and the suppression of a threat. On the other hand, has become evident that in the war to an insurgency is difficult to delimitate a threat, drawing a border between what is a threat and where find it. The rules of Just War Theory are programmed for war among states, which can be more easily controlled and monitored.

Counterinsurgency is a kind of war that needs appropriate principles. Is necessary to check the application of discrimination between civilians and fighters but public declaration in a system of interconnected structures of terror, unwilling to surrender whatever the cost, become a principle obsolete, almost unnecessary except for the internal public opinion who needs to remind that there is a war.

The violation of the United States has been to feel authorized to persecute the terrorists wherever they are, and whatever was the level of threat without feeling the necessity to declare their behaviour

Drones thanks to their capabilities have allowed the US to behave as much as they have preferred, avoiding excessive costs to persecute the US's enemies. The missions have been done almost secretly or at least not with constant and direct report to the home's electors. But the defence of the role of drones in violations of the principle of public declaration is the same as the precedent accusations.

Indeed, the role of drones is military and is executed only after that a political class, a government has decided to face the threat against the US with the military force without respecting the limits that the principles of Just War Theory impose. Indeed, without drones' certain air campaign would be, almost impossible to perpetrate but the moral and the practical responsibility for a campaign weights on the shoulders of the decision-makers. The public declaration is a principle of *jus ad bellum*, and as such the violation starts before a drone may strike.

According to me some principles of Just War Theory are too tight for counterinsurgency. What I mean is that, as I explained, the threat of terrorism is diffused but not specifically identified as the one of a country. So, pretending the respect of all the principles of Just War Theory in the same way from a state facing a different threat, is not fair and the result is to make Just War as something impossible to apply, and so unnecessary.

However, the US has taken too many liberties, violating foreign territory, applying retaliation and targeted strikes arbitrarily. This behaviour finds in the lack of public declaration the proof of lack of good faith, and the symptom of superiority over the rules that mitigate the violence of conflicts. Drones might have indeed given the chance to operate avoiding one of the principles of moral conflict. But the violation is not a result of incompatibility, but rather an overextension of power, that aims to overextend the sphere of influence and intervention. The compatibility of drones with Just War Theory is evident because of the air campaign of drones in Afghanistan, for what concern public declaration, was valid.

5. Just Intent

Has been introduced that just intent is a principle alongside with the principle of just cause, shaped by the Christian moral establishing the necessity for a war to have been declared for good reasons, otherwise, it would have meant the damnation of the souls of the fighters. The Intent in this sense works in contemporary with the just cause, because it aims war to a precise future, a long-lasting peace.⁵⁷ Indeed if a war is done according to the UN's charter, is just for self-defence and so the declared intention is to push back the enemy to its borders, and establishing a fruitful peace at the end of the conflict. Any other reason, like territorial expansion, would mean a violation of Just War.

An argument developed by Van der Linden criticizes the use of drones because they have been used in an improper way. Indeed, the author analyses the US's air campaign considering the strategy adopted by the US during Obama's presidency. The White House decided to change the target of its strikes moving from a more generalized targeting to a more focused on low ranked militants. This strategy would be a clear lack of good intent. The air campaign would be focused only on leaders of the terrorist group with the intent to make them no more dangerous, eliminating the head, destabilizing the command and organizing capacity. Killing low-ranked militants moreover have been criticized because the wide criteria chosen to define a terrorist as such, shows that the US decided to target also civilians, mining the possibility to an effective process of long-lasting peace and moreover lying on its approach to the conflict, referring to target terrorists while is consciously killing civilians.

Moreover, the mala fide of the administration is demonstrated not only in striking more the low ranked militants than the high ranked but also in striking local groups of insurgents. Indeed only the 10%⁵⁸ of the strikes were against Al Qaeda, all the rest were against local groups, with local aims and not necessarily directed against the US, it should be a demonstration of violation of the principle of the right intention, supporting the Pakistani government against opposing groups, increasing its influence and its hegemony in the area, so for principle far from morality.

The use of drones for precise targeting campaign is started in 2003 in Yemen, and in the time has increased and expanded, despite the condemn to be activities almost illegal, indeed they are

⁵⁷ Van der Linden Harry. "Drone Warfare and Just War Theory,".

⁵⁸ Drone Wars Pakistan: Leaders Killed, NEW AMERICAN FOUNDATION (last visited May 15, 2014), natsec.newamerica.net/drones/pakistan/leaders-killed; in Drone Warfare and Just War Theory.

defined as extra juridical⁵⁹. When Bush left the office in 2009, the US perpetrated only in Pakistan from 45 to 52 targeted killing⁶⁰. In about three and a half years President Obama ordered the execution of five times more strikes, 292. Such an increase may be explained in different ways in my opinion, not only for a cynic consideration but also for strategic evaluation. Indeed during the Bush's presidency, the advantages of drones have been highlighted, moreover may have been stimulated by a greater desire of involvement into the Pakistani affairs, because of the desire of the US to retreat from Afghanistan, which was impossible without a proper targeting of Al Qaeda bases in Pakistan bordering with Afghanistan.

What changed drastically was also the targets. During Bush's presidency, the targets were mostly high-ranked leaders of Terrorist's groups, but with Obama, such a definition of target disappear and was substituted by the so-called "signature strikes". The "signature strikes" were targeting anyone linked to terrorist activity, anyone suspected to be a terrorist. The criteria remained always quite faint, up to the point that rumours arriving from the president's staff, as published by the New York Times⁶¹, alleged that the CIA targeted suspects executing strikes easily, with very few shreds of evidence.

The area of the FATA in the North-west part of Pakistan has been extremely tormented and also complicated. Generally speaking, is a rural area in which the ruling roles were held by the elder leaders of the tribe, that are in touch with the local administrators of the central government. The area of the FATA has been under the attention of the Taliban since 2001, and have perpetrated their involvement into the area, using violence, threats but also substituting some Pakistani institutions perceived as corrupted and inefficient. Moreover, in the area are present local militias with local aims that substantially had alternate relations with the central government, sometimes open war, sometimes collaboration. Alongside with the drone campaign, that has been for many years supported by the central government, the Pakistani government fought a counter-insurgency campaign on the ground. The result has been general violence in the entire area, with the civilian between the Pakistani army on one side and the insurgents on the other. The population has indeed suffered greatly in these years⁶².

⁵⁹ Commission on Human Rights, *Special Rapporteur for extrajudicial, summary or arbitrary executions, Civil and Political Rights, Including the Questions of Disappearances and Summary Executions*, UN, p39, Doc. E/CN.4/2003/3 (Jan. 13, 2003) (by Asma Jahangir). Taken by living under drones.

⁶⁰ Peter Bergen & Katherine Tiedemann, *The Year of the Drone: An Analysis of US Drone Strikes in Pakistan, 2004-2010*, NEW AMERICA FOUNDATION, 1 (2010)

⁶¹ Jo Becker & Scott Shane, *Secret 'Kill List' Proves a Test of Obama's Principles and Will*, N.Y. TIMES (May 29, 2012), <http://www.nytimes.com/2012/05/29/world/obamas-leadership-in-war-on-alqaeda.html?pagewanted=all>.

⁶² All this information have been taken by chapter 1, page 17-20, Living under Drones.

What surprises is that between 2010 and 2011 the White House affirmed to have killed almost no civilian, to have targeted only militants with extreme precision, the amount was so low that is unbelievable. Indeed, what is emerged is the definition of militant according to the parameters of the White House, the New York Times have published that is considered a combatant any man in the military age in the striking area unless provided the demonstration to be innocent⁶³.

In the data collected by the Stanford University on the impact of drones strikes over the civilian population, they discovered that the results were very similar to those belonging to a war zone or an area affected by an extremely high rate of violence.

The Intent of Peace should be supported by the proportionality, indeed when war is done with no limitations on violence, the chance to cause a desire for revenge and unrest. Indeed, the result of these feelings can be a future war and new terrorist activities, demonstration that the just intent of peace was missing.

I also add another fact that has been mention in the research over the air campaign in Pakistan and Afghanistan that is a demonstration of lack of just intent, for what concern the idea to establish the premises for future peace and of lack of proportionality. Indeed, The Bureau of Investigative Journalism in 2012 have registered and proved through credible media and directly by their researchers 18 strikes done by drones using the strategy of “second tap”. Testimonies reported that has become usual for the people leaving in the Tribal Area waiting at least a couple of hour before getting inside the area of the strike to search for survivors to help, indeed has happened very often that drones have stroked a second time 10-15 minutes just after the first blow just to wait for rescuers. This strategy has provoked not only the lack of willingness to rescue the wounded among the civilians but also among the humanitarian organizations that have adopted the policy not to intervene immediately but to postpone the intervention of 6 hours⁶⁴. These violations are a severe infringement of fundamental legal and moral rules regarding the conduct of war, violating the principles of distinction, proportionality, precautions and violations, in conformity with the Geneva’s convention and evident violation on specific legal rules regarding the treatment of medical personnel in action and of the wounded⁶⁵protected by the customary humanitarian law. Such violations are not just a clear violation of laws, practices and formalities, they are crimes of war that are normally associated with the most treacherous and violent

⁶³ Jo Becker & Scott Shane, Secret ‘Kill List’ Proves a Test of Obama’s Principles and Will, N.Y. TIMES (May 29, 2012), <http://www.nytimes.com/2012/05/29/world/obamas-leadership-in-war-on-alqaeda.html?pagewanted=all>

⁶⁴ Interview with Shams Mohiuddin (anonymized name and location), in Pakistan (May 2012); taken by living under drones.

⁶⁵ Jean-Marie Henckaerts, Louise Doswald-Beck, International Committee of the Red Cross, *Customary International Humanitarian Law: Vol1: Rules* (2006).

conducts. The "second tap" is notoriously extremely effective and its consequences are so predictable that it is difficult not to presume that those commanding the second strike were aware of the rescuers and civilians involved in the operation of first aid and it is logical to think that or there was no intention to discriminate, or even worse, the intent was to spread terror among the civilians. The violation of just intent is found on the lack of the ideal plan to build a credible perspective of solid peace.

The principle of right intention discussed by Van der Linden is very difficult to analyse.

In the discussion over the violation by UAVs of the principle of the just intent is questioned the policy taken by the US government to have started striking low level militant in a greater percentage than the leaders of Al Qaeda, and terrorist groups with local aims and not directly threatening the US. The tactic of targeting low-level militants is not explained by Van der Linden, he doesn't explain the reason for whom a government should persecute this tactic, risking being surprised on a violation, he just condemns. But if we consider the counterinsurgency war morally equal to a conventional war there is no reason not to target militants instead of commanders. For sure, due to the different nature of the terrorist group, it might be possible to explain the killing of terrorist leaders as a way to "cut off the head of the snake", hoping for the complete death of all the system. Frankly, the fact that Van der Linden didn't find any moral justification to his critiques should be sufficient to claim the morality of the action but anyway pertains more to the field of the strategy, maybe aiming more to eliminate its actual capability on the field, and push to negotiate those groups not really motivated or with only local objectives. Another reason can be that the terrorist groups are more aware of the real capabilities of drones and the leaders avoid to expose themselves, they avoid to be tracked, so due to the impossibility to locate leaders the US concentrate on low-level militants, who need to be on the field in order to be active. A tactic that Van der Linden declares as violating a just intent should have a reason but is generally explained as a decision that, killing militants, undermine the chances for future peace.

Van der Linden on the issue of the targeting of local militias with local objectives has been really critical, striking those groups means attacking with no good reasons, lacking just cause because they haven't harmed the US, and lacking right intention due to the fact that local groups have no objectives against the US but only against the Pakistani government it should be a demonstration of violation of the principle of the right intention, supporting the Pakistani government against opposing groups, increasing the US's influence and hegemony in the area, so for principle far from morality. But if you decide to be allied with a terrorist group you inevitably decide to get all the relative consequences, because as an ally they probably provide logistics, strategic, and on a

certain extent, economic support to Al Qaeda. They “entered in war” against the US as they decided to join the terrorist side. In this sense, they took an aware decision, that joining the front of the terrorists they would have paid the same consequences of Al Qaeda, and they did that for convenience, for gains that they should have taken by being associated with an organization with a greater audience and “fame”, with all the gains there are all the costs correlated to a decision of this kind.

After having done these observations is necessary to consider the active actor of the warfare’ action. The violations did, like the one of “double-tap” and the evident lack of “good faith” on attacking civilians considering them as militants, have been done from a government.

Drones in this sense are a tool of a policy determined by a government. The critics, when valid or at least debatable should be considered according to their real author. The violations reported are the result of strategic consideration. We should imagine a meeting of policymakers, gathered in a room facing a certain type of problems and challenges. They have at their disposal certain tools and certain procedures. Given that situation, what is breaking the Just War Theory is the political decision to double-tap or killing militants with no precise intentions, but these kind of violations are violations of the war belonging to the time frame of *in bello*, and the subject of the violation are the policymakers. Drones can be accused of double-tapping as much a rifle can be accused to have killed a civilian, the fault belongs to who pulls the trigger and to who gives the order.

Moreover, the criticisms of Van der Linden are not very focused on the real meaning of just intent. Indeed the targeting of presumed low-ranked militants can be an infringement of the principle of proportionality if we consider the targeting of “simple soldiers” in terrorism as something wrong, or a violation of discrimination if we prove that the militants are civilians and the militaries killed them on purpose knowing their true identity.

The just intent refers to what the country should aim while is doing a war, a “good” objective. Just to be clear, if a country is doing the war as a first reason to safeguard oil wells, then there is a breach of the principle, the objective should establish a long-lasting peace. Actually, the observations on just intents have been demonstrated or to be imprecise or to be out of topic.

6. Proportionality

Proportionality is a principle present in both groups of Just War Theory. Indeed, in the *jus ad bellum* proportionality refers to the decision of a country to choose war as an answer to an adversary challenge. Normally war should be a last resort, and as the meaning and the rules of the International law suggests war is the proportionate answer only to war and a defensive operation.

Indeed, the right to use force to counter an attack is considered valid only when the country is facing a major attack, on a large scale. That's because the self-defence does not protect the interest of states on defending their status, integrity or military proud, but regards the appropriate answer only in case of concrete endangerment of their security, and the force should be aimed only to push back the enemy attack. So, Jus ad bellum predetermines the interests that can be protected through the use of force, security and on a certain extent the survival of the country, and proportionality determines the right instruments to achieve them.

In the judgment on the Nicaragua case, the International court of justice has determined and specified certain conduct lawful and proportionate to the danger. For example, the court has defined the selling of weapons and the logistic supplies as not sufficient reason to respond with the force⁶⁶ escalating the conflict to a real and large-scale conflict. Or again the disputes between Ethiopia and Eritrea have seen the decision to define the crossing of borders by units of isolated infantry, not as an act of war, and so a reason insufficient to respond with an increased level of force implying the starting of a major conflict, the violation do not exist even in case loss among the soldiers skirmishing⁶⁷. This means that self-defence is based on a series of thresholds, to whom correspond a functional respond, according to this war is the last step as a response to a larger threat endangering the survival of the country and is preceded by measure adequate to the violations of the adversary.

The International law provides on this sense also a series of rules and measures defining the countermeasures different from the use of force to face a wrongful act.

⁶⁶ See the findings of the ICJ in the decision of 27 June 1986 on the Nicaragua case (*Case concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*), Merits, ICJ Reports 1986), paras. 176ff., esp. paras. 194–195 and 211. <https://www.icj-cij.org/files/case-related/70/070-19860627-JUD-01-00-EN.pdf>

⁶⁷ Eritrea-Ethiopia Claims Commission, *Arbitral award of 19 December 2005, "Ethiopia vs. Eritrea, jus ad bellum, Ethiopia's, claim 1–8"*, available at https://legal.un.org/riaa/cases/vol_XXVI/457-469.pdf

The International Court of Justice in 1997 with the decision in *Gabčíkovo – Nagymaros Dams* case and the chance to define also the conditions necessary to the application of countermeasures⁶⁸.

In the first place, the Court poses a condition for a country to use countermeasures, the existence of a wrongful act committed by another state directly to the counter measuring state. The second condition is that the injured state has called upon the wrongfully acting state to stop its conduct and to repair to the act, third the reparation should be in proportion to the damages reported. The last point, the purpose of the countermeasure is to induce the wrongdoing state to conform to International law, and the measure needs to be reversible.

There is a different kind of countermeasures. The first kind is Normative Countermeasures, which is typical of bilateral agreements, and they are those which are aimed at reproducing the legal balance that has been breached. In case of violations of unilateral obligations, the countermeasure mostly used is the coercion, who is aiming to make the cost of continuing the violation higher than the gains obtained from the violation and pushes normally to interrupt the action and repair to the action. These kinds of countermeasures are normally called retributive countermeasures. Another kind of countermeasure is the action aiming only to stop an action to defend the interests of the International community and its essential interests, the interest of recreating the pre-existing balance through more a spirit of appropriateness, this is the case of coercive countermeasures. The last kind of countermeasure is the executive one. This countermeasure aims to substitute the breaching state with another one to secure the protection of the breached rule.⁶⁹

How are related drones with the principle of proportionality?

Actually, in the recent development of drones have changed the approach to war.

Indeed, according to Daniel Brunstetter and Megan Braun drones might have changed the perception of warfare on targeted killings⁷⁰. This might have given the chance to the state to use force without breaking proportionality. Indeed, due to the extreme precision of drones. Before 2001 targeted killing was perceived as illegal in the American administration but since the strategic thinkers have discovered the capabilities of drones this position is changed. As

⁶⁸ International Court of Justice, *Advisory opinions and orders concerning THE GABCIKOVO-NAGYMAROS PROJECT (HUNGARY/SLOVAKIA)*, Reports Judgements, Judgement of 25 September 1997. <https://www.icj-cij.org/files/case-related/92/092-19970925-JUD-01-00-EN.pdf>

⁶⁹ Federica Paddeu, *Countermeasures*, Max Planck Encyclopedias of International Law, Sept. 2015, <https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1020>

⁷⁰ Daniel Brunstetter and Megan Braun, *The Implications of Drones on the Just War Theory*, Ethics & International Affairs, 2011.

previously illustrated the preference for drone striking is increased since the Bush to Obama's presidency. On this issue, there can be two opposing sides of the discussion. The first declare the illegitimacy of these killings, who break the international law. The second group support the use of drones in this system as a more proportional response to the terrorist threat, highlighting the difficult to face this threat with conventional measures. According to this last interpretation, a consequence is the increased threshold of last resort to warfare. This consequence is related to the interpretation of Walzer distinguishing between "measure short of war" and "actual warfare". The result of this distinction is that drones should be a tool that despite using force, avoids a large-scale war, avoids troops on the ground and large bombing campaigns and substitute them with a precise airstrike, hitting the most sensible" point of the enemy. Walzer finds on this topic the necessity of *jus ad bellum* to be expanded⁷¹. So, this topic involves proportionality, the appropriate answer to the appropriate threat, and the principle of last resort, so choosing warfare as the last option, that we will evaluate after.

The evaluation of proportionality, of drones and the strategic evaluation that they provoke into government, is an aspect that needs meditation. I agree on the analysis done by Walzer, Brunstetter and Braun on the evaluation of the government. Indeed, I think that drones may become a tool increasing the incentives to resort to war, the "chirurgical strikes" of drones reduces the "impact" of an attack changing those factor that transforms a rivalry into open conflict.

But defining the use of drones in counterinsurgency warfare as disproportionate is not necessarily true. If the resolution to war is disproportion is defined by the context of the crisis. The violence of the group, the resources at its disposal, etc., define if using military strength against these groups is proportionate. The characteristics of the groups and the general strategic characteristics define the necessity of using force.

According to me, this measurement is necessary for conventional and unconventional threats. The resolution to force may not be necessary even against a country at the moment that there is a great disproportion of forces, deterrence can be enough to interrupt wrongdoing. While can be necessary against terrorists because of their guerrilla strategy, indeed a ground operation by a western country can be the chance for insurgents to gain a spotlight for their cause, and inflicting casualties to the western country can give them "prestige".

If there is the resolution of a government to start a military operation, proportionality needs to respect the measure that the offence received can be answered only through a military solution.

⁷¹ Just and Unjust War, M. Walzer, page xv-xvi

The fact that terrorists have been the target of military action is due to the immorality of their strategy and the difficulty to target them with instruments different from military strength.

A state can be easily targeted with economic sanctions, military deterrence, expansive signals of resolutions to stop the wrongdoing, etc., states have a certain wide number of options. Instead, the possible choices against terrorists are quite limited. Terrorists get their funds with illegal means, they do not answer, as states do, to the conventional signals that normally states do among them, and the law enforcement, of conventional police, has been most of the time impossible, terrorist groups operate in weak or failed states, moreover, the police would face a military organization for which is not prepared. Therefore, using force against insurgents' groups is not necessarily disproportionate, can be the only way to face the threat and drones are a tool that can reduce the risks to violate the proportionality in the set of principles of *jus in bello*.

Is necessary to evaluate the proportionality also in a context of the state against state. What we need to remind is that no-matter the tools at disposal, the proportionality needs to respect certain guidelines. If there is no military aggression, no countermeasure involving military strength can be used. Is evident that in case of aggression defend itself with drones can be necessary, and thanks to their precision they can be incorporated with proportionate weapons. But, again, the use of force has been strictly regulated, and the force can be used only for aggressions, etc. So, the violation of the principle of proportionality in *jus ad bellum* is the result of overreacting to an "offence" or any form of aggression. This violation is done through a process of decision making, if using drones is disproportionated to the provocation received, the violation is in using the force, not using drones. Breaking in the principle can be done also by the use of jet-bombers, the fact that they are drones do not prove anything in the category of *jus ad bellum*.

7. Last Resort

The principle of last resort has been already introduced previously. This principle is necessary to apply all the actual international legislation concerning the resolution to the war. It is also reasonable to affirm that the resolution to war is something that is related also to the rationality of governments. Morally speaking the fact to be the last option is due to the necessity that violence should be avoided, but we also know that in the bargaining equilibrium among nations discussing to avoid a conflict, finding an agreement can be sometimes impossible. Moreover, a government defending from an attack has no time to consider other options different from the use of force. War has also the rational implication of choosing to fight only when possible or necessary. With that, I mean that inevitably whatever kind of government has on a certain measure the obligation to respond to its citizens. In a democracy the audience cost obliges a government to start a conflict only when necessary when other options would imply a dramatic conclusion and higher costs. If a conflict is perceived as “unjust” by the population of a democratic country, then in the next round of voting the government would pay a cost with a minor political consent.

Drones have demonstrated to be able to operate silently, with a low budget and with military operations much less invasive.

Such characteristics have allowed the US government to do its operation of targeting in the Middle East without any political consequence, without responding to anyone.

In this sense the resolution to the war, if we imagine it figuratively as a line, it has been moved forward. Indeed, the recrimination denouncing in this sense the incompatibility of drones with the Just War Theory consists in denouncing a lack of transparency and accountability of using drones. These precise elements are related to last resort because the lack of these two elements, transparency and accountability, allows elimination or weakening of this principle, that because drones are an incentive to operate out of the checks and transparency that in a democracy are required, with the consequences of paying low audience costs.

A more general observation concerning the principle of last resort and drones is a generally increased propensity to engage into war for states, who, thanks for drones, would be induced to consider the targeting as operations different from war. Consequently, the possible scenario prospected is greater risks for the use of force through drones strikes but less likely for large military operations involving land operations or large-scale bombing strikes. What I will do is after having exposed the concern on the topic of the movement of the threshold of last resort, I will show that drones may become a guarantee of peace through an increase of deterrence power, increasing the chances for settle a peace

agreement without modifying the position of last resort for what concerns the minimum conditions to resolute to war.

7.1 Accountability and transparency

Keohane and Buchanan⁷² mentioned three major risks and violations that the use of drones implies. One of them is the very low level of accountability, reducing the audience costs in case of violation of a principle of Just War Theory.

The loss of accountability is the result of different factors coming by the desire of the US government to keep its operations secret, and also due to the loss of audience costs⁷³ of deploying drones in the Middle East increasing the chances of resorting to force. The absence of audience costs and the lack of transparency give a great advantage to western democracies that normally need the sustain of citizens and public opinion. This kind of behaviour is a danger for our democracies that needs transparency to make accountable any government, and possible any public discussion.

Drones have given the chance to have operations to zero-costs reducing also the number of people involved in it, the nature of the warfare, the counterinsurgency war, has given the chance to a government to avoid the same kind of transparency using the excuse of Intelligence necessities and national security.

There is no public debate on the use of drones because there are not questions or concern to answer, any time the operation is executed under the cover of secret service, so with a lack of transparency, accountability and risks for the military personnel, governments have no-incentives to limit their capacity to resolute to war through drones. Indeed, such concern has been expressed only by competent academics and authorities like in 2011 the Minister of Defence of UK saying: "*... It is essential that, before unmanned systems become ubiquitous (if it is not already too late), we should ensure that, by removing some of the horrors, or at least keeping it at distance, we do not risk losing our controlling humanity and make war more likely.*"⁷⁴

Indeed, it is the lack of transparency one of the main problems concerning the use of drones. There has been an analysis of the progress done by the Obama administration in carrying out the

⁷² Toward a Drone Accountability Regime, Allen Buchanan and Robert O. Keohane,

⁷³ The Audience cost is a theory in International Relations with some ideas at its base and consequences, generally speaking this theory is based on the concept that governments need the popular support to govern, without it their government are going to last shortly, commitments on certain policies may give more public support or less, depending on the gains and costs that certain decisions imply.

⁷⁴ United Kingdom Ministry of Defence, *The UK Approach to Unmanned Aircraft Systems*, Joint Doctrine Note 2011. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/644084/20110505-JDN_2-11_UAS_archived-U.pdf

recommendations done by the Stimson Task Force on U.S. Drone Policy⁷⁵ on the strikes campaign against insurgency. The result of the analysis was a general diffused lack of transparency and accountability, too little information revealed on the number, the location, the effectiveness, the collateral damages provoked by the strikes; these attitudes have provoked the result that the public opinion about UAVs in the US and the world, is, generally speaking, negative. The presence of absolute transparency would mitigate the resolution to the use of drones' attacks. What I think has not been sufficiently highlighted during the analysis of Keohane and Buchanan is the arbitrary use of force against the suspects of terrorism. The information, in particular on militants of low profile maybe not 100% clear. Indeed, the US policy is a mix between an act of war and law enforcement. Is part of a policy action because the US's agents collect proofs on the identity of the suspects, which is a "modus operandi" more similar to a job a policeman; but then as the proofs are sufficient, we do not know exactly which would be the necessary characteristics, again because of a lack of transparency, they bring justice through the use of an ultimate military resolution, typical of a condition of war, using a drone attack.

This use of violence may infringe the principles of Just War Theory, through a violation of those principles that are related to the resolution to war and proportionality, because if you need to prove that your targets are terrorists is not a war, but if you use UAVs using guided bombs with no process, is definitely war.

Such a use of force is justified by Barack Obama in his speech at the National Defence University on May 23, 2013⁷⁶. In his speech he discussed a wide series of topics over drones, responding to questions also from the audience. On the use of drones, he mentioned the impossibility of using troops on the ground. He referred to the fact that the militants hit by the drones' attack are often committed in territories under the absolute control of jihadists militias and sending their soldiers would be too risky, to mention president Obama "To put it another way, our operation in Pakistan against Osama Bin Laden cannot be the norm. The risks, in that case, were immense."⁷⁷ (referring to the operation that has led to the death of Osama Bin Laden). Indeed, the researchers have found out that operations on the ground cause a higher number of victims among the civilians, the Pakistani forces fighting in the area hosting Afghan terrorists and militants have caused in percentage more civilian victims than drones' strikes.

⁷⁵Rachel Stohl, *"Grading Progress on U.S. Drone Policy"*, Stimson Centre, published on Feb. 23rd, 2016. Taken From: Moral and Legal Accounts on the Use of Armed Drones Against Suspected terrorists.

⁷⁶A full text can be found on the New York Times online under the title "Obama's Speech on Drones," May 23, 2013, accessed October 23, 2013.

⁷⁷"Obama's Speech on Drones," May 23, 2013, accessed October 23, 2013.

The use of drones would have been constrained by the White House publishing a White Paper⁷⁸ giving instructions and directives on the circumstances in which are described the modalities and the cases in which the drones are employable. At the same time, President Obama admitted some unconstitutionality⁷⁹ of the striking in particular against US citizens plotting against the US itself.

Said so, there is a breaking of the conditions making drones and Just War Theory compatible?

According to me, no. Let's consider the facts. What emerges is an incentive for states to start a war because has become more difficult to make drones' strikes accountable. This analysis despite being, correct, on the reality of the facts, it does not change the principles of the theory.

The principle of last resort plans to oblige a country to choose war as the last chance. The breaking of this principle implies that if I decide to bomb someone without taking into consideration other possible solutions, it does not matter what I'm using, if drones or jet bombers, I'm violating a rule of *jus ad bellum*.

The lack of accountability is not an argument of discussion of this thesis, on how to improve transparency, etc. let's only say that these characteristics can be eliminated, making drones accountable. The point is that the last resort has not changed as value. States have a moral duty before starting a war to evaluate any other possible solution. The use of a weapon in place of another does not change the principles in place, implies a strategic evaluation, that does not change the moral one. Indeed the moral principles exist for humans and so they are not influenced in their existence by a new weapon.

Moreover, the systematic use of force has been the result of a disproportion of one of the sides fighting. The United States didn't have any kind of fear concerning a possible retaliation of insurgents, not immediate or direct, through military force. But the Just War Theory needs to be more general evaluating also situations of "classical warfare" and contraposition among fighting sides.

As I will show in the next paragraph, as the discussion is moved into the symmetric contraposition among states the problem of transparency and accountability disappears because the enemy will respond to the strike provoking a public reaction, eliminating the accountability and transparency concern. This highlights how the problem is more related to the typology of the conflict than the weapons used in the conflict. Using drones is related more to the strategic field than to the moral use of force. As the conflict changes the subjects involved, the consequences change too. While the moral

⁷⁸Erich Freiberger, *Just War Theory and the Ethics of Drone Warfare*, JUL 18 2013.

⁷⁹A full text can be found on the New York Times online under the title "Obama's Speech on Drones," May 23, 2013, accessed October 23, 2013

debate is based on constants that never change with the changing of some variables. Indeed, as the counterparts are states, the debate moves to the deterrence power, and the accountability problem disappears.

7.2 The changing of last resort

In the moment in which drones become a proportionate answer to terrorism the threshold for last resort increases for what is considered large scale war. Indeed, the targeting of drones may become a resolution to force, as defined by Walzer, a “measure of short war”, distinct by “actual warfare” which implies, real war, real fighting on the ground by contingencies of troops⁸⁰. The first form of force lacks the “unpredictable and catastrophic consequences of a full-scale attack”⁸¹. In this context of the discussion, Walzer reclaims the necessity to expand the *jus ad bellum* to a wider system contemplating, called *jus ad vim*. Moreover, drones for their capacity of strikes, according to the advocates of drones, are necessary to fight the terrorists and avoid escalations of conflicts.

As I previously exposed, the nature of the threat changes the rule of the game, and the same opinion is followed by Mark Totten declaring that the global threat of terrorisms makes the point of last resort closer to the one of imminence⁸², in other words making force a solution necessary more than possible. Indeed, other alternatives at a certain point may become unreasonable and impossible to chase without renouncing to the right of self-defence. In this sense states are sensible to deterrence, while terrorists respond to other incentives, states can have in anticipatory force a necessity that in conventional relationships with states do not have.

The problematic at the centre of the discussion is the change in the development of the right instrument to use. Indeed, as drones’ striking became a justified way to deal with the threat of terrorism, other means not involving the use of force may become less likely to be used, increasing the level of violence diffused. The only limit to the use of drones seems to be territorial sovereignty. Indeed, some operations of drones’ strikes can have presumed the violations of international principles. When the strikes have been done in areas of war, the striking didn’t presume any kind of violation, as it is the case of Afghanistan. Different is the situation of Pakistan, indeed with the absence of a state of war the use of force can be figured as a homicide in absence of the approval of

⁸⁰ Walzer, taken by The Implications of Drones on the Just War Tradition, Daniel Brunstetter, Megan Braun.

⁸¹ Kenneth Anderson, *Rise of drones: Unmanned System and the Future of War*, American University Washington College of Law. http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1002&context=pub_disc_cong

⁸² Mark Totten, *First strike: America, Terrorism, and Moral Tradition*, 2010

the local government, but even in this case is necessary to have tried first the use of law enforcement. Another possible situation is one of the failed states, but also, in this case, Walzer declares the necessity to try other solutions before the use of force, that should remain a last resort.

In Pakistan the violation of sovereignty has been proved sometimes, in specific circumstances, up to the point that a strike in 2011 provoked the death of 24 Pakistani soldiers, that have pushed the Pakistani government, under the pressure of public opinion to forbidden the use of the airbase of Shamsi in Balochistan to the CIA aggravating the relation between Pakistan and US. The US ambassador in Pakistan itself requested more cautious in choosing targets and suggested greater involvement of the Pakistani authorities in the striking missions⁸³. Is also necessary to point out that the air campaign has been also approved in many of its operations, up to the point that the Pakistani government cheered in the occasion of some strikes against insurgents.

The chance to manipulate the last resort could be also the result of an accusation that is born from a theory according to which the use of drones alienates the public opinion from war.

An issue that seems having acquired certain importance in the elaboration of the change of last resort is the manipulation of the audience cost through the alienation of citizens from war. The argumentation of alienation has been discussed, in particular through the strong words of Van Der Linden in *Arguments against Drone Warfare with a Focus on the Immorality of Remote Control Killing and "Deadly Surveillance"*⁸⁴, he referred to drones as an unfair method to perform air attacks. The entire context is so abnormal that according to the author, and to some extent, I agree, the airstrikes, if done by a drone, alienate civilians from war, safe at home and the pilot from the conflict. This context of alienation involves not only the citizens of a country using drones, not more hearing the death of their fellow citizens fighting in a far country but also the drones pilot, living a normal life in an American city sometime, and just going into office and spending their day to watch over Pakistani people living their lives in their country, and when the moment comes, striking.

Civilians will be alienated from the discussion on a fair war, because their fellow citizens, serving in the army are not on "the ground" risking their lives. There isn't a constant report of soldiers killed in an ambush or in a battle. The lack of human lives lost increases the distance of the democratic audience from the situation of war. At least the concern will be drastically reduced. Moreover, the cost of an air campaign done with drones is much lower than an operation "boots on the ground".

⁸³Entous, Adam, Siobhan Gorman, and Julian E. Barnes, "U.S. tightens drone rules" Wall Street Journal, November 4, 2011. taken by, Drone Wars: Transforming Conflict, Law, and Policy (p.39). Cambridge University Press.

⁸⁴ Harry Van der Linden, *Arguments against Drone Warfare with a Focus on the Immorality of Remote Control Killing and "Deadly Surveillance"*, Butler University, 2016

As it is visible by *figure 2*, war can reach extremely high costs, determined by the expenditure in sustaining a military campaign abroad. The war in Afghanistan has been the second most expensive war sustained by the US. And despite the recent decrease of troops in Afghanistan, 2018 has been the year with the highest number of bombs dropped by the US, 7300⁸⁵. These data are a demonstration of the general strategy of the US government to face the threat as least as possible with troops on the ground but rather with airstrikes, despite the Taliban gained terrain and the increased influence of ISIS in the country has made Afghanistan the prime battleground of the IS⁸⁶

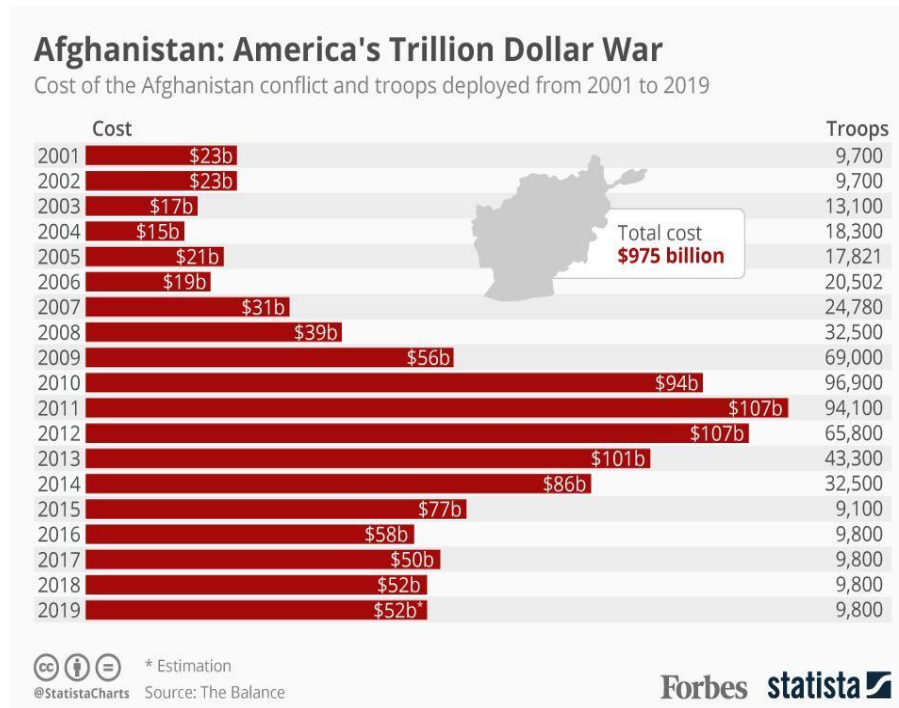


FIGURE 3⁸⁷

The alienation of pilots is a different concept.

When you are in a war as a fighter you know that is possible that you may die, killed in action, and the same is for your opponent, but when you are fighting from a position thousands of miles away from the battlefield the pilots admitted a sense of “guilty”⁸⁸.

⁸⁵ Niall McCarthy, *The Annual Cost Of The War In Afghanistan Since 2001*, Forbes, 09/12/2019, <https://www.forbes.com/sites/niallmccarthy/2019/09/12/the-annual-cost-of-the-war-in-afghanistan-since-2001-infographic/#38cf3aa31971>

⁸⁶ Michael Kugelman. *The Islamic State Will Outlive Baghdadi. Afghanistan Shows How*. Foreign Policy, 11/5/2019. <https://foreignpolicy.com/2019/11/05/isis-terrorism-killing-islamic-state-outlive-baghdadi-afghanistan/>

⁸⁷ Niall McCarthy, *Cost of the Afghanistan conflict and troops deployed from 2001 to 2019*. <https://www.forbes.com/sites/niallmccarthy/2019/09/12/the-annual-cost-of-the-war-in-afghanistan-since-2001-infographic/#38cf3aa31971>

⁸⁸ M. Shane Riza, *Killing without Heart: Limits on Robotic Warfare in an Age of Persistent Conflict*, University of Nebraska Press, 2013.

I personally feel and understand this sense of unfairness, the feeling to get an overwhelming power of the pilot over his enemies, that is in a sense unfair.

An advantage in warfare from one side or another is always criticized because it breaks the conventions in war, not necessarily regulated through laws or International Agreements.

But when a government starts a war it needs to consider all the implications of this choice and has a holy duty to fight avoiding as much as possible losses on both sides, but most of all of its fellow citizens. Actually, a disproportionate superiority of one of the sides should convince the weaker opposer to surrender and discuss for a peace. Indeed, Fearon⁸⁹ explained the factors that lead countries to discuss the conditions for peace, according to a rational perception of their chances to win. Sure, now we perceive the remote killing as not “fair”, someone may say unhuman, but is more human risking more lives? Maybe through the use of jet fighters or even worse through a land operation? Should be also reminded, as said by Van der Linden himself, that there is an extreme disproportion between terrorists’ militias and armed forces of a country, in particular, if we consider the US. Indeed with the actual level of technology war jets are extremely difficult to be targeted with the weapons that a militia may be able to acquire, so the greatest danger for a modern jet would be technical problems, so it wouldn’t be the “war” to kill, but technical mistakes. Should it be fairer? In a conventional war among two states instead, despite drones remain more difficult to intercept and located by radar, they can be shoot down with adequate air, and radar control, adequate to the actual stealth technology.

With the diffusion of drones in the warfare scenario, the last resort can change according to the strategic situation that a country is facing. Indeed, we have seen that drones may incentivize a country to choose force against insurgents, due to low costs but at the same time, the consequence can be opposite in a direct confrontation between states.

7.3 Deterrence and lower chances of war

Deterrence is a mechanism that in the years of the Cold War has been forgotten. The academics focused on the mechanisms of mutually assured destruction of nuclear weapons, but the principle of conventional deterrence has always remained valid and working.

⁸⁹ James D. Fearon, *Rationalist Explanations for War*, in «*International Organization*», Vol. 49, No. 3 (Summer 1995), pp. 379-414

The conventional deterrence is a mechanism that describes a strategy based on the threatening of punishment, so the threat to destroy a large portion of opponent's civilian population and industry, or by denial, which consists on convincing the enemy that he will not attain the expected objectives⁹⁰.

Differently by Nuclear Deterrence, Conventional Deterrence is based on objective capacities that can be shown through propaganda and expansive signals, whereas the Nuclear one is based on commitment.

We will have the objective to try to analyse and suppose the role of drones in the classical system of conventional warfare and its repercussion on the last resort principle and the consequential compatibility with the Just War Theory.

With conventional warfare, we indicate a certain kind of war done through the exclusion of nuclear weapons, in which two armies fight one against the other through troops' manoeuvre and direct fight of tanks, aeroplane, etc. Indeed, we have seen the drone to be employed for two main tasks. The first is the reconnaissance and monitoring and the second is the targeted killing in the counter-insurgency war.

Being able to insert the role of drones into the strategy of warfare might be very important to determine if their future use might be shadowed by a morally doubtful way or might be used accordingly to the rules of war and the Principles of Just War Theory.

What lies at the base of deterrence is the fear of the consequences that an attack might have for the attacker. We might assume that deterrence works when an attacker calculating risks and costs of war ends to consider the war too expansive compared to the possible gains that are possible to achieve. Knowing the fact that long and protracted conventional war may produce unexpected results and prolonged war means inevitably higher costs, states prefer to achieve a quick, clear and striking victory.

On the topic of conventional exists two main theory, the first focusing on the weapons possessed by each side, and the second on the balance of forces existing among the fighters.

Through this classification, it should be able to analyse if the weaponry helps the deterrence, so the most effective weapons to make effective deterrence are the defensive one, or if deterrence is destined to fail due to the prevalence of offensive weapons. The second theory weights the power of the opposing sides, considering the balance of forces.

⁹⁰ John J. Mearsheimer, *Conventional Deterrence*, Cornell University Press, 1983.

Anyway, according to Mearsheimer, these considerations are influenced by the strategies chosen to engage in a war. The strategies might be reassumed into three main types. The first one is the famous blitzkrieg, is a strategy relying on mobility and speed. The second strategy is the attrition one. Through this strategy the commander aims to destroy the enemy battle by battle, advancing through the enemy territory with the entire front. The third strategy is the one with limited objective, this last strategy aims to catch the enemy by surprise, attacking a small part of the enemy and conquering a limited area of the enemy's nation, the name tells, "limited objective".

All of these three strategies have difficulties and weak points. Indeed, the blitzkrieg is so reliable on mobility that in case the enemy is prepared for such a kind of warfare through a forward defence and military units as well able to strike a counterattack on the attackers' spearhead's flanks, the defence is capable to block the blitzkrieg

The attrition strategy has as the main drawback the duration and the costs indeed is a strategy based on a frontal fight among two armies and it is based on the calculation of overwhelmed the enemy, with the power of the numbers of the army and the production capacity that a nation may have at his disposal.

This drawback of the duration is probably extremely limiting for the political choice but if rightly calculated might give larger certainty to win, indeed a larger superiority may oblige a defender to stretch the enemy's line to such a point that defending becomes almost impossible⁹¹.

The limited strategy has as a main drawback the fact that once obtained the limited victory and the territories desired, the attacker will become a defender, and the war may become an attrition war if the defender is committed to taking back the territories lost during the attack by surprise.

The analysis of the possible role of drones into the classical scenario of warfare is purely speculative that might be based only on the features that the weapon has shown until now in the counter-insurgency scenario and only through to these main characteristics it could be possible to imagine the use of drones in a today scenario of conventional war among two states.

Probably the main characteristic that defines drones is mobility⁹². As Mearsheimer shows in its book⁹³ mobility is a key factor into the offensive strategy allowing an offensive force to deepen into enemy territory allowing through constant surveillance and striking precision to support directly the troops fighting on the ground, attacking enemy tanks or infantry's bunkers.

⁹¹ J.J. Mearsheimer, *Conventional deterrence*, Cornell University press, page 58-59.

⁹² Tyler Wall and Torin Monahan, *Surveillance and violence from afar: The politics of drones and liminal security-scapes*, *Theor. Criminol.*, 15, 239–254, 2011.

⁹³ *Ibidem*, J.J Mearsheimer, *conventional Deterrence*, page 35-43.

But as the mobility is an advantage for offensive it may be an advantage for defenders, who may use UAVs to monitor enemies movements along the border, being able to localize the areas where the enemy concentrate its forces preparing for an offensive, and as well as the attacker drones may strike the attacker's advancing tanks eliminating the spearhead of an enemy offensive. UAVs result if used in a defensive way to be a great advantage for the defenders, less vulnerable to enemies' radar and anti-air batteries, defenders' drones may result as a key element for gathering information on enemy forces, and rebalancing in favour of the defender the balance of power. At the moment drones are not an invulnerable weapon. Indeed, UAVs have been used in countries lacking the capacity and technologies to intercept or even taking down these aircraft. Is reasonable to suppose that the actual technologies may more easily be tracked by modern radar at the disposal of western countries.

A weapon that counterbalances the use of blitzkrieg would potentially give a greater advantage for the defender to properly react and stop any attempt to invade a country, potentially stopping an attack and degenerate a strategy, aiming to resolute in weeks a conflict, into an attrition conflict.

This possible degeneration into attrition would make deterrence more probable due to the intrinsic higher costs that such a strategy has implicitly. Indeed, a government would be less attracted to fight an enemy with the military capabilities to stop an attack and make war much more expansive.

Let's take into consideration the main skills of remote-controlled aircraft. First, drones have shown the be extremely reliable in the endurance of its flights, indeed are able to fly for 24 hours consecutively, such an advantage allows drones to be the perfect watchman, patrolling and monitoring enemies movements along the border, that allows the defenders to get the greatest amount of information to prepare the right answer to a possible attack. Such level of endurance may make possible to drones to monitor specific targets and once into open conflict may allow the defenders to target not only sensible areas like ammunitions storage and deposits, or fortified positions but also prominent leaders and commanders, whom death may provoke moments of confusion and vulnerability for an enemy's army, allowing a counterattack. Second, as we know drones are not completely invisible to radars, indeed as recent news has demonstrated, with the appropriate technology drones may be located and shot down⁹⁴, nevertheless thanks to their composite materials⁹⁵, which make them more difficult to be detected, and the fact to be extremely more silent

⁹⁴ Thomas Gibbons-Neff, David E. Sanger and Richard Pérez-Peña, *Trump Says U.S. Shot Down Iranian Drone as Both Nations Dig In*, New York Times, 18 July, <https://www.nytimes.com/2019/07/18/us/politics/iranian-drone-shot-down.html>

⁹⁵ A composite material is the result of a union of two different materials with different characteristics which once combine form a unique material which differs from the components' characteristic. Important is to notice that the new material is composite, so the components remain distinct and separate inside the new material, differently from mixtures and solid solutions.

then jet fighters and they are sensibly smaller, drones have higher chances to fly unnoticed by the enemies' defences.

Third fundamental characteristic is the precision of drones, indeed thanks to guided missiles, and cameras installed on UAVs, drones can detect and strike a specific target with precision, possibly avoiding undesired killings or collateral damages for the civilians. This precision gives extreme reliability for strategists to expect the success of strikes, second allows a greater morality giving the chance to apply the principle of distinction between civilians and soldiers and third allows through precise hits to interrupt military manoeuvre hitting precise targets that may avoid higher casualties and may cause higher probability for the attacker to be more inclined to consider the possibility to negotiate.

Using drones gives a great advantage to strike the most sensible areas of the enemy. Taking advantage of the stealthy capabilities of drones, an army can reach a relative advantage, targeting the HQ of the enemy, acquiring a superiority for what concern organization, for a while, or again drones may more easily strike central vital spot of a country, like industries, storages etc.

This happened for example recently in Saudi Arabia, indeed Iran has been able to strike thanks to a drone an oil process implant, one of the most important of Saudi Arabia⁹⁶. The attack was a demonstration of the technological capabilities of Iran, a proof of strength, that did not provoke an escalation and will eventually deter the enemies of Iran to start a conflict.

What demonstrates the use and the potential capabilities of drones?

I think that what emerges in the manipulation of the principle of last resort by drones, is a clear capacity of increasing the threshold of the start of a symmetric conflict among states. It should become more difficult the beginning of a conflict. Indeed, drones may result as a strategic weapon capable of striking the vulnerable points of the enemy, with a very little capacity to defend itself from the attack. Substantially starting a conflict with a country having drones that can be equipped with missiles would mean paying a high cost.

Drones are substantially a military advantage, clearly when the enemy is militarily inferior, as the case of insurgents, but also in case of war among states.

In the first case, a country employing drones would pay an extremely low price in term of economy, a military mission generally speaking less expansive when only drones are used. Less expensive than a military campaign, as is easily understandable, but also much less expensive than a jet fighter like

⁹⁶ Thomas L. Friedman, *Trump and Tehran Shake Up the Middle East*, New York Times, 10/8/2019.
<https://www.nytimes.com/2019/10/08/opinion/iran-israel-saudi-arabia.html>

the F15. Indeed, the Reaper can cost 15 million dollars⁹⁷ while an F15 can cost at least 31 million dollars⁹⁸. But also, there is a substantial reduction in the cost of human lives for the nation using this technology. Indeed avoiding the direct involvements of troops on the ground, soldiers would not die, only the enemy is going to pay the costs of the war, and what matters more the internal public opinion will be less interested in the foreign policy because would not perceive the price of the war.

When the war is done against another country, drones can be an extremely effective deterrence, even in case of inferiority, thanks to its capacity can inflict higher losses compared to the real military capacities of the country.

The result is a higher deterrence power and consequently a higher threshold to resolute to war and greater adherence to the principle of last resort.

⁹⁷ U.S. Air Force, "*Department of Defense Fiscal Year (FY) 2020 Budget Estimates*". March 2019. p. Vol. 1–125. https://www.saffm.hq.af.mil/Portals/84/documents/FY20/PROCUREMENT/FY20_PB_3010_Aircraft_Vol-1.pdf?ver=2019-03-18-152821-713

⁹⁸ US Air Force, F-15E Strike Eagle fact sheet. Retrieved: 13 May 2017. <https://www.af.mil/About-Us/Fact-Sheets/Display/Article/104499/f-15e-strike-eagle/>

8. Reasonable chance of success

The reasonable chance of success is a principle of *jus ad bellum* with specific aims. The success in war is not simply a selfish objective but is a necessity to preserve human lives, in specific of civilians, avoiding to them as much as possible sufferance. Indeed, as higher are the chances of success likewise are the chances of a quick victory. The conditions for a rapid victory are determined by the proportions of military strength between the fighting sides.

Probably this principle has never been discussed by the detractors of drones, the reasons are due to the advantage that drones have demonstrated. Indeed, drones are a military tool. Tools can give chances of success, without those tools certain options would be impossible to have.

As we have seen drones give the chance to strike an enemy with surgical precision. Drones have prolonged autonomy, that allows long periods of surveillance over the enemy camps, giving the time necessary for the pilot to strike only when the view is clear and is sure to strike without civilian deaths. UAVs are the perfect system of surveillance, indeed has born with the project to watch the enemy forces, thanks to its natural stealthy skills, the reduced dimensions and lower sound produced compared to jet fighters.

In the chapter above I also discussed the military advantage that this aircraft should give in war, and the result achievable in deterrence. However, all that discussion demonstrates also that as the military strength increases the same should happen to the chances of success.

Anyway, a good point would be that despite the use of drones the US have not been capable to reach a decisive victory, so in this point, drones seem to have failed, moreover strategically speaking has been proved that the strike has provoked also the death among civilian giving a bad reputation to the US, encouraging some to enlist among the lines of those terrorists that the US is trying to suppress increasing the recruitment among the terrorist organizations⁹⁹. According to a series of interview collected by the Stanford University¹⁰⁰ with Drones' victims and experts, the US's strikes in Pakistan have increased the anti-American sentiment and resentment towards the American policies in the Middle East.

⁹⁹ Micah Zenko, "Reforming U.S. Drone Strike Policies", Council on Foreign Relations Special Report (January 2013); taken by Moral and Legal Accounts on the use of Armed Drones Against Suspected Terrorists.

¹⁰⁰James Cavallaro, Stephan Sonnenberg, Sarah Knuckey, *Living under Drones, Death, Injury and Trauma to Civilians from US Practices in Pakistan*, International Human Rights and Conflict Resolution Clinic, Stanford Law School, Global Justice Clinic, NYU School of Law. <https://www-cdn.law.stanford.edu/wp-content/uploads/2015/07/Stanford-NYU-Living-Under-Drones.pdf>

On this issue Van der Linden highlighted that such a condition of instability, concerns the civil society in many spheres; with such an instability economic activities, investments and political environment are at risks causing long-term problematics. All this violence for reducing the risks of attack for the US, despite they have been largely decreased in the past years¹⁰¹ through a series of military campaigns. Probably the US are creating enemies, not just for the strikes of drones, they are not the exclusive reason for whom they are so abhorred but is not helping.

These considerations are suggesting that major capabilities of warfare are not automatically translated into greater chances of victory. Indeed, appears that drones are not decisive in victory and may have also had a counterproductive impact on the counterinsurgency strategy.

For many authors the terrain operations "boots on the ground", are the only way to eliminate a threat, according to Coker, referring to drones' strikes: "such operations are extensive but likely to remain inclusive. All that airpower can do is contain a problem, not solve it."¹⁰²

Another critique and analysis that I think is extremely effective in explaining the limits and the problems of drones' warfare have been done by Elke Schwarz¹⁰³. In the article Schwarz highlights the limits of a counterinsurgency policy counting only on heavy use of drones. Specifically, she found three principles that summarise those limits: (1) the production of intelligence about socially complex networks and societies; (2) the application and use of soft or smart power; and (3) the attainment of a medium to a long-term goal of peace.

Drones can count on the elaboration of data or through the human intervention, the military personnel working in the bases behind the monitors, or through the elaboration of big data done by an algorithm analysing and capturing those elements that are recognizable as a "terrorist behaviour". At the beginning during the Bush's presidency, as previously reported, the targeting strategy was aiming only specific persons, known to be terrorist leaders, so the target was limited, recognizable and well known. After the strategy changed and the target was those suspects of "terrorist activities". So the targeted group expanded drastically also to low-ranked militants, but those activities recorded and analysed are so wide and generalized that the patterns of terrorists extended up to the point that there was the fear of missing terrorists and the number of suspects falling into the control of military

¹⁰¹ Harry Van der Linden, *Drone warfare and Just War Theory*, Chapter 9 of Drones and Targeted Killing: Legal Moral, and Geopolitical Issues

¹⁰² Coker, C., (2001), *Humane Warfare*, London, Routledge, p.59.

¹⁰³ Elke Schwarz, *Pursuing peace: the strategic limits of drone warfare*, extract from Intelligence and National security, 9th May 2017.

analysis was so high that was the algorithm to determine the membership to a terrorist group, as explained by Jutta Weber¹⁰⁴.

The mistake that the author, recognizes in this analysis is the fallacy of a strategy based only on brutal strength, basing its effectiveness on data and not prospecting an adaptation to the situation on the field. Decreasing the capacity of social interaction in the country where the military operation is working. Such weakness determines a misunderstanding in developing a strategy. The development of a strategy aiming to what and how to achieve a task has been missed because according to the author drones cannot be used always. They are undoubtedly useful tools but with limitations, first of all in the capacity of building durable peace. Drone lack of the soft power required to relate with the place of operation and the final objective of a durable peace. Durable peace is the final objective desirable achievable through what Nye defines “smart power”¹⁰⁵, so the capacity to achieve an objective. Achieving a social outcome, such as peace, only through violence is impossible, violence is an instrument with the short-run result, useful for an immediate result. Indeed, also in the theory of warfare designed by Von Clausewitz, war is useful to understand the enemy and comprehend the force of the opposer, but violence is alternate with the discussion and bargaining. A strategy based exclusively on violence can’t reach any result in long terms.

Such opinion is shared also by the American General Stanley McChrystal, commander of the military operations in Afghanistan, he said: “the whole point of war is to take care of people, not just to kill them”¹⁰⁶. Indeed a “human result” cannot be reached with the exclusive use of violence. On this issue I find extremely useful the words of Anna Arendt on the usefulness of violence of political ends:

“Violence, being instrumental in nature, is rational to the extent that it is effective in reaching the end that must justify it. And since when we act, we never know with any certainty the eventual consequence of what we are doing, violence can remain rational only if it pursues short-term goals... If goals are not achieved rapidly, the result will be not merely defeated but the introduction of the practice of violence in the whole body politic”¹⁰⁷

In the end, what the author criticises is the strategy that the exclusive use of drones implies. A military power aiming to destroy, cannot build terms for effective peace. There is no doubt that the tactical success that military capacity can give is extremely useful in counterinsurgency but is also true that

¹⁰⁴ Weber, Jutta. “Keep Adding: On Kill Lists, Drone Warfare and the Politics of Databases.” *Environment and Planning D: Society and Space* 34, no. 1 (2016): 107–125.

¹⁰⁵ Nye, Joseph. “Power and Foreign Policy.” *Journal of Political Power* 4, no. 1 (2011), page 12

¹⁰⁶ McChrystal, Stanley. 2013. “Generation Kill: A Conversation with Stanley McChrystal.” *Foreign Affairs*, March/April. Accessed December 12, 2016. <https://www.foreignaffairs.com/interviews/2013-02-11/generation-kill/>

¹⁰⁷ Arendt, Hannah. *On Violence*. Orlando, FL: Harcourt, Brace, 1970.

a phenomenon wide and complicated as terrorism cannot find a unique solution, but rather a strategy wide in means and objectives.

What can be understood is the critique on the use of drones concern the tendency that has distinguished the US government on using drones. Indeed, they seem to have been used as a “panacea”. What I mean is that drones would have been used to substitute any other system of intervention pretending to see the same results as they were using ground troops.

Indeed, is not wise from a government to see results using a single strategy when the scenario is so complicated. Indeed, terrorism is based primarily on the will of terrorists to fight. They continuously try to demonstrate that the government is incapable to protect the civilians, and in general, that is not a legitimate government. A conventional enemy does not try to change the system like terrorists try to do fighting. So, we should imagine a necessity to fight this kind of enemy with a different kind of strategy, and also there is an objective consideration, that apparently the strategy of using drones didn't work so it would be necessary changing approach.

Anyway, the drone approach has not been a unique approach used. Indeed, economic sustain has been done to Afghanistan and its economy, and up to a certain point, the military presence of the US in the country was strong. Probably we can suppose the desire of the government to disengage as fast as possible from a situation extremely difficult for which the solution would have been a long commitment, and an even higher expense.

So, are drones compatible with the reasonable chances of success? From what we have seen yes. Indeed, we have seen that the mistakes that can be done according to the opinions previously taken consists of a strategic mistake of decision-makers. Nevertheless, is disputable the fact that air bombing from afar may have had an impact on the military campaign due to the impact on the civilian population. This specific topic will be discussed later in the chapter dedicated to the principle of humanity. Anyway, is evident that excessive use of violence on the civilian population has a negative impact on the success of counterinsurgency. As a kind of warfare counting a lot more on the support of civilians on the success for both sides. Bombing and killing without principles of necessity and proportion have a negative impact on the perception that civilians have on the regular forces fighting the insurgents, undermining a victory against insurgents and reducing the chances to stabilize an area of war. However, is indisputable that this result can be reached also with other weapons. Jet fighters through an indiscriminate striking campaign can produce the same negative impact on the civilian support for the legitimate government. So, the negative impact is not produced by the weapon but by the government choosing a certain kind of strategy to face insurgency.

However, the principle of good chances of success considers the opinion that a government has before starting a war on its military compared to one of the enemies. Evidently, as the chances of success are considered inferior the consideration of a government for its forces is poor. What has emerged from the capabilities of drones in war is an extremely important capacity to execute missions with precision and effectiveness, that can't be compared to any other weapon.

This advantage gives for sure the perception of the faction using drones to have a military advantage, and any military advantage is the foundation to demonstrate the success of the principle of reasonable chances of success. Moreover, is important to notice that any military advantage given by a tool needs a strategy. What I mean is that tanks have given the possibility to win battles over infantry forces, but tanks have been inserted into a strategy to use them at their best and without excluding precedent elements¹⁰⁸.

So again, the mistake belongs to those building a strategy to face a large and intense conflict such as the war in Afghanistan. A negative impact of a tool over conflict can derive from whatever kind of new weapon if used in an inappropriate way, according to a measure of proportion and military necessity.

In the end, drones do not violate the principle of reasonable chances of success, not as much as any other weapon used in a conflict, on the contrary, they can prove to be an additional instrument for an army to reach its objective, without forgetting their employment in a more general and consistent strategy.

¹⁰⁸ Ibidem J.J. Mearsheimer, *Conventional deterrence*, page 23-60.

9. End of Peace

As has happened with the other principle of Just War Theory, the principle of end of peace exists related to other principles. The end of peace is complementary to proportionality and is not untied to just intent. The essence of this principle is that every action and decision taken before starting a war should have as final objective peace. Peace is a status not only of the absence of fights among factions but also, we intend a solid system of peace, so the absence of disputes, recriminations, etc. This condition is achieved in the premises to war, so not only for the presence of a just cause, for the “good guys”, but the objective of war should be free from the imperialistic idea of hegemonic power, and rapacious intent of territorial expansion.

According to me, this principle expands its validity from the category of *ad bellum* to *in bello*. Indeed, can be perceived as intent on one side in the phases preceding the conflict, so *ad bellum*, while can be also an essential element in the development of the conflict when we are speaking of proportionality during the war. Indeed, is not possible to build any peace if the strategy used for warfare aiming to the destruction of every enemy facility, and to the systematic killing of the civilians. In this sense, the end of peace is the moral value watching over proportionality and military necessity.

Moreover, the end of peace is the moral principle initiating the activities of the *jus postbellum*. A principle like rebuilding, reparation, reconciliation cannot be employed without the right premises built during the war, specifically when the war fought is a war of counterinsurgency that needs good relations between the militaries and the civilian population.

What influence drones can have on the principle of end of peace?

According to some authors, drones are one of the greatest threats to peace. Due to the previously cited reasons for lower costs and interest of public opinion, the end for the government may become something different from peace like state interest and supremacy.

The premise to such a threat is made by John Kaag and Sarah Kreps¹⁰⁹ taking as reference the Kantian concept of democratic peace. According to them the democratic natural constituency and nature, take the democratic government to support policies that do not necessarily take to peace but protect the private property. As the “direct consent” of citizens disappears because they are

¹⁰⁹ J. Kaag and S. Kreps, *Drones and democratic peace*, Brown Journal of World Affairs, 2013.

not more involved in the war and to not have to pay any cost in blood their interest in the conflict disappears¹¹⁰ living wider margin of choice for the governments.

This advantage has been caught by the governments that have started a series of strategies to avoid the direct involvement of citizens. One of the first for some commentators has been the creation of professional armies avoiding in this way the calling of big masses of citizens for the conscription, who, once avoiding the risk of war, have reduced their critical analysis for the war. A second step that would have started the government for this “alienation” is the construction of drones. Already in 2012, Singer noticed the fact that all the major producers of aircraft have focused their new projects into unmanned vehicles¹¹¹, that should be the symptom of the strategy initiated to alienate.

The authors add to their statements that if the development and the tests of nuclear weapons have spurred British citizens, and not only, to protest against the system of nuclear deterrence that has characterized the Cold War, in the occasion of the diffusion of drones no one opposed. The reason should be the fact that drones do not affect the lives of western citizens while nuclear deterrence if would have failed it would have meant the death of millions of people. Electors behave in a self-interest logic, voting the candidate minimizing the costs for them, and persecuting the policy best answering to their interests. For what concern the topic of war, the result is an attempt of politicians to reduce the costs for electors, and that result can be achieved with two main strategies, or a peaceful approach or an approach reducing the costs related to the war, such as the use of drones.

Peace is such an important element for the protection of human rights that Marjorie Cohn and Jeanne Mirer¹¹² define it almost as a human right. Such definition is taken by the numerous declarations of the General Assembly, Security Council and from the constitution of countries. Drones acquire a measure of immorality and danger for peace for a series of characteristics that have emerged in their analysis.

The first point under consideration of the authors from which they start their analysis concern the same reasons for whom the international system is born. Indeed, peace is the fundamental value of the International system born after the Second World War. The persecution and research for

¹¹⁰ Immanuel Kant, “Towards Perpetual Peace,” in the Basic Writings of Kant, ed. Allen Wood (New York: Random House, 2001), 422.

¹¹¹ Peter Singer, “Do Drones Undermine Democracy?” ,New York Times, January 21, 2012.

<https://www.nytimes.com/2012/01/22/opinion/sunday/do-drones-undermine-democracy.html>

¹¹² Marjorie Cohn & Jeanne Mirer (2015) *Armed Drones Violate the Right to Peace*, Peace Review.

peace are declared in art. 2(3) of the UN charter¹¹³. The article proclaims the necessity for states to settle their disputes through peaceful means. Drones work in exactly the opposite way. The US has developed drones with the precise intent to resolve disputes with UAVs, reducing the accountability and the transparency of their operations they have been able to use force systematically in some situations that normally would have required more military involvement increasing the audience costs. The US thanks drones have assured the killing of individuals while according to international principle it would have been disproportionate.

The principle of peace as a right is defined as such by a series of resolutions taken during the years of the Cold War. In 1984, the General Assembly adopted the resolution 39/11¹¹⁴, the Declaration on the Rights of Peoples to Peace. The declaration proclaims the inviolable and sacred right to peace. Drones would be in conflict with this principle, because there is the intent of governments to bypass this principle using less costly weapons like drones, systematically violating the right of peace of peoples.

Another point that the two authors took into consideration is the resolution 33/73¹¹⁵ of the General Assembly, declares that the development of new weapons based on technological achievements is a threat to peace. Therefore, drones fall under this principle, as a recent weapon based on the recent development of remote-control aircraft. So the development of drone per se is a violation of the right to peace of citizens because it increases the threat of violence of civilians, increases the run for armaments, moreover breaks the principle of goodwill in submitting this kind of agreements, indeed the same countries submitting this declaration are the one that at the moment is developing UAV's technologies.

Another point concerning the behaviour of states and the influence of drones is the principle of non-intervention. Already fixed since 1648, with the treaty of Westphalia, Cohn and Mirer cite the resolution of General Assembly n°2625¹¹⁶ of 1970, proclaiming the obligation for a member

¹¹³United Nations, *Charter of the United Nations*, Chapter I, art.2 (3), <https://www.un.org/en/sections/un-charter/chapter-i/index.html>

¹¹⁴ UN. General Assembly, *Declaration on the Right of Peoples to Peace*. 39th session, 1984. <https://digitallibrary.un.org/record/74608>

¹¹⁵ World Congress on Disarmament Education, *UN General Assembly Resolution 33/73: Declaration on the Preparation of Societies for Life in Peace*, Paris, 1980. <https://unesdoc.unesco.org/ark:/48223/pf0000038366>

¹¹⁶ UN. General Assembly, *The Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States*, Resolution 2625. 24th Oct. 1970.

state to not intervene in the internal affairs of the countries. Such declaration was made not only to avoid the violation of the sovereignty of countries but also to avoid the escalation of conflicts due to domino's effect caused by alliances among countries, that oblige all the member of alliances to intervene and start a war.

Moreover, the importance of peace and avoidance of war is proclaimed and defined by the resolutions of constitutions. One of the most cited is the one of Japan, also for the repercussion involving the modification of the text, pressured on by the US. Indeed, Japan constitution defines clearly that the force can be used only for the defence of the country. That can be the only motivation, a direct attack. This is the reason why, Japan despite being a great ally of the US has never participated in the military operations in Korea, Afghanistan, etc. However, President Shinzo-Abe has proposed to modify the constitution to allow Japan a greater involvement in foreign affairs requiring the use of force¹¹⁷. Such modification is due to the necessity to face the Chinese ascent in the East.

In the end, the concern over the development and proliferation of drones is the danger that they constitute for peace. Reporting the words of Christoff Heyns, Special Rapporteur on extra juridical affairs of UN, the concern is over the advantages and possible preference of a country to violate peace for interest, starting conflict of low intensity but with long terms of duration. And again, Gregoire Chamayou declares that the use of drones makes war not simply asymmetrical but “absolutely unilateral”¹¹⁸.

The considerations done over drones have been particularly strong. The principle disputed is peace. The discussion is concentrated on the breaking of the peace. In this term the breaking of the peace, it would be incentivized by drones.

Starting from the last consideration cited from Chamayou, I agree on the measure that is a discussion very limited in object and time. In the object, because war with drones against states has never been done, while I'm saying that is limited on time for the reason of proliferation. What I mean is that as soon as drones will be a weapon affordable to anyone, the chances of a conflict started due to a military advantage will disappear. As has happened for the nuclear bomb it has been used only in two occasions, the US used the atomic bomb only against Japan who was

¹¹⁷Linda Sieg, *Mission unaccomplished — Abe's drive to revise pacifist Constitution*, the Japan Times, 19th Nov. 2019. <https://www.japantimes.co.jp/news/2019/11/19/national/politics-diplomacy/shinzo-abe-revise-constitution/#.Xdakf-hKJIU>

¹¹⁸ G.Chamayou, *A drone theory*, 2013, Introduction page III.

incapable to respond proportionally, but as soon as also the URSS acquired the weapon, luckily, both contenders were too afraid to use it as first because of the possible consequences. What I mean is that as soon as drones will be diffused, contenders will know that the opposer will be capable to inflict a proportionate amount of damages. This fear will have two main consequences, a greater deterrence capacity among states, eliminating any risk of “unilateral” war, and increasing the chances of peace among states. Every time there is a military development someone has an incentive to use violence to resolute controversies.

The considerations over peace and the declarations of the General Assembly over its importance are evidently important, peace is a prime element to guarantee development and the protection of human rights, but at the same time are demonstrative of their uselessness.

First, the declarations of UN General Assembly have no compulsory value, so the same states voting in favour of the resolutions have no obligations to respect them, so they vote them because they are just declarations with no real value. Second in the international relations, if there is a just fighter, necessarily there is an unjust fighter, who decided to start a conflict calculating what would have been the consequences of a war, knowing exactly what it is wrong, is not declaring that doing war is wrong changes anything, the only way is the imposition of a system of international retaliation, like heavy economic sanctions, compulsory for everyone, a burden that rarely is taken by someone.

The status of just combatant is not defined by what kind of weapon you use but from the principles that brought you to fight, that needs to be self-defence, and the application of the military necessity during the conflict, sided by proportionality and discrimination. At the moment that you are an aggressor, you are already wrongdoing whatever kind of weapon you are using.

In the end, is the end of peace compromised by drones? In my opinion no. Not as much as any other weapons. Is evident that a systematic, intense and unjustified use of drones is wrong because it doesn't respect the lives of civilians, civilians who suffer as first of the consequences of a conflict, but every weapon if improperly used may cause consequences adverse to end like peace. The end of peace requires the perspective of a good “strategist” on the side of the just fighter, able to understand the necessities of the aggressor, and willing to use a “proportionate” strategy to build peace and on the other side, an aggressor once defeated willing to build a common peace.

10. Proportionality “*in bello*”

In the preceding chapters we have seen the importance of the principles regulating the *jus ad bellum*, so the rules that a “just” combatant needs to observe. These principles need to be observed primarily by decision-makers. In the following chapters, we will explore the principles of proportionality and discrimination. These principles, as the categorization, suggests need to be observed during a conflict, and as such, they need a closer participation military and not only by decision-makers.

Proportionality is a principle applied during the war, and differently by the homonymous in the category of *jus ad bellum*, evaluates the means to use during the fight according to the objective and the enemy capacity to respond and defend itself.

The violation of proportionality has been reported many times also in the precedent chapters referring to phenomena registered and reported.

A first example of the violation of proportionality is the targeted killing of militants through the use of drones. What can be and infringement is that using a guided missile to kill one single militant might seem excessive. Disproportionate reaction to an action, killing, that normally in war is done with a lower amount of strength. Such a use of force is justified by Barack Obama in his speech at the National Defence University on May 23, 2013¹¹⁹. This kind of force has been justified as a military necessity, indeed according to the President, sending troops on the ground for every militant leader or commander it would be too risky and dangerous for American soldiers. Indeed, this kind of striking attacks is executed deep into insurgent’s territory.

Another violation of proportionality is the result of the difference of power among the fighting sides. Indeed, Harry Van der Linden has highlighted in *Drone Warfare and Just War Theory*¹²⁰, a too great difference of military power between US and terrorist groups. The violation was, according to him, for the proportionality regarding the *jus ad bellum* but the breaking of the proportionality of *jus in bello* is almost inevitable. It seems that violating proportionality is the result of conducting a military campaign with drones. Indeed, also considering the consideration of fairness and dishonour.

¹¹⁹ A full text can be found on the New York Times online under the title “Obama’s Speech on Drones,” May 23, 2013, accessed October 23, 2013.

¹²⁰ Ibidem, H.V.d. Linden, *Drone warfare and Just War Theory*.

An argument discussed and examined in depth in *“Deadly Surveillance”*¹²¹, it takes into consideration the disproportion of potential military power and superiority that drones give to drones’ pilots.

Pilots feel themselves to act unfairly, indeed soldiering as a profession is something done for a sense of moral duty, to fight for their own country, and in a certain extent the principle of “fair fighting”, and chivalry remains, and dropping bombs without risking life is perceived as “unfair”. When you are in a war as a fighter you know that is possible that you may die, killed in action, and the same is for your opponent, but when you are fighting from a position thousands of miles away from the battlefield the pilots admitted a sense of “guilty”.

They feel guilty, for a sort of power, a deciding power that may decide the life or the death of a man. Van der Linden reported similar cases experienced in other times by soldiers, like Orwell in Spain, in which an individual had the chance to kill an enemy by surprise, but looking at them for a long time in a moment of rest they saw their common humanity and were unable to strike the fatal shot. Drones pilot feels the same.

I personally understand the evaluations of unfairness, the feeling to have at disposition a disproportionate and in a sense “unfair” power. When a new weapon is introduced bringing a little military revolution and giving a decisive advantage, claims of unfairness can emerge.

But we need also to be realistic when a government starts a war it needs to consider all the implications of this choice and has a holy duty to fight avoiding as much as possible losses on both sides, but most of all of its fellow citizens. Claiming that would be moral only if all the soldiers may be killed in battle reaches the claim of absurdity. The claim of the immorality of killing by remote has as the main consequence that more people should die in war, risking with no reason its life.

Sure, now we perceive the remote killing as not “fair”, someone may say unhuman, but is more human risking more lives? Maybe through the use of jet fighters or even worse through a land operation? Should be also reminded, as said by Van der Linden himself, that there is an extreme disproportion between terrorists’ militias and armed forces of a country, in particular, if we consider the US. Indeed with the actual level of technology war jets are extremely difficult to be targeted with the weapons that a militia may be able to get, so the greatest danger for a modern jet would be technical problems, so it wouldn’t be the “war” to kill, but technical mistakes. Should

¹²¹ Harry Van der Linden, *Arguments against Drone Warfare with a Focus on the Immorality of Remote Control Killing and “Deadly Surveillance”*, Butler University, 2016

it be fairer? In a conventional war among two states instead, despite drones remain more difficult to intercept and located by radar, they can be shoot down with adequate air, and radar control, capable to be effective against the current stealth technology.

The evaluation of this lack of proportionality, miss the consideration of the nature of the threat more than its magnitude. The great concern of fighting insurgents belongs to the fact that terrorists are the one deciding to use an “unfair” method to fight enemies. The guerrilla is for sure the most convenient but is considered less fair by the one fighting it because is based on avoiding the enemy’s superior military power and attacking where and when more convenient.

This gives also the dimension that also proportionality, for what concern the system of *jus ad bellum*, has no meaning when dealing with asymmetrical warfare, whatever is the amount of strength used by the US as ground troops, guerrilla works anyway because it aims at surprise and knowledge of the territory. The extreme necessity of effectiveness against insurgency finds its meaning on avoiding the longest duration of a war, which may imply the use of weapons that the opponent is unable to confront.

In the Just War Theory proportionality is a principle decisive for the public consideration for a just conflict. Indeed, proportionality requires an evaluation of specific military operations. It is necessary comparing the gains, the losses and the damages provoked, in considerations that the military advantages acquired may contribute to the resolution of those objectives that have provoked the conflict. So, the gains should be equal or greater than the damages provoked, always having in mind that the operation reduced the duration of the war. Therefore, respecting proportionality means on a certain extent avoiding the escalation of the war and keeping the war on a certain acceptable amount of violence.

In the end, are drones compatible with proportionality? As any other weapon, yes. The decision to use a drone is the result of many options. Against the concern over the compatibility of drones with Just War Theory born from the consideration of the war against terrorism so according to me, incomplete and partial to be able to evaluate the compatibility with principles that try to be universal. However, the point of proportionality, just to simplify, is to kill only when necessary. The discussion on drones to be effective is on the method, so how they have been used. The researchers should focus if the strikes executed against terrorists have been effective in the resolution of the conflict. Indeed, the war in Afghanistan has been since 2001 that is going on. According to me the violation is on the strategy chosen and the poor results and the long-time duration are the proofs. If the killings have been useless, and that the killings of militants did not

change the result of the conflict it doesn't matter if have been drones or jet or foot soldiers to have done the strikes, what matters is that those attacks did not have any influence on war, but have provoked sufferings and damages to a society with not gains in the resolution of the war.

So once again the point is that the fault is attributable to commanders suggesting the strategy, and to politicians preferring it to others.

11. Discrimination

The principle of discrimination, according to me is one of the most important principles of Just War Theory. Indeed, consisting on the necessity to separate civilians from militaries, is the principle that in case of violation once presented in front of the public opinion may cause the general evaluation on the legitimacy of a conflict, in other words, if it is just or unjust¹²². That consideration is due to the fact that generally speaking combatants “renounce” to their right to live and in a battle they kill. Indeed, even a fighter for an unjust cause, despite wrongdoing is not so blaming if kills an enemy soldier even if are just combatants. Because while fighting a soldier has the right to try to preserve its life, but in the future, he will respond to the unjust war to whom he has taken part, most probably as part of a community.

The death of civilians is admitted only if done as an involuntary result of incontrollable circumstances, or in case the military result achievable through a victory overwhelms the possible civilian losses.

The concept of discrimination has been often related to a lack of transparency and accountability. Indeed, most of the operations, done in Pakistan have been done by the CIA¹²³, so protected by the high standard of secrecy. This standard does not allow to verify if the principle is applied or systematically violated. One of the most dramatic reports concerning discrimination is the report of “second tap”¹²⁴. As previously reported if those attacks are true, we are facing an extremely serious violation of human rights, and principles of Just War. Probably the lack of transparency has been one of the main issues related to the analysis of the authors analysing the impact of drones on warfare, finding a strong correlation between these elements and the systematic use of drones. This has been the result of an institutionalized strategy concerning the alienation of the citizens of democracies from war. In a context in which there are no-transparency and accountability for the behaviour in war, there is no real attempt to observe discrimination among targets, which can be an infringement of the principle of just intent and not discrimination by drones. There is a violation of just intent and not of discrimination because we presume that a military strategy is created before whatever is its result. If the strategy to use aims to avoid any form of accountability that may oblige to respond to whatever kind of misbehaviour, the violation of just intent comes before the violation of discrimination, and even if there is the violation of

¹²² Lazar Seth and Frowe Helen, “The just war framework,”

https://helenfrowe.weebly.com/uploads/8/1/6/0/8160867/frowethe_just_war_frameworkoxhandbook.pdf

¹²³ Peter L. Bergen Daniel Rothenberg, *Drone Wars: Transforming Conflict, Law, and Policy* (p.12). Cambridge University Press. Edizione del Kindle.

¹²⁴ Matthew Nasuti, *Hellfire Missile Accuracy Problems Uncovered in Pentagon Data*, KABUL PRESS (Nov. 27, 2011), <http://kabulpress.org/my/spip.php?article89242> taken by Living under Drones.

discrimination is not determined necessarily by the exclusive use of a weapon, in particular, if the weapon is able to discriminate between combatants and civilians.

11.1 Comparing air campaigns

The capacity to declare if drones are compatible with discrimination can be reached comparing the data concerning the civilian victims caused by drones and the victims caused by the recent air campaigns that have been accomplished with jet bombers. Indeed, the critiques increase even more as the American government always declared too low numbers of civilians killed, up to the point that in 2011 John Brennan, advisor to counterterrorism of President Obama declared that there were no civilian casualties¹²⁵. Avoiding the discussion over the definition of militant, given by the US government, the New America dataset collected information through the research on the field, interviews, credible news reports, local administrators etc. Needs to be noted that the definition of the victims' identity can't be sure, because of the difficulties related to the identification, if militant or not, of the killed person, but needs to have at least an idea of the real percentages. Through the data collected from 2004 to 2013, the civilian average killed by drones is around 20%, from nearly 40% of civilians killed during the Bush administration to just 5% of 2013 under the Obama's administration.

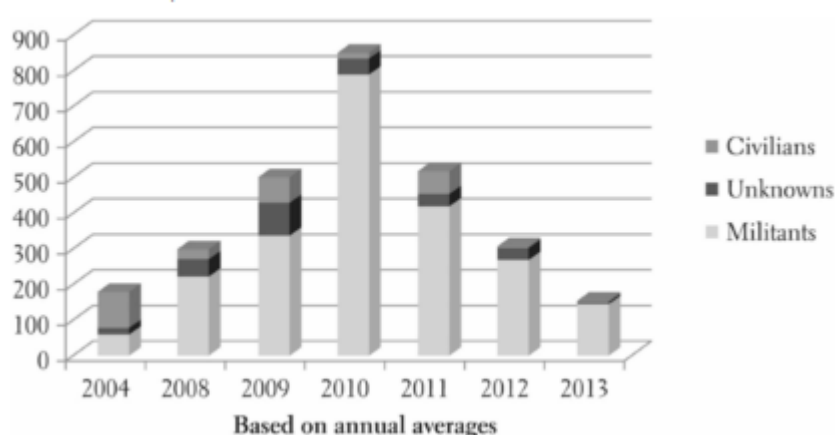


Figure 2¹²⁶

The total amount of civilian killed (considering also those defined as Unknown) is between 457 and 641. The *Bureau of Investigative Journalism (BIJ)* and *The Long War Journal* confirmed the low level of civilian casualties in 2013¹²⁷. The BIJ confirmed the general trend from 2004 to 2013 of the average percentage of civilian casualties.

¹²⁵ Shane, Scott, "C.I.A. is disputed on civilian toll in drone strikes," New York Times, August 11, 2011.

¹²⁶ Data taken by New America as of 31 December 2013.

¹²⁷ Long War Journal, "Charting the data for US airstrikes in Pakistan 2004– 2014."

From an Interview to the General Commander of Pakistani troops in North Waziristan Ghayur Mahmood, he declared that thanks to a closer collaboration between the American and Pakistani intelligence, the capacity to identify and program targeted strikes, has increased the precision and the capacity to kill proved militants of Taliban and Al Qaeda¹²⁸.

The Russian strikes in Syria have been the result of a completely different environment and so executed in a completely different way. In this sense, I do not exclude that a massive amount of force has been used also to produce a psychological impact on the international community and demonstrating the resolution and involvement of Russia in the Syrian conflict.

Indeed, the Syrian conflict is a highly intense civil war confronting many different actors with opposing intents, and each of these sides is supported by a different regional actor or by a foreign power, aiming to change the equilibria of the area. The Russian forces started their intervention in September 2015 after a formal request of the Syrian government of support to the Russian government¹²⁹. The Russians in this scenario have employed manned aircraft.

If rhetorically the intervention on the side of the Syrian government was aiming to target extremists' Islamic groups as the Islamic State, soon after has become clear that the strikes were against any opposer to the Assad's government¹³⁰, so even against those parties fighting for a democratization of the country. It is reasonable to think that the effort may be against the positions of the enemy, those with fighting forces, the testimonies against the indiscriminate bombing activities are numerous. Being able to discern between the victims caused by the Russian air force, the Syrian air force, or by any other fighting group, is difficult but testimonies are numerous.

The indiscriminate bombing has been documented, according to the accusations, through the use of cluster bombs, unguided bombs and thermobaric bombs¹³¹. Chris Woods, director of the recording organisation Airwars, realising an interview to *The Guardian*¹³² declared that in six months at least more than 2000 people have been killed by the Russian Airstrike. The air incursions had a double used, the first is direct support for the troops fighting in the first line,

¹²⁸ Sherazi, Zahir Shah, "Most of those killed in drone attacks were terrorists: Military," Dawn, March 9, 2011.

¹²⁹ *Russia carries out first airstrikes in Syria*. Al Jazeera 30 September 2015, <https://www.aljazeera.com/news/2015/09/russian-carries-air-strikes-syria-150930133155190.html>.

¹³⁰ "Putin Officials Said to Admit Real Syria Goal Is Far Broader". Bloomberg Business. 19 October 2015. <https://www.bloomberg.com/news/articles/2015-10-19/putin-officials-said-to-admit-real-syrian-goals-are-far-broader>

¹³¹ *Russia unleashes lethal aerial arsenal on Aleppo*, The Times, 22 June 2016 <https://www.thetimes.co.uk/article/russia-unleashes-lethal-aerial-arsenal-on-aleppo-q73c8dlI3>

¹³² *Russian airstrikes in Syria killed 2,000 civilians in six months*, The Guardian, 15 March 2016, <https://www.theguardian.com/world/2016/mar/15/russian-airstrikes-in-syria-killed-2000-civilians-in-six-months>

targeting strategic positions and enemies' vehicles, the second was to bomb the enemies in the backlines, causing, according to humanitarian agencies civilian victims. Amnesty International have documented¹³³(is anyway important to highlight that the work of documentation done by amnesty through a direct link with contacts inside the Syrian territory because it wasn't allowed them to enter the country) violations of human rights and accused of war crimes the Russian and Syrian governments¹³⁴ using banned weapons extremely dangerous for the civilian population, like the cluster bombs.

According to *the Syrian Network for Human Rights* from September 2015 to March 2019 the Russian Forces have been guilty to have killed 6283 Civilian¹³⁵ in a war that, according to the Special Envoy of the UN, have caused the death to more than 400,000 people until 2016¹³⁶. The *Human Rights Watch* also denounced direct attacks to hospitals, ambulances and very high rate of civilian victims, in just three days 400 people have been killed by the Russian-Syrian coalition¹³⁷. The air-campaign done by the Russian has been characterized by the employment of conventional aeroplanes and a huge number of unguided bombs. The results are extremely great firepower able to give important support to the troops on the ground. Indeed since the Russian intervention on the side of the loyalists' troops of Assad, the Syrian army has gained ground against the opposers, but at the same time has caused an extremely high rate of losses among the civilians. Moreover, the Russian didn't hesitate to test new supersonic bombers¹³⁸ and launching missiles from ships, increasing firepower but reducing drastically the precision. Just to give an idea of the dimension of the conflict, the UNHCR registered more than 5 million refugees in the bordering countries of Syria¹³⁹.

After having illustrated some of the features of contemporary air incursions involving on one side conventional aeroplanes and the other UAVs let's see the results.

¹³³ 'Left to Die Under Siege' War Crimes and Human Rights Abuses In Eastern Ghouta, Syria, Amnesty International; 12 August 2015, <https://www.amnesty.org/download/Documents/MDE2420792015ENGLISH.PDF>

¹³⁴ Syria: Relentless bombing of civilians in Eastern Ghouta amounts to war crimes, Amnesty International, 20 February 2018, <https://www.amnesty.org/en/latest/news/2018/02/syria-relentless-bombing-of-civilians-in-eastern-ghouta-amounts-to-war-crimes/>

¹³⁵ The Syrian Network for Human Rights, *Civilian Death Toll*, <http://sn4hr.org/blog/2018/09/24/civilian-death-toll/>

¹³⁶ Syria death toll: UN envoy estimates 400,000 killed, Aljazeera, 23 April 2016, <https://www.aljazeera.com/news/2016/04/staffan-de-mistura-400000-killed-syria-civil-war-160423055735629.html>

¹³⁷ Syria/Russia: International Inaction as Civilians Die, Human Rights Watch, 22 February 2018, <https://www.hrw.org/news/2018/02/22/syria/russia-international-inaction-civilians-die>

¹³⁸ New Russian Warplanes and Missiles Beat Expectations in Syria, Official Says, The Moscow Times, 17 Dec. 2018, <https://www.themoscowtimes.com/2018/12/17/new-russian-warplanes-missiles-beat-expectations-syria-official-says-a63851>

¹³⁹ Syrian Refugee Response, 4 July 2019, <https://data2.unhcr.org/en/situations/syria>

First, it is always necessary to distinguish among the different scenarios in which the two air platforms have been used, the conventional planes have been used to fight a more "classic" war, even if a civil one, with enemy forces, battlegrounds etc. The Unmanned Planes instead in Pakistan have been used for operations defined as counterinsurgency. The two platforms may be armed with different weapons; drones may be armed only with guided missiles allowing precise strikes, thanks to the acquiring target technology of the missiles and thanks to their peculiar capacity to fly for longer times waiting the right moment to strike. Jet bombers instead have been used with a larger variety of weapons; the Russian air force has been accused to have used not just unguided bombs but also cluster bombs. So both platforms may complete the same kind of operations, but the drones better, reducing the risks to mistake target, or the conventional bombers may do operation of greater explosive power dropping a greater number of bombs, but with unguided bombs, causing greater damages and eventually a greater number of civilian victims because of their incapacity to discriminate between fighters and civilians. Confronting the numbers, considering in both the cases analysed the civilian victims caused by the American in Pakistan in nine years of drones' campaign is less than 700 people, the Russians operating mainly through the air force have caused more than 6000 death among the civilian population in four years of intervention. Numerically speaking it is evident that the UAVs have demonstrated to have been used less lethally and allowing a greater capability to discriminate among fighters.

Drones conduct strikes with greater accuracy, giving a greater advantage to the pilot, who is safe from any harm, and to the civilian that in a conflict like the one in Syria suffered an incredible level of sufferings. The generalized use of violence done by conventional planes has not been put into discussion, they are not an alternative in counterinsurgency, they would be for sure disproportionate, but this wouldn't make them immoral.

If drones would have been used since the beginning not against terrorists in a counter-insurgency war, but only in the civil war in Syria, would they have been defined incompatible with Just War since the beginning?

However, drones accomplish operations of surveillance and targeted strikes. Bombers like the Tornado, who have served in Iraq against ISIS, have operated similarly with the targeting of specific objectives, accomplished them, but it is generally shared the idea, that this kind of operation is better done by drones. In a case of war, a drone attends surgical strikes, avoiding collateral damages, so why should be defined immoral if it does the same kind of operations?

From what we have understood from commentary, putting on aside the legal opinion concerning the principle of Just Cause that has brought the American government to start its bombing

campaign in Pakistan, we have known that the target bombing campaign has reduced the capacity of Al Qaeda and Taliban to organize and prepare terrorist attacks, indeed, in coincidence with the peak of drones strikes in 2010 coincided with the minimum level of suicide bombing attacks¹⁴⁰ of 50%. So apparently is reasonable to say that drones are capable to bring good results, and with a minimum impact on the civilian population considering that the accuracy of strikes reached the 5% of civilian casualties.

Is evident that the Russian Airforce operating under the permission of the Syrian government have used an amount of force, in particular indiscriminate, that have caused the death of thousands of civilians. Indeed, the Russians reached many objectives, the Syrian government has gained a lot of terrains, but the sufferings of the civilians have been proportional to the objectives?

In both cases the objective has been reached, but if drones reached their task through a minimum amount of “collateral damage” for the civilians, while conventional bombers have destroyed indiscriminately entire areas of cities causing the death of militants as well of civilians, not just debilitating the offensive power of the fighters but also terrorizing the civilians in a greater scale.

Unguided bombs are more likely to hit civilians, drones can reduce this risk greatly, and despite their incapacity to distinguish the target, strategic bombers are not under accusation of immorality, only the governments suffer such accusation.

The analysis demonstrates not only an evident lack of discrimination between civilians and militants by unguided bombs and conventional jet fighters but also a generalized lack of proportionality in the force used the thousands of civilians killed in respect of the limited number of the proved militants killed.

If we try to imagine a drone used in conventional warfare, we can imagine that it would be able to hit with greater precision any military position, both in the frontline of war and in the area, where is usual to see civilians living. Drones can accomplish the same missions of their jet equivalent, but better and with lower risks.

11.2 Chemical weapons and antipersonnel mines

The entire thesis is concentrated on the evaluation of the compatibility of drones with Just War Theory. According to me is necessary to consider the reasons that have brought to the creation of international treaties prohibiting the development, production, acquisition, stockpiling, retention,

¹⁴⁰ Peter L. Bergen and Daniel Rothenberg, *Drone Wars: Transforming Conflict, Law, and Policy* (p.24). Cambridge University Press

transfer or use of chemical weapons¹⁴¹ and antipersonnel mines¹⁴². Doing so is necessary to confront the weapons already prohibited for their incompatibility with principles regarding also the Just War Theory, with drones, and being able to say if they share the same motivation of banning. This part has been inserted in the chapter belonging to discrimination because the most important violation of chemical weapons and mines is their incapacity to discriminate between civilians and combatants.

As already anticipated one of the reasons why chemical weapons and mines are prohibited is the fact that they can't discriminate among the victims. Indeed, once the attack has been launched, those living in the area of conflict are exposed to the effect of chemical weapons, the militaries as much as the civilians. This effect is particularly effective in the urban area. In the case of Syria, where the war in inhabited areas has been particularly frequent, have meant that civilian victims have been frequent, but the number of civilian victims would have been amplified by the use of chemical weapons¹⁴³.

Indeed, chemical weapons have an effect over an area, killing indiscriminately, soldiers and civilians. As has been the case of war in Syria the effect of chemical weapons on the civilian population is amplified because the fights occur in inhabited areas. Moreover, chemical weapons provoke extremely painful sufferance, that normally is used to debilitate the enemy's troops, and not necessarily kill them¹⁴⁴. This is considered real cruelty due to the fact that the exposition to chemical weapons provokes muscle twitches, unconsciousness, paralysis of respiratory organs, etc. This sufferance has been strategically chosen because the enemy is more expansive having an injured soldier than a dead one, due to the healthcare expenses related. The sufferance inflicted are, generally speaking, beyond the principle of military necessity, for the implications that they have in the immediate and also in time, indeed a lot of these weapons kill in a protracted frame of time. Also, conventional weapons, firearms, can provoke debilitating injuries, the loss of limbs, etc. but once recovered the injured are safe while chemical weapons can kill after a long time, and those affecting the nervous system can provoke damages to the brain, and nervous system, implying chronic pain.

¹⁴¹ Chemical weapons convention, Art.1, 13th Jan. 1993 <https://www.opcw.org/chemical-weapons-convention/articles/article-i>

¹⁴² Ottawa Treaty, Art.1, 18th sept. 1998, https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XXVI-5&chapter=26&clang=en

¹⁴³ During the civil war in Syria there have been numerous accusations against the Assad's regime and after also against the Turkish government for having used chemical weapons that have caused also the death of civilians.

¹⁴⁴ Arms control association, *What You Need to Know About Chemical Weapons Use in Syria*, 14th March 2019. <https://www.armscontrol.org/blog/2018-09-23/what-you-need-know-about-chemical-weapons-use-syria>

Moreover, chemical weapons have had the characteristic to be extremely terrorizing. An example reported is one of the terrorist attacks in the subway of Tokyo in 1995. Indeed, the only risk or perception to have been exposed to a toxin is sufficient to provoke symptoms and anxiety on the population. Actually, after the Aum Shinrikyo attack over 4,000 people need medical treatment despite they have never been exposed to the attack¹⁴⁵. Indeed, there is a sort of “division” among academics, between those considering chemical weapons as terrorist arms and those considering them as arms of mass destruction. The first highlight the psychological effect on the population, killing few and terrorize thousands, and minimizing the concrete military effect. The other party highlights how many deaths have been provoked in a conflict that has seen a massive use of these weapons and their massive effect in a protracted period of time also for the those survived the attack but have been injured. Indeed, in World War I chemical weapons have provoked 90,000 deaths and 1,230,853 injuries¹⁴⁶.

What has remained constantly shared by everyone is the adversity against those weapons considered as an abomination and an unfair method of warfare. Even the first commander of a unit of American army equipped for chemical warfare, General Pershing, declared that chemical warfare is an abomination of humanity, cruel, unfair and the example of the improper use of science¹⁴⁷.

The point for my thesis is not to discern between the terroristic nature rather than the mass destruction of chemical weapons but to get the point over the fact that chemical weapons are not compatible with Just War Theory, in particular with the principle of discrimination and the principle of humanity. Indeed, chemical weapons once used affect indiscriminately, attacking an area, whoever present, and violate the principle of humanity because they cause unnecessary violence and sufferance to people, both militaries and civilians, whatever if they have been injured or just live in areas attacked with those weapons and suffer the stress related to it.

Antipersonnel mines are another kind of weapon that has been prohibited with a convention, the treaty of Ottawa. Since the preamble, we get to know why antipersonnel mines do not respect the principle of discrimination. Indeed, the treaty reminds that mines affect civilians and children

¹⁴⁵Kyle B. Olson, *Responding to the Consequences of Chemical and Biological Terrorism*, (1996)

¹⁴⁶ Clare Henley, *The Political and Emotional Power of Chemical Weapons*, 18th Jan. 2017, Oxford Research Group.
<https://www.oxfordresearchgroup.org.uk/blog/the-political-and-emotional-power-of-chemical-weapons>

¹⁴⁷ Christopher A. Warren, *Chemical warfare in the inter-war years*, page 1,
https://history.army.mil/events/ahts2015/presentations/seminar3/sem3_ChristopherWarren_ChemicalWarfare.pdf

provoking hundreds of deaths every year, even after the end of the conflict¹⁴⁸. Moreover, when the treaty has been signed a lot of landmines were located in poor countries. The presence of these devices has furthermore slowed down the economic recovery and reconstruction, having also a social impact on the countries affected, with hundreds of mutilated that are needy of healthcare.

As reported by the International Red Cross, the impact of mines is extremely intense and needs great economic support for those countries incapable to support and rehabilitate its citizens in an appropriate way¹⁴⁹, through campaign aiming to demine areas and support the injured economically and psychologically. Apart from for few exceptions, the prohibition of mines is shared by the greatest majority of world countries, 55 million of stockpiled mines have been destroyed since the sign of the treaty¹⁵⁰, moreover, in 2018 the calculated victims reported are more than 6 thousand¹⁵¹ and over 71% of the verified victims were civilians. Definitely is one of the cases in which the international community recognizes the immorality of a certain weapon and banishes it.

Both for chemical weapons and landmines, the violation of discrimination and Just War theory is clear. Both weapons can't be used in accordance with Just War Theory even if the user is in good faith in trying to avoid any civilian victim or the principle of military necessity. Both kinds of weapons can't be controlled in their action and inevitably kill whatever civilians and militaries as well.

Both weapons have a negative impact on the social community even after the end of the conflict. Leaving injured and mutilated people needy of constant help, a territory not completely safe from danger, undermining also a more rapid economic recovery.

This analysis demonstrates that drones can't be defined as incompatible with Just War Theory as landmines and chemical weapons. The weapons banished by the international community have in common that they operate without human control and approval, they work automatically, or because detonated involuntarily by a person or because they work attacking an area.

¹⁴⁸ United Nations, *Convention on the prohibition of the use, stockpiling, production and transfer of anti-personnel mines and on their destruction*, Ottawa 3rd Dec. 1997, preamble.

https://treaties.un.org/doc/Treaties/1997/09/19970918%2007-53%20AM/Ch_XXVI_05p.pdf

¹⁴⁹ ICRC, *Anti-personnel mines*, 24th May 2018. <https://www.icrc.org/en/document/anti-personnel-mines>

¹⁵⁰ Land Mine & Cluster Munition Monitor, *Press Release*, page 4. <http://the-monitor.org/media/3071398/Press-Release-Final.pdf>

¹⁵¹ Ibidem, Land Mine & Cluster Munition Monitor, page 1.

Drones differently by both the other two arms, strike as a result of human being decision. If any attack provoke civilian victims is the result of a human mistake, on a human miscalculation or an aware decision, anyway the responsible can be found and has its own personal responsibilities. The use of drones, in the end, can be calculated, its impact on civilian can be moderated and decided according to the objective in mind.

In the end, we can say from what we have seen in the paragraph dedicated to the comparison of air campaign of manned and unmanned aircraft and from the comparison of drones with those weapons banished from the international community, that drones respect the principle of discrimination. They are capable to reduce the number of civilian victims, and in this sense being more efficient of other aircraft, showing that any civilian victim is the result of wrong choices taken by decision-makers, militaries or politicians, but the aircraft per se is capable as much as any other weapon, or it is even better.

12. Principle of Humanity

I mentioned the problems related to the respect of the principle of Humanity in the precedent chapter. The concern was on the air campaign in Pakistan, and the damages reported by the civilian population who suffered important difficulties of living in an area like the one of FATA, targeted by the US airstrikes due to the presence of militias declared as hostile. Analysing and being able to be properly able to answer a question like: “Do drones respect the Principle of Humanity?” is difficult. It would be necessary compare the people living in an area of war, suffering only drones’ strikes, with people living in areas with no drones but “only” with ground troops and jet fighters performing targeted strikes in place of drones. This should be a fair way to analyse the impact of drones compared with other forms of warfare.

Indeed, in FATA’s area drones were the only cause of stress, due to the absence of ground troops, so saying if drones might provoke more stress than other elements of war has been impossible. Just to remind, the principle of humanity establishes a system requiring guarantees of dignity for “humans” not only civilians but also militaries. Is defined as a humanitarian principle and it is flanked by those that are its range of work concerning proportionality and discrimination, has the specific objective to limit the military necessity. In the analysis done by Stanford University¹⁵², what emerges is that the nature of the operating of drones, cause an incredible level of stress. People are extremely afraid to go out home, to meet people and socialize or gather together, killing the sociality of the rural community.

Analysing this phenomenon, I judged the economic and private consequences of less relevant importance. Although the loss of a relative, with the sentimental and economic consequences related to such a loss, or the impoverishment of a region due to operations of war, is a terrible effect of a conflict, is reasonable to be considered inevitable, the fact that war has consequences on civilian is an inevitable fact, in a way or another, civilians will pay the costs of war, economically, or by being killed for mistake, if we take the case of Syria were millions the people leaving their homes, the cities have been shattered and an economy stopped to exist, even if the negative impact of drone has been very dramatic in the rural areas of Pakistan, it’s not even comparable to the level of destruction suffered in Syria.

¹⁵² *Living under Drones, Death, Injury and Trauma to Civilians from US Practices in Pakistan*, Stanford University, International Human Rights and Conflict Resolution Clinic, Stanford Law School, Global Justice Clinic, NYU School of Law. <https://www-cdn.law.stanford.edu/wp-content/uploads/2015/07/Stanford-NYU-Living-Under-Drones.pdf>

The discussion about the morality of attacking Pakistani's militias allied or the part itself of Al Qaeda has already been discussed, so the following reasoning is based on the premise that we consider the air campaign in Pakistan as a "war" against militants allied to the same terrorists that were a concrete danger to the US, with all the implications related to that. So if the economic impact of a war is not relevant to judge the morality or not of a weapon, nevertheless it might be considered relevant only if the destruction of private properties are done with purpose and systematically, with the only purpose to damage a society, or for pure revenge against an enemy ignoring principles of proportionality. In this case, the responsibility would weight only on the shoulders of the decision-makers ordering the systematic destruction. Indeed if a weapon has such a great destruction power the militaries coordinating the attacks should avoid any kind of attack which is not proportionate to the objectives and their strategic weight, breaking these limits is a violation of the principle of proportionality, part of the principles of *Jus in Bello* and the responsibility is of the one planning the operation and giving the executive order.

The civilian losses are also a despicable result of war, but despite violating the moral rules of distinction it may be considered needed. To be considered a horrible infraction of moral and legal rules, generally, the academics refer to the infraction of the principle of necessity, so showing a lack of proportionality or in some cases a systematic ignorance of any principle aiming to avoid sufferings to the civilians. Civilian losses are considered inevitable when a war breaks out due to mistakes and the military necessity to whom the principle of humanity is able only to set limits, but in the challenge between these two principles, military actions, necessary to the development of the war, that may have civilian casualties, are inevitable.

So, when we evaluate if drones are respecting the moral rule of the principle of morality we should talk of the psychological impact of drones on civilians. As previously exposed the difficulty to elaborate an organic thought is extremely great, for sure the unexpected strike of a drone put under stress the civilians in the areas of attack but is sure that the same happens when jet fighters incursions start or when in a city under siege the attacking army starts a door by door fight. It would be cynical to call a "necessary evil" but what is sure, considering the always pressing military necessity, the alternatives may provoke as much as the same amount of civilian losses and even more sufferings, and trauma. The case of Pakistan has put in a bad light drone, but this reputation was due to the legal framework, the intent and the lack of transparency shown by the US government in discussing the use of drones. Otherwise in a clear context of symmetric warfare, with two opposing armies on a battlefield, with all the parameters of *Jus ad Bellum* and *Jus in*

Bello respected, and the fighting side using drones is the one who defends himself, probably the accusations against drones would lose strength.

The chances to violate the principle of proportionality, due to the capacity of drones is of targeted strikes, are limited, as well the chances to violate discrimination, indeed a proper battlefield have always a limited number of civilians in the area because they normally flee or they are forcefully evacuated.

The impact of drones on the mental health of civilians is surely strong, increasing the level of stress, but if drones are immoral because of this intrinsic characteristic of drones, then we should evaluate the psychological impact of the bombing campaign perpetrated by jet, that would be less precise and will probably cause more civilian losses, or as the case of Syria using even unguided bombs provoking indiscriminate destruction.

Moreover, there is the economic impact, extremely urbanized and central areas of a country, even if the poor can enjoy a better treatment in case of damages suffered from airstrikes. Big cities have normally a better system of communications to be connected with the rest of the country to receive the necessary resources. The victims of bombs can be rescued by doctors and brought to a hospital in less time, and normally the people of cities have easier access to economic help coming from the international community or by the country's government itself. Instead, as we have seen the analysis of living under drones has been done considering the area of FATA, border and rural area, under the threat of Islamists militants that only in 2014 there have caused 2863¹⁵³ fatalities.

The same terrain attacks have been demonstrated to be inconclusive. Indeed, the terrain campaign of 2015 of the Pakistani government has been only a partial success according to the commentaries. Indeed if the fatalities due to terrorist attacks are drastically decreased thanks to the successes, according to testimonies, a big amount of families related to militants have fled the country to go in the bordering Afghanistan where they have the protection of safe areas out of the control of the Afghani government.

Moreover, according to journalists reports the ground operation Zarb-e-Azb Has cost the home to nearly two million people¹⁵⁴, and diffused violence has been done with the operation. Indeed, the

¹⁵³ Farhan Zahid, *The Successes and Failures of Pakistan's Operation Zarb-e-Azb*, Jamestown Foundation, 10th July 2015. <https://www.refworld.org/docid/55a4cfa74.html>

¹⁵⁴ Meher Ahmad, *Pakistan's war against the Taliban has a hidden cost*, 16th Nov. 2016, Vice. https://www.vice.com/en_us/article/j5vemd/pakistans-war-against-the-taliban-has-a-hidden-cost

police and the army have been accused of using an extremely violent strategy against the suspect, using the tactic of “encounter killing”, they pretend to have a gunfight with the suspects while in reality, they were under the custody of the police¹⁵⁵.

This means that also the ground operation is not clean and that can provoke serious consequences on the civilian population, with systematic violence and rampage dissent that affects economic development and recovery. Moreover, the problems that inevitably can emerge with the military occupation of a region, like the perceived violence against the civilian population, checkpoints, the terrorist attacks against the ground troops that might involve civilians, the increased level of possible sexual assault. Indeed, a military operation has the certainty to reduce the quality of life of a civilian.

To determine the fact that a specific weapon is absolutely against the principle of humanity there should be great evidence highlighting not just a worsening of life for civilians but something more. Moreover, we should highlight that the greatest violations of human rights did not need any specific new technology, for example, the genocide of Rwanda has become famous for the employment of machetes for the perpetuation of the violence. Indeed, according to a research done in the prefecture of Kibuye by the research IBUKA, 52.8% of the victims were killed by machetes, 16.6% by a club and “only” 14.7% by a gun¹⁵⁶. This genocide is remembered for the brutality and the horrific level violence, violating several principles and also the principle of humanity, because the tools and the mutilations registered are beyond any acceptability, even because such violence has been considered as centrally organized and guided by the central government.

In the end, the principle of humanity to be respected needs a certain amount of attention towards the civilian population, limiting the violence that might affect civilians respecting those human principles of dignity and protection of human lives that have brought for example to the foundation of Red Cross.

The violation of human dignity in this sense is, in my opinion, the result of a systematic strategy. As has been for the genocide of Rwanda in which there was a central director aiming to perpetrate violence systematically, and the choice of the machete was for security reason, to avoid the

¹⁵⁵ Human Rights Watch, “*This Crooked System*” *Police Abuse and Reform in Pakistan*, 26th Sept.

<https://www.hrw.org/report/2016/09/26/crooked-system/police-abuse-and-reform-pakistan>

¹⁵⁶ Philip Verwimp, *Machetes and Firearms: The Organization of Massacres in Rwanda*, *Journal of Peace Research*, Vol. 43, No. 1 (Jan., 2006), pp. 5-22, Page 17.

<https://www.jstor.org/stable/pdf/27640247.pdf?refreqid=excelsior%3A3ca08a882b55d13388a4f11f5e233a40>

distribution of guns to civilians, to economic reasons, ammunitions are expensive and psychological, the mutilation with machetes was aiming to traumatize the Tutsi minority. Indeed, there was the objective to “terrorize”.

The use of drones has been dictated, according to me by the necessity of US government to reduce its military and political commitment in the Middle East, reducing its accountability and the pressures coming from the civilian world on the reduction of military commitment. The use of drones did not have the objective to terrorize civilians.

Moreover, the use of one weapon in the context of a strategy that does not involve any other system, produce as a result that the weapon in question collects for itself every possible violation and critique. I share the idea, previously cited, of General McCrystal, that a war cannot be conducted using a single armament, moreover, since drones have become the preferred system over ground troops, the war is not finished, and the results are poor. So, we can talk of efficiency in strategic choice but that does not imply a moral incompatibility of drones with the Just War Theory and specifically with the principle of humanity. The principle of humanity can be observed respecting proportionality and discrimination. We have seen in the chapter on discrimination that a weapon incompatible is the one that is incapable to distinguish between civilians and militaries. The violation of the principle is the result of a strategy, a massive bombing campaign has always dramatic consequences on material resources for a population and on its mental health, is not a single act that violates principles but a series of choices implying the approach to a problem.

The point is not defending drones as a zero-cost weapon, it can't be, and it will never be, rather the point is highlighting the fact that is probably the best alternative compared to other weapons that provoke all the consequences of drones but amplified by their inaccuracy. The defence of human dignity, basing the principle of humanity, can be reached only closing observing those strategies that Just War Theory needs. This implies the existence of a system aiming to the defence of principle composing Just War Theory, a system that reaches the result with the right behaviour and not only with the right weapon.

13. Conclusion

Throughout the thesis, we have seen a series of data, describing a scenario of warfare. The question that moved this analysis was concerning the compatibility of drones with Just War Theory. To do so has been necessary taking every single principle of the theory, supposing any future possible breach caused by the use of drones, considering the critiques and the violations perpetrated since the first deployment.

The first part of the analysis has been about those principles belonging to *jus ad bellum*, that are those principles to be respected to start a just conflict. Van der Linden has theorized the incompatibility of drones with Just War Theory because the war started by the US against terroristic groups was unjustifiable. Indeed, according to the author, the difference of power was too great to justify a just cause, indeed the war should be done considering the magnitude of the threat. In this sense, Buchanan and Keohane support this version highlighting that the war has been initiated despite the lack of a good cause and this break out should have been encouraged by the few costs, in terms of political responsibility that drones imply. Such definition is supported by the increased use of UAVs in striking enemy forces.

To this analysis, I answered considering the reality of the condition that brought the US to employ drones. The threat was terrorism. Indeed, Van der Linden considers the magnitude of the threat while should also consider its nature. In fact, guerrilla and terrorism do not aim to accumulate a greater power but to demoralize and weaken the enemy, in long and expansive war, bleeding out the enemy. The inaction leaves a country into a constant danger of attack, that can be opposed with a counterterrorism strategy, that is anyway too expansive to be considered applicable for an indefinite period of time, indeed from 2002 to 2017 for counter-terrorism in the US have been spent 2.3 trillion dollars¹⁵⁷, which explains the preference for a government to eliminate the threat.

Analysing further principle, we have taken into consideration legitimate authority and public declaration. In both cases, I didn't find any relevant element compromising the compatibility of Just War Theory with drones. Indeed, legitimacy is a characteristic related to social and political preferences, the legitimacy of a government is provoked only if the government decides to break one of the principles belonging to the society that it represents. On the other hand, the public declaration is a useful principle for what concerns the transparency of a government, declaring to

¹⁵⁷ Stimson Study group on, *COUNTERTERRORISM SPENDING: Protecting America While Promoting Efficiencies and Accountability*, May 2018, Stimson Center. https://www.stimson.org/sites/default/files/file-attachments/CT_Spending_Report_0.pdf

the public opinion the beginning of a conflict. This is necessary for the electors to be aware of the decision taken by the government and for the enemy, who is aware of the commitment of the opposer. Moreover, it has emerged the problematic that the war in Afghanistan has been declared eighteen years ago and spread in the entire area; such event may provoke some concern over the legitimacy of such act and questioning the validity after such a long time of the conflict. In case the public declaration is avoided starting a “secret war” the responsibility belongs to decision-makers, moreover about the validity of war after such a long time, there are no limits to the duration of war, the limit belongs to the commitment of a country to fight, the violation is of the certainty to end the war in a short time but again such a violation is due to a mistake in deciding a strategy, the weapons and materials used have a very limited responsibility.

Again, is Van der Linden¹⁵⁸ to be reported on his analysis of the impact of drones on warfare and their compatibility with Just War Theory. The just intent is a principle that the author declares has been violated by the use of drones because the US’s government have started to strike with greater frequency low-ranked militants, reducing the chances for future peace. The parameters used to identify a person as a militant would be too wide and the inevitable consequence is the killing of civilians, reducing the chances of a rapid building of a peaceful system. Moreover, another observation concerns the habit of US forces to change the objective of their strike from their main opponent Al Qaeda to local militant groups with local aims, which the author identifies as a violation of the intent of fighting the international terrorism. But as I explained, a militant loses the right to live as much as a militant leader, in this sense, none of the two has more right to live, moreover, the author defines the counterterrorism as war, and if it is so the principles for militants and regular soldiers are the same. Instead for what concerns the strike of local group, what is evident is the fact that once a terrorist group decides to help and be allied with a major one, that is engaged into a conflict, exposed itself to the retaliation of the state fighting terrorism because as like as happens with the small countries that decide to support a major power, they start their support aware of the advantages and of the consequences of the act, they voluntarily expose themselves to violence.

In the evaluation of some principles, the direct concern over the compatibility of drones with Just War Theory by the academics does not emerge. Nevertheless, my analysis has taken into evaluation principles not already discussed. This has happened for proportionality. Proportionality is the principle defining when the use of force is adequate, the international system

¹⁵⁸Ibidem. Van der Linden Harry. “Drone Warfare and Just War Theory,”.

defines and lists a series of principles to be respected to be able to activate a series of countermeasures¹⁵⁹. Terrorism in this scenario has obliged western states to start a war. Indeed, terrorists do not answer in the same way of states. Countermeasures can be done against a country, not necessarily involving the use of force but they can anyway deter the state from the continuation of the wrongdoing. While terrorists have different system and structure and they cannot be deterred easily, and it ends that the only system that can be the used against them is the force.

Last resort has been one of the principles of *jus ad bellum* that has provoked the major concern and discussion. Indeed, Keohane and Buchanan¹⁶⁰ have put as a main concern of the theory the fact that the use of drones supported by a lack of accountability and transparency have caused an increase of the chances of resort to force by states. As I described in a more accurate way in the related chapter, not only the resolution of war doesn't change, but it can increase the deterrence capacity of states among them. Indeed, the conventional system of warfare introducing the UAV can deter any enemy thanks to its characteristics that permit it to strike the opposer where can provoke the highest amount of damages. With this awareness, states will be less encouraged to attack a country equipped with this weapon. The high level of incentives on attacking an enemy is due to the military advantage given by technological innovation. Such disparity is almost always present when the opposers are, on one side a state and on the other an insurgent/terroristic group. Moreover, as drones will be diffused and distributed equally among all the major powers the military advantage will disappear and will be present for all the actors involved in the international arena. The result which is important is that drones can, according to my analysis, reduce the chances of war increasing the perspective of peace and the incentives for states to find an agreement.

The analysis of the reasonable chance of success supports my precedent statement about last resort. Indeed despite some critique point on the fact that drones have been used as the unique system to face insurgency, mistaking the approach to the phenomenon, the relative advantage that adds to one of the parts is determining an increase in the reasonable chance of success. Drones have demonstrated to be a useful tool for western nations to fight. They can provide images of the territory, information, monitoring for a long time entire areas of interest, and as said throughout

¹⁵⁹ Ibidem. Federica Paddeu, *Countermeasures*.

¹⁶⁰ Ibidem. Toward a Drone Accountability Regime, Allen Buchanan and Robert O. Keohane,

the thesis they can provide precise strike able to support troops on the ground as well as against precise targets.

The reasonable chance of success is not only supporting the principle of last resort but also the principle of end of peace. Peace is supported and defended as the highest value of the United Nations, and it may seem that drones are actually incompatible with this principle. But first, the incentive to fight has given by a technological advantage that will disappear as soon as the technology diffuses, becoming part of a larger system of deterrence. Moreover, the end of peace is a principle, that according to me arrives as a second factor, what I mean is that to be a just combatant there must be first an aggression, the only just cause that the international law recognizes as a reason to fight if there is no just cause, or is improper, the end of peace is irrelevant in the consideration over the fact that a combatant is just or not.

Moreover, and most of all I think that is essential to notice that for all these principles the main responsibility weights on the strategy adopted by decision-makers. Indeed, all these principles are belonging to the category of *jus ad bellum*, so just to remind those principles that need to be defined before the starting of a war. In other words, they define if the war is just, define who of the contenders is a just combatant and it needs to fight for a good reason and with the good intents. Have drones an influence? Yes, but do their use necessarily determine the moral status of a contender? No, as already said, strategies and approach to warfare are determining the adherence to the principles of *jus ad bellum*.

The category that can actually define more properly if a drone is compatible with Just War Theory, is the *jus in bello*. The principle of discrimination and proportionality have been also discussed comparing drones with an equivalent that may give an important reference, capable of giving a real dimension of these two principles.

The principle of proportionality is necessary to limit the proportion of war, and according to some academics using drones to strike a single person or few people is disproportioned. But this evaluation does not consider again the nature of the threat, indeed counter insurgency is a kind of threat that may imply strategic resolution that is disproportionate but that if actuated and substituted with other may provoke more dramatic results. Indeed, comparing the impact of drone strikes with conventional airstrikes done by jet fighters, the amount of destruction and civilian death, done by jet fighters, is much higher and disproportionate.

Indeed, for discrimination, we have seen with the comparison of the air campaign and with the comparison of drones with weapons already banished by the international community that drones are capable to discriminate between civilians and militaries in a much better way, avoiding useless sufferance. Moreover, they have demonstrated to be less impacting on the psyche of civilians and on injured, compared to chemical weapons.

So, compared to already banished weapons, drones are much more respectful of the limits that Just War Theory would give. UAVs compared to bombing campaigns can be more proportionate in attacking only specific positions avoiding as much as possible civilian casualties. So, for the principles of proportionality and discrimination, drones are totally compatible, considering all the limit and chances of a weapon, and the impact that a wrong strategy may have on the evaluation of a just war and of a just combatant.

The last principle analysed is the principle of humanity whose central concern is the defence of human dignity. The greatest difficulty of the analysis of this principle is being able to perceive the sufferance that a human community has to suffer. In particular, the text cited, *Living Under Drones*, enumerate a series of data concerning the damages, that the drone strike campaign provoked in FATA. According to the authors, the campaign would have been illegal because of the damages that it provokes to the economy of the area and to the trauma that the strikes provoke on the population. Such considerations are not per se sufficient to determine the incompatibility of drones with a just war. Any kind of bombing provoke damages to infrastructure, the point is determining if they were necessary, in a sense proportional. For what concerns the psychological impact I think that is evident that a drone striking campaign is a traumatic event but determining the inhumanity of drones' strikes should be done by the comparison with other forms of warfare applicable in this case. Comparing is quite difficult, nevertheless what can be understood by the data is that ground operations can have likewise an impact on the sociality, involving as well in a violence to whom is incapable to respond or defend itself, moreover regular conflict provoke masses of refugees, because of the larger extent of destruction and violence that a conventional war provoke. Another element that we should we consider is the duration of the air campaign that has been protracted for years, such a long time can have provoked a negative impact on the perception of UAV's operation, but what has been mistaken is the strategy adopted in this sense drones have demonstrated not to be the definitive weapon, but only a useful tool in a larger perspective of approach to insurgency.

In the end, from the analysis and the data collected has not emerged a defined reason for which drones should be considered incompatible with Just War Theory. The violation regarding the theory has been the result of the decision of government taking advantage of the qualities of this aircraft. However, violations of transparency and accountability that often have been reported by the academics are evidently strategic political decision that nothing has in common with the determination of the immorality of weapon.

We have seen that antipersonnel mines have been banished for a series of reason. The most important according to me is the fact that they are incapable to distinguish between civilians and militaries and that is because they are not under the direct control of a human deciding whether the attack should be done or not. That's the point the willingness to commit a kill. This concept is composing principle of discrimination. The killing of civilians is justifiable up to the point that is involuntary or inevitable to the success in war.

Drones because are directly piloted and under direct control, any violation, unjustifiable killing, they are under the responsibility of those deciding the attack and of those that are pulling the trigger. The drone may imply a change in warfare at least until they will not insert into the deterrence system among states, but they are not a revolution for Just War Theory. The conditions for the respect or break of rules are the same, and most of the time they are the result of the decision of a government, who prefers to violate such principles to obtain something more, in the relative amount of power, the consensus of the national public opinion, etc., the weapons that can be banned are few, the behaviour is a lot.

What we can actually learn is that there is the necessity for western democracies to take into consideration that some principles should be always defended and to do so is necessary constant awareness on the decision of politicians, because government are taking decision in the name of their citizens that inevitably become responsible for the decision taken by a government.

Appendix

The Soleimani case

What we have seen in the analysis is that despite a general adherence of drones to the Just War Theory, these same aircraft have been directly linked to violations of the principles composing the framework of a Just War. At the moment is difficult to distinguish a real condition of war, formally initiated and formally ended. Rather, it is more probable to find conditions of conflict that proceed with alternation in intensity and location. The actual trend in certain areas of the world is a constant and diffused threat, with a low level of intensity.

Drones have become an instrument that can be employed in an unstable system to pursue foreign policy through force, without a real framework of war. This is done with different intentions, such as facing an insurgent threat without the direct involvement of ground troops, or targeting an adversary, to send a signal of resolution to fight, or just to draw a red line. These can be categorized as violations and have meant that drones have become an instrument for government in a tit for tat strategy. The last and most famous event connected to this scenario is the strike executed by an American drone the 3rd of January, that killed the Iranian general Qasem Soleimani and the head of a militia supported by Teheran, Abu Mahdi al-Muhandis and the men of their escort.

This strike has immediately caused a declaration by the Iranian government to revenge the general's death, while the US government justified the strike as a pre-emptive attack against a key organizer of attacks against US citizens and institutions. This attack has been the peak of escalating tensions between Iran and the US, an escalation that most likely brought the Air defence of Teheran to shoot down a civilian aeroplane causing the death of 176 civilians.

Was this attack against Soleimani admissible from the standpoint of Just War Theory? What can we conclude from these events?

The UN charter, and Just War Theory as well, states that the resolution to force can be employed only for self-defence. On this remark, the US government has indeed justified the strike as a self-defence operation, according to the Department of Defence, Soleimani was planning attacks against US citizens and institutions in the Middle East. So, it would be a necessary use of force in an imminent attack. But over this consideration, there are quite important shadows that inevitably cause numerous suspicions. The suspicions are directly coming from the second Gulf

War that was justified as a necessary conflict to avoid a direct attack against the US with weapons of mass destruction, a justification that in the end was revealed to be no more than a lie¹⁶¹. The fact that Soleimani was in some way preparing attacks on American sites is highly possible, the point is to prove it, but at the moment no proof has been shown. If unproven, this use of force can be considered illegal, at least by the International system, because there wasn't any kind of direct threat.

According to Just War Theory, there are specific conditions in which the use of force can be permitted. Indeed, we should first consider that the strike was executed outside the condition of war, that would give the implicit authorization to kill an enemy whenever possible. The same President Trump argued that the attack was done not to start a war but to avoid one¹⁶². Such consideration is actually consistent with Just War, with the principle of end of peace, but is also consistent with a strategy of brinkmanship, of constant pressure that the US is executing against Iran, and consistent with a tit for tat retaliation logic that has characterized the relations between US and Iran since the exit of the US from the agreement over the Nuclear energy (JCPOA). A kind of logic based more on a constant calculation of risk that can lead to a dangerous escalation, and the end of such a strategy is more likely the avoidance of a regional hegemony of Iran rather than to achieve peace.

Another justification given for the attack was the fact that Soleimani would have been responsible for the death of 608¹⁶³ Americans. Again, this kind of consideration is not compatible with any principle belonging to Just War Theory, indeed is nothing more than revenge. We could discuss the fact that a democratic country based on the rule of law, and on a modern system judges and gives a penalty after a fair trial. In principles regulating a moral conflict, revenge is not an admissible criterion for beginning a conflict, war can be initiated only when under a clear and strong threat or attack, the killing of a foreign high ranked general would be normally perceived no more than a declaration of war. Indeed, the killing of Soleimani, morally speaking has broken the main principle sustaining the international system, the preservation of peace.

Indeed, according to me, the greatest violation was putting in jeopardy peace without a clear danger of American integrity. The only danger that might be found for the US in the area of the

¹⁶¹ Julian Borger, *there were no weapons of mass destruction in Iraq*, 7th Oct. 2004, The Guardian. <https://www.theguardian.com/world/2004/oct/07/usa.iraq1>

¹⁶² Geoffrey S. Corn and Rachel VanLandingham, *Lawful Self-Defense vs. Revenge Strikes: Scrutinizing Iran and U.S. Uses of Force under International Law*, Just Security, January 8, 2020. <https://www.justsecurity.org/67970/lawful-self-defense-vs-revenge-strikes-scrutinizing-iran-and-u-s-uses-of-force-under-international-law/>

¹⁶³ Ivi.

Middle East is losing its hegemony and influence. But this influence and game of power have nothing in common with a just conflict.

Preserving peace and human lives is the highest and important intent of Just War Theory, and a strategy of calculated risk, brinkmanship, exposes national communities to possible conflict, a conflict that both Iran and US do not desire. Indeed, both actors are extremely aware of the cost of conflict. Iran is aware that it would lose an open war against the US that remains the greatest military power, while the US knows that invading Iran would mean probably a long and expansive war without real prospective of post-conflict peace.

In an article, Peter Singer¹⁶⁴ analysed the moral acceptability of the targeted killing of General Soleimani. Reporting the same opinion of Agnès Callamard¹⁶⁵, a Special Rapporteur on extrajudicial and arbitrary executions at the Office of the UN High Commissioner for Human Rights, the targeted killing over the border is not justified in any mean or measure, it corresponds only to a unilateral act of a government. The justification concerning the guilty of the General cannot be used, indeed only the International Court of Justice has the right to judge and condemn. So, the killing was illegal, moreover, as just said, there wasn't an imminent risk of attack. Moreover, the attack was immoral due to the absence of a clear state of war. The killing was an act of war without any legal condition or permission, as noted by the Speaker of the House Pelosi, the President should have asked the permission of the Congressional Leaders¹⁶⁶.

In the end, the attack against Soleimani was neither legal nor moral. Such a harsh judgment is due to the fact that the US is a democratic country and should be always taking into consideration major moral and legal factors to guide its conduct. I personally sustain the interpretation of Annalisa Perteghella¹⁶⁷, considering the action of US government in Iran as the consequence of a strategy aiming to put pressure on the Iranian government, showing its capacity to strike the highest-ranked leaders, rebuilding the US system of deterrence in the Middle East, that might have faded after the Iranian actions in the area. This is strategic thinking that might have good reasons to work but is extremely dangerous, because it can provoke an escalation to a large-scale conflict, and has the objective of hegemonic control over the area of the Middle East, which is

¹⁶⁴ Peter Singer, *Was Killing Soleimani Justified?* Project Syndicate, 6th January 2020. https://www.project-syndicate.org/commentary/suleimani-assassination-legally-ethically-unjustified-by-peter-singer-2020-01?fbclid=IwAR2mYkaHCvsRqz3AWIIX7J2R5NZbq_BWgs5oxVHnPI3kJsHMITIjbb733yQ

¹⁶⁵ Agnès Callamard, twitter, <https://twitter.com/AgnesCallamard/status/1212918159096864768>

¹⁶⁶ The New York Times, *Confrontation in Congress Looms Over Iran Conflict*, 20th January. <https://www.nytimes.com/2020/01/08/world/middleeast/iran-us-missile-attacks.html>

¹⁶⁷ Annalisa Perteghella, *USA-Iran: le conseguenze della morte di Soleimani*, ISPI, 8th January. <https://www.ispionline.it/it/pubblicazione/usa-iran-le-conseguenze-della-morte-di-soleimani-24728>

against all principles of Just War. The action aiming to stabilize the area through hegemony may lead to an even wider instability due to the clash of objectives of the powers involved, so a concrete danger to peace that is probably an even bigger violation of the principles of Just War.

Drones have been in some sense a useful instrument, allowing precise and almost undetectable attacks, but their unaware use can provoke a series of consequences that might provoke tremendous escalation, that as much as any executive decision, is attributable to an executive willing to risk open conflict.

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Summary

1. The Theoretical Bases of Just War Theory

War has been a human phenomenon since the beginning of times. But to this circumstance humans have tried to put limits, trying to limit the violence or at least agreeing on some rules to observe. The Just War Theory is a system that collects and deciphers moral principles necessary to be observed to conduct a war that can be defined as moral. The doctrine of Just War Theory has many academics since Christianity. The most eminent proponents are Saint Augustine and Saint Thomas Aquinas.

Just War Theory influence has been so deep that has been much of the International Law's foundation, indeed if we think to International treaty they always refer to constitutive principles fundamental in Just War. The Just War Theory can be divided into two main parts: The *Jus ad Bellum* and the *Jus in Bello*. The first one has as main focus the rules that need to be observed to start a conflict that can be defined morally right. The second group, instead, refers to those rules that need to be respected during a conflict. Politicians and decision-makers have the main responsibility to observe the principles of *Jus ad Bellum*, they are the one to have the power to decide if do or do not initiate a war. The second group instead implies rules that need to be observed during the conflict, for this reason, the militaries have a greater impact not only in the tactical but also at the strategical level.

When we talk of "*Jus ad Bellum*" we should consider the existence of some criteria which need to be respected, if we want to engage in a just conflict¹⁷⁰. In order we have:

- 1- Just cause, 2-Legitimate authority, 3-Public declaration, 4-Just intent, 5-Proportionality, 6-Last resort, 7-Reasonable chance of success, 8-End of peace

At the base of these principles, there is the idea to refuse conflict and to avoid war as an instrument of resolution of the discords, and the principles above have the purpose to limit, as much as possible, the use of force¹⁷¹. Each of this principles need to be broken the initiative of the decision of an executive government, that willingly decides to break it.

The *Jus in Bello* as said before is the part of the Theory describes the precepts that need to be respected during the war. Because of the precise moment, the subjects that need to observe these principles. Indeed if the *Jus ad Bellum* is a responsibility of politicians the *Jus in Bello* need to be respected also by militaries that through their direct involvement and through their advice to the politicians that

¹⁷⁰ Childress, James F. (1978). "Just-War Theories: The Bases, Interrelations, Priorities, and Functions of Their Criteria". *Theological Studies*, page 427- 445.

¹⁷¹ "Just War Theory | Internet Encyclopedia of Philosophy". www.iep.utm.edu.

approve certain policies, like the rules of engagement. There are two main principles in this second group of rules, discrimination¹⁷⁶ and proportionality.

Another principle that Henry Sidgwick¹⁷⁷ contemplates is the utility. The utility is a principle connected with the aim of the victory. Any act necessary to win is useful, so lawful, and any war's act not necessary to win is unlawful. This principle is chosen with the specific aim to limit the use of violence. The analysis of Sidgwick subordinates the value of human life to the value of the victory for the opposing sides. This reduction is due to the consideration of soldiers in a war.

There is also a fourth principle, considered among the most important principle in the Just War Theory which is the Principle of Humanity. The Principle of Humanity was born from the principle of avoiding useless sufferings to soldiers and civilians during the conflicts, prohibiting certain kind of weapons that do not simply kill but provoke sufferings to people, completely useless to the end of the war, except to cause terror and bend the morale and the resistance of the enemy.

1.1 Inter Arma silent leges

The sentence giving the title to this paragraph describes a situation described by the status of necessity. This is only a cynic view that forgets not just those International Treaties done to reduce any kind of useless violence but also forgets the Natural Law. One of the elements often discussed by academics is the element of the "double effect". The double effect describes a situation in which a military decision affects not just the enemy's army but also the civilians. According to Walzer¹⁷⁸, killing civilians working in a military factory is acceptable because they are contributing to the war, and to feed the military power of their nation, but killing the civilians living around the factory is not acceptable.

1.2 Jus Post Bellum

The concept of *Jus Post Bellum* is one of the most recent elements of the Moral law. Has emerged as an attempt to regulate and analyze the duties that victorious factions have over the defeated and the rights that the last one holds. The *Jus Post Bellum* is described as "a new category of international law currently under construction"¹⁷⁹. This branch has emerged as a result of international missions of peacebuilding and intervention inside countries.

¹⁷⁶ Jeff McMahan, *The Morality of War and the Law of War*, Page 21-22

¹⁷⁷ Michael Walzer, *Just and Unjust Wars*, cap. VIII, page 165.

¹⁷⁸ Michael Walzer, *Just and Unjust war*, cap. IX, page 185.

¹⁷⁹ Inger Österdahl and Esther van Zadel, "What Will Jus Post Bellum Mean? Of New Wine and Old Bottles" (2009) 14 *Journal of Conflict and Security Law* 1; in "The concept of jus Post Bellum in International law, Eric De Brabandere"

Part of the rules belonging to the *Jus post Bellum* refers to the humanitarian law, human rights and the rules over the occupation.

Larry May¹⁸⁰ identified some principles of *Jus Post Bellum*:

1-Rebuilding, 2-Retribution, 3-Restitution, 4-Reparation, 5-Reconciliation, 6-Proportionality

2. Just Cause

The principle of Just Cause refers to the idea insert into the international law that war can be done only as a result of a direct attack. However, we have seen formulas such as the “war on terror” to justify the starting of a conflict. Drones in this scenario have been accused to be incompatible with Just War Theory because, according to authors such as Van der Linden¹⁸¹ drones have been used in a conflict in which there was an excessive difference between the fighting side, so a problem of magnitude. Along with Van der Linden, Buchanan and Keohane¹⁸² support this image as an opportunistic use of drones, describing a scenario in which there was no real just cause but only the opportunities given by the use of the new weapon. The opportunity was consisting in a strategic advantage on using drones that has been perceived by the US, because the use of drones implied lower costs, in terms of money, risk of American lives, and also in terms of public interest toward the conflict. This preference is evident also from the increasing use of drones in the warfare operations. Indeed, since the Obama’s presidency the use of drones is drastically increased.

As I have illustrated in the chapter the guerrilla and terrorism are a form of warfare completely different, both, terrorism and guerrilla, are designed to be threat even when the fighter is extremely weaker than the other. The point is that terrorism can be a reasonable cause to determine the use of force, because there are no alternatives, force is necessary, also because differently from a government, terrorists do not have to answer to a public opinion they have no political restrictions.

The violation of this principle is the result of a political decision, indeed also the analysis reported in the chapter highlights the fact that the choice of using drones belongs to a political decision, a strategy taken to face a conflict.

3. Legitimate Authority

The legitimate authority is the principle that defines who have the right to use the force. Its aim is to reduce the actors who have the right to coerce. This principle is the result of an historical period aiming to construct a state power, who as definition is the only to have the right to start a conflict.

¹⁸⁰ Larry May, *After the war ends: A philosophical perspective*, Cambridge University Press, 2012.

¹⁸¹ Ibidem. Harry Van der Linden, *Drone warfare and Just War Theory*.

¹⁸² Ibidem. Allen Buchanan and Robert O. Keohane, *Toward a Drone Accountability Regime*.

The immorality of terrorists is naturally perceived as a result of the strategy of terror, so a strategy aiming to kill not just combatants but also civilians, a strategy that aims to terrorize the enemies. While an insurgent faction can have legitimate claims to rise against the so-called legitimate authority, who may have broken natural and human principles.

Legitimate authority is fundamental to an effective military campaign. Indeed, also the Field Manual of US army¹⁸³ describe the war against insurgency as a scenario in which both opposing side try to gain legitimacy among the population, that's because insurgents needs the sustain of civilians for new recruits and generally speaking, logistic sustain, while state's forces need to demonstrate their capacity to protect and defend the authority of the state from those who challenge it.

So, an army needs to gain legitimacy from the population. This legitimacy is necessary to impede the proliferation of the insurgency. The way that an army of a state can win is through the creation of an appropriate strategy. Analysing the morality and compatibility of a strategy with the Just War theory is a task that belongs to other principle like the principle of humanity. Indeed, a state loses legitimacy if it violates principles that normally are perceived as fundamental or if it uses violence and force indiscriminately.

In the end drones cannot affect legitimacy in the phase of *ad bellum*, indeed there is no interaction between the two and so according to the principle of legitimate authority they are compatible with Just War Theory.

4. Public Declaration

The public declaration is a principle referring to a formality, and as such perceived as useless. But it has a declaratory mandate. It needs to aware the public opinion and the opposer that the country is willing to start a conflict. The problem that is emerged in the starting of the conflict in the Middle East that saw the use of drones was an unlimited use of force beyond those that were the borders of the conflict. Indeed, the US have used drones to strike militants in different countries in which Al-Qaeda and allied organizations have their bases and cells. All this without a proper public declaration. Indeed, those operation have been done covered by the secrecy of CIA or have been done avoiding any permission.

Such a policy has, anyway, a reason due to necessity. Has expressed previously, terrorism is an over bordering phenomenon, using different tools from a nation, it occupies a territory it does not own it,

¹⁸³ Army Field Manual 3-24: Counterinsurgency, United States. Department of the Army, 2006-12.
<https://www.hsdl.org/?abstract&did=468442>

it gets its revenues most of the time from illegal trafficking, so it responds to other signals and priorities. Moreover, is necessary to consider the role of public opinion. After having taken the consideration over the different nature of terrorism, we should now see that the conflict in Afghanistan is started with a great support by the public opinion. And to respond to such a support was evident the necessity to satisfy the desire of good results, that did not occur. This might be a reason why the US over passed the principle of public declaration.

Another element that should be taken into consideration is the time frame. Indeed, the war in Afghanistan started in 2001. The question over the validity of public declaration after such a long time needs to be examined. But the duration of a conflict is not determined, if there is a central cause for the conflict is reasonable to remain committed to the fight but is also true that war should be started with the consideration to end it in relative short time and with high expectancy to win it.

In the end what emerges is an evident violation of public declaration, indeed for a war that is characterized by a worldwide diffusion certain principles might result as restricting in the capacity of a country to measure the threat of terrorism. What is clear is that the violation has been done by a government decided to extend its power beyond the limits created by the Just War Theory. The breach of Just War Theory by the US government does not imply an incompatibility of drones with Just War.

5. Just Intent

The just intent bases its origins into a Christian morality. Its intent is to give a positive aim to the combatant, and that objective is peace. The way to breach this principle is to act in way that makes the peace impossible to achieve or if the intention is supremacy and control of strategic areas.

One of the first analysis is the one done by Van der Linden¹⁸⁴ who evaluates the strategy done by the US, based on targeting not, the high ranked militants but the low ranked militants. The targeting of militants according to the author is a lack of just intent, the reason is not specified, but we can presume that it undermines the chances to reach a future peace.

The US government declared that there were no civilian losses among the population, but soon has been proved that the data was misrepresented. Indeed, the guidelines¹⁸⁵ approved by the government were considering any man old enough to carry a gun as a potential threat, expect that the identity of not being a member of insurgents was proved.

¹⁸⁴ Ibidem. Van der Linden Harry. "Drone Warfare and Just War Theory,".

¹⁸⁵ Jo Becker & Scott Shane, Secret 'Kill List' Proves a Test of Obama's Principles and Will, N.Y. TIMES (May 29, 2012), <http://www.nytimes.com/2012/05/29/world/obamas-leadership-in-war-on-alqaeda.html?pagewanted=all>

Another element is the targeting of local militants. Indeed, attacking this insurgent's group is considered by Van der Linden as a violation of Just War Theory and Just Intent. First there is no real moral reason impeding the striking of militants rather than the leaders of insurgents. It is a war and since then there are no limits according to whom the victim of an attack should be the commander rather than a low-ranked fighter. Both kind of insurgents are exposed to the consequences to be a militant. While targeting the local insurgents does not constitute any reasonable violation. Indeed, despite being a lower threat the insurgents have anyway decided to become an opposer of US, deciding so, they expose themselves to the same consequences of any other subject.

Most of the time the analysis by Van der Linden does not fit with the moral objective of the just intent. What remains a concrete concept also for this principle is the fact that the intent is decided before the starting of a conflict and violations, like double tap, are the result of a decision taken by the decision makers, and it's not the result of the incompatibility of a weapon with the moral conduct of a conflict.

6. Proportionality

Proportionality belonging to jus ad bellum defines those parameters that allow a just combatant to fight a conflict. To be proportional, war according to proportionality can be the response to a massive attack, aiming to self-defence. On this matter the International system have established countermeasures different from war. In particular the International Court of Justice has defined through a series of sentences the conditions and the experience have established the method to counter a wrongful act, the countermeasure.

A countermeasure can be carried out in presence of a wrongful act, executed by a country against another, the damaged country needs to recall to change the behaviour to the wrongdoing state, and for last, in case of request for a reparation, that needs to be proportionate to the damaged suffered. They do not exclude a certain amount of coercion, but the use of force remains inside certain parameters of proportionality.

The academics have exposed a change in warfare due to the introduction of drones. Indeed, these weapons according to authors such as Daniel Brunstetter and Megan Braun¹⁸⁶ would have changed the approach of states to the issue to consider the use of force. Substantially drones would have made the use of force extremely easier.

¹⁸⁶ Daniel Brunstetter and Megan Braun, *The Implications of Drones on the Just War Theory*, Ethics & International Affairs, 2011.

What is clear is the disproportion of forces between a terrorist group and a state. But this is not a measure that can be considered in counterinsurgency. For example countermeasures against terrorists have a limited impact, that because terrorists when they start their activity are aiming to an open conflict, their objective is the subversion of the political system.

Another element that needs to be taken in consideration is the fact that the principle of proportionality belongs to the category of *ad bellum*. This means that the violation of this principle is the result of an overreaction to a threat or to an attack. The violation can be done in both cases with any kind of instrument and is the result of a decision imputable to decision makers.

7. Last Resort

This principle has a moral implication that aims to avoid violence as much as possible and spurs the subjects of a controversy to find an agreement. It might consider reasonable to fight only when possible or necessary for major issues and also there is the preference for the politicians to choose war only as last option, to increase the support of the population. Drones wouldn't be compatible with Just War Theory because they suppress the last resort. This phenomenon is generally explained with the lack of accountability and of transparency. The weakening of last resort might have as inevitable consequence a greater resolution to force, even with a reduction of major conflicts. The chapter will collect in a first part all the concerns and negative impact of drones on the principle of last resolution. While later I will show that actually drones may increase the deterrence power among states, so having a positive effect, increasing the chances of states to find an agreement instead of an open conflict.

7.1 Accountability and transparency

Keohane and Buchanan¹⁸⁷ reported three major risks connected with drones. One of these is the low level of accountability and the consequent reduction of the audience costs that the use of drones in warfare imply. Indeed, the general perception is that the drones' strikes are operations with 0 costs. Indeed, the chances to lose military personnel is inexistent, that reduce the questions and the concerns about a military campaign.

About the issue of accountability and transparency the Stimson Group¹⁸⁸ has done an evaluation of the Obama's presidency and the war operations involving drones. The results have been negative. The result of the analysis evaluated a general diffused lack of transparency and accountability. The

¹⁸⁷ Ibidem. *Toward a Drone Accountability Regime*.

¹⁸⁸ Ibidem. Rachel Stohl, "Grading Progress on U.S. Drone Policy", Taken From: Moral and Legal Accounts on the Use of Armed Drones Against Suspected terrorists.

reason for this lack of transparency is identified in the attempt to reduce accountability. In a public speech¹⁸⁹, president Obama despite he admitted some irregularities on the use of drones, legally and morally, he justified the use of drones as the only solution to face terrorism.

The final consideration is that drones give incentives to war but the respect of a moral principle remains unaltered. The moral duty for a country to be resolute to war only as an extreme solution remains, preserving human life is a duty. The use of drones has been incentivized by the disproportion of force, a state that does not fear a specific retaliation for his behaviour is incentivized to prosecute in breaching the moral duty.

7.2 The changing of last resort

We consider the possible changes of the principle of last resort. Specifically, the change refers to an increased likelihood of states to resort to force. In the moment in which drones have been used as a proportionate answer to the threat of terrorism the threshold of last resort has been increased.

Such a necessity of using force not only when the morality allows it but also in presence of necessities is supported by Walzer¹⁹⁰, supposing an extension of *jus ad bellum* and the creation of a *jus ad vim*. In this context probably Walzer would insert drones into a “measure of short war”, distinct by “actual warfare”. Such a modification of last resort has been contemplated by Mark Totten¹⁹¹.

Another element that has emerged connected to last resort has been the alienation. The argumentation of alienation has been discussed, in particular through the strong words of Van Der Linden in *Arguments against Drone Warfare with a Focus on the Immorality of Remote Control Killing and “Deadly Surveillance”*¹⁹², he referred to drones as an unfair method to perform air attacks. Civilians will be alienated from the discussion on a fair war, because their fellow citizens, serving in the army are not on “the ground” risking their lives. The alienation in this system of detachment of the citizen from war, it would be a strategy of separation of the public opinion from the political responsibility of the decision makers. But, using an advantage showing an overwhelming power may lead to a faster peaceful solution. Fearon¹⁹⁴ explained the factors that

¹⁸⁹ Ibidem. “Obama’s Speech on Drones,” May 23, 2013, accessed October 23, 2013.

<https://www.nytimes.com/2013/05/24/us/politics/transcript-of-obamas-speech-on-drone-policy.html>

¹⁹⁰ Ibidem. Walzer, taken by *The Implications of Drones on the Just War Tradition*, Daniel Brunstetter, Megan Braun

¹⁹¹ Mark Totten, *First strike: America, Terrorism, and Moral Tradition*, 2010

¹⁹² Harry Van der Linden, *Arguments against Drone Warfare with a Focus on the Immorality of Remote Control Killing and “Deadly Surveillance”*, Butler University, 2016

¹⁹⁴ Ibidem. James D. Fearon, *Rationalist Explanations for War*, in «*International Organization*», Vol. 49, No. 3 (Summer 1995), pp. 379-414

lead countries to discuss the conditions for peace, according to a rational perception of their chances to win.

7.3 Deterrence and lower chances of war

The point is to show that in a certain context the chances of the beginning of a conflict are reduced thanks to the presence of drones and their power to deter. Being able to insert the role of drones into the strategy of warfare might be very important to determine if their future use might be shadowed by a morally doubtful way or might be used accordingly to the rules of war and the principles of Just War Theory.

The conventional deterrence is a mechanism that describes a strategy based on the threatening of punishment or by denial¹⁹⁵. We have seen that the drone employed for two main tasks. The first is the reconnaissance and monitoring and the second is the targeted killing in the counter-insurgency war.

What lies at the base of deterrence is the fear of the consequences that an attack might have for the attacker. On the topic of conventional exists two main theory, the first focusing on the weapons possessed by each side, and the second on the balance of forces existing among the fighters. Anyway, according to Mearsheimer, these considerations are influenced by the strategies chosen to engage in a war. The strategies might be reassumed into three main types. The first one is the famous blitzkrieg, is a strategy relying on mobility and speed. The second strategy is the attrition one. The third strategy is the one with limited objective, this last strategy aims to catch the enemy by surprise, attacking a small part of the enemy and conquering a limited area of the enemy's nation.

Probably the main characteristic that defines drones is mobility¹⁹⁶. As Mearsheimer shows in its book¹⁹⁷ mobility is a key factor into the offensive strategy. But as the mobility is an advantage for offensive it may be an advantage for defenders, who may use UAVs. A weapon that counterbalances the use of blitzkrieg would potentially give a greater advantage to the defenders. Attrition would make deterrence more probable due to the intrinsic higher costs that such a strategy has implicitly.

Using drones give a great advantage to strike the most sensible areas of the enemy. It should become more difficult the beginning of a conflict. Indeed, drones may result as a strategic weapon capable of striking the vulnerable points of the enemy. Substantially starting a conflict with a country having

¹⁹⁵Ibidem. John J. Mearsheimer, *Conventional Deterrence*, Cornell University Press, 1983.

¹⁹⁶Ibidem. Tyler Wall and Torin Monahan, *Surveillance and violence from afar: The politics of drones and liminal security-scapes*, *Theor. Criminol.*, 15, 239–254, 2011.

¹⁹⁷Ibidem, J.J Mearsheimer, *conventional Deterrence*, page 35-43.

drones would mean paying a high cost. The result is a higher deterrence power and consequently a higher threshold to resolute to war and greater adherence to the principle of last resort.

8. Reasonable chances of success

This principle has not been discussed in a deep way by the academics in comparison with the employment of drones. Indeed is clear that the employment of drones gives a military advantage as such a greater chance of success. However, can be noticed that in Afghanistan, where drones have been used, but victory has not been achieved, and is definitely the longest war in American history. Moreover, according to a series of interview collected by the Stanford University¹⁹⁹ the US's strikes in Pakistan have increased the anti-American sentiment and resentment towards the American policies in the Middle East.

According to the general opinion of critics of drones' warfare, the massive use of drones has lacked characteristics necessary to an appropriate military campaign. Also, generals have highlighted that to win a war, in particular based on counterinsurgency, the so-called "boots on the ground" are necessary.

Another critique and analysis that I think is extremely effective in explaining the limits and the problems of drones' warfare have been done by Elke Schwarz²⁰⁰. Specifically, she found three principles that summarise those limits: (1) the production of intelligence about socially complex networks and societies; (2) the application and use of soft or smart power; and (3) the attainment of a medium to a long-term goal of peace.

Generally speaking, the great strategic mistake is the fact that has been used only brutal strength in an unproportioned way, when the objective is a durable peace is necessary a smart power. The violations and limits of drones are imputable to a mistake in choosing a consistent strategy. Anyway, is evident that excessive use of violence on the civilian population has a negative impact on the success of counterinsurgency.

What has emerged from the capabilities of drones in war is an extremely important capacity to execute missions with precision and effectiveness, that can't be compared to any other weapon. Is necessary to insert the new tool into a strategy to use it at its best and without excluding precedent elements²⁰². So

¹⁹⁹Ibidem. James Cavallaro, Stephan Sonnenberg, Sarah Knuckey, *Living under Drones, Death, Injury and Trauma to Civilians from US Practices in Pakistan*, International Human Rights and Conflict Resolution Clinic, Stanford Law School, Global Justice Clinic, NYU School of Law. <https://www-cdn.law.stanford.edu/wp-content/uploads/2015/07/Stanford-NYU-Living-Under-Drones.pdf>

²⁰⁰Ibidem. Elke Schwarz, *Pursuing peace: the strategic limits of drone warfare*, extract from Intelligence and National security, 9th May 2017.

²⁰² Ibidem J.J. Mearsheimer, Conventional deterrence, page 23-60.

again, the mistake belongs to those building a strategy to face a large and intense conflict such as the war in Afghanistan.

In the end, drones do not violate the principle of reasonable chances of success, not as much as any other weapon used in a conflict, on the contrary, they can prove to be an additional instrument for an army to reach its objective, without forgetting their employment in a more general and consistent strategy.

9. End of peace

The essence of this principle is that every action and decision taken before starting a war should have as final objective peace. The objective of war should be free from the imperialistic idea of hegemonic power, and rapacious intent of territorial expansion.

The premise to such a threat is made by John Kaag and Sarah Kreps²⁰³ taking as reference the Kantian concept of democratic peace. According to them the democratic natural constituency and nature, take the democratic government to support policies that do not necessarily take to peace but protect the private property. As the “direct consent” of citizens disappears because they are not more involved in the war and to not have to pay any cost in blood their interest in the conflict disappears²⁰⁴ living wider margin of choice for the governments.

Peace is such an important element for the protection of human rights that Marjorie Cohn and Jeanne Mirer²⁰⁵ define it almost as a human right. Such definition is taken by the numerous declarations of the General Assembly, Security Council and from the constitution of countries. The persecution and research for peace is declared in art. 2(3) of the UN charter²⁰⁶. In 1984, the General Assembly adopted the resolution 39/11²⁰⁷, the Declaration on the Rights of Peoples to Peace.

Another point that the two authors took into consideration is the resolution 33/73²⁰⁸ of the General Assembly, declares that the development of new weapons based on technological achievements is a

²⁰³Ibidem. J. Kaag and S. Kreps, *Drones and democratic peace*, Brown Journal of World Affairs, 2013.

²⁰⁴Ibidem. Immanuel Kant, “*Towards Perpetual Peace*” in the Basic Writings of Kant, ed. Allen Wood (New York: Random House, 2001), 422.

²⁰⁵Ibidem. Marjorie Cohn & Jeanne Mirer (2015) *Armed Drones Violate the Right to Peace*, Peace Review.

²⁰⁶Ibidem. United Nations, *Charter of the United Nations*, Chapter I, art.2 (3), <https://www.un.org/en/sections/un-charter/chapter-i/index.html>

²⁰⁷ Ibidem. UN. General Assembly, *Declaration on the Right of Peoples to Peace*. 39th session, 1984. <https://digitallibrary.un.org/record/74608>

²⁰⁸ Ibidem. World Congress on Disarmament Education, *UN General Assembly Resolution 33/73: Declaration on the Preparation of Societies for Life in Peace*, Paris, 1980. <https://unesdoc.unesco.org/ark:/48223/pf0000038366>

threat to peace. Moreover, the importance of peace and avoidance of war is proclaimed and defined by the resolutions of constitutions.

The status of just combatant is not defined by what kind of weapon you use but from the principles that brought you to fight, that needs to be self-defence, and the application of the military necessity during the conflict, sided by proportionality and discrimination.

In the end, is the end of peace compromised by drones? In my opinion no. Not as much as any other weapon. Is evident that a systematic, intense and unjustified use of drones is wrong because it doesn't respect the lives of civilians but every weapon if improperly used may cause consequences adverse to end like peace. The end of peace is achieved before the beginning of the conflict and is based on the intention. The intention to how approach to a conflict, the intent and the aim that you are setting.

10. Proportionality “in bello”

The principle of proportionality, when referred “*in bello*” distinguishes itself from the one of “*ad bellum*” because it evaluates the means to use during a conflict, according to the objectives and the enemy's capacity to respond and defend itself. The strength used should never exceed certain limits of necessity. According to such aims, drones have been defined disproportionate, that because through the use of drones is possible to kill a militant, killing him with a missile. Such a great power is considered disproportionate with the objective, killing one person. Such an overwhelming power has been justified by President Obama in a speech²⁰⁹.

Another element of concern has been the general disproportion of power among the fighting sides. Specifically, such disproportion is perceived by the pilots of drones, who testify a perceived disproportion between the fighters, feeling a power of life and death upon their enemies. I personally understand the evaluations of unfairness but we need also to be realistic when a government starts a war it needs to consider all the implications of this choice and has a holy duty to fight avoiding as much as possible losses on both sides, but most of all of its fellow citizens. Claiming that would be moral only if all the soldiers may be killed in battle reaches the claim of absurdity. The evaluation of this lack of proportionality, miss the consideration of the nature of the threat more than its magnitude. Proportionality requires an evaluation of specific military operations. It is necessary comparing the gains, the losses and the damages provoked, in considerations that the military advantages acquired

²⁰⁹ Ibidem. A full text can be found on the New York Times online under the title “Obama's Speech on Drones,” May 23, 2013, accessed October 23, 2013.

may contribute to the resolution of those objectives that have provoked the conflict and then evaluates the use or not of a weapon, of a strategy or of any means for the conflict.

In the end, are drones compatible with proportionality? As any other weapon, yes. The decision to use a drone is the result of many options. The researchers should focus if the strikes executed against terrorists have been effective in the resolution of the conflict. According to me the violation is on the strategy chosen and the poor results and the long-time duration are the proofs. If the killings have been useless, and that the killings of militants did not change the result of the conflict it doesn't matter if have been drones or jet or foot soldiers to have done the strikes, what matters is that those attacks did not have any influence on war, but have provoked sufferings and damages to a society with not gains in the resolution of the war.

11.Discrimination

The death of civilians is admitted only if done as an involuntary result of incontrollable circumstances, or in case the military result achievable through a victory overwhelms the possible civilian losses. One of the most dramatic reports concerning discrimination is the report of “second tap”²¹¹. Probably the lack of transparency has been one of the main issues related to the analysis of the authors analysing the impact of drones on warfare, finding a strong correlation between these elements and the systematic use of drones.

11.1 Comparing air-campaigns

The capacity to declare if drones are compatible with discrimination can be reached comparing the data concerning the civilian victims caused by drones and the victims caused by the recent air campaigns that have been accomplished with jet bombers

Through the data collected from 2004 to 2013, the civilian average killed by drones is around 20%, from nearly 40% of civilians killed during the Bush administration to just 5% of 2013 under the Obama's administration. The total amount of civilian killed (considering also those defined as Unknown) is between 457 and 641. The *Bureau of Investigative Journalism (BIJ)* and *The Long War Journal* confirmed the low level of civilian casualties in 2013²¹².

The Russian strikes in Syria have been the result of a completely different environment and so executed in a completely different way. The Russian forces started their intervention in September

²¹¹ Ibidem. Matthew Nasuti, Hellfire Missile Accuracy Problems Uncovered in Pentagon Data, KABUL PRESS (Nov. 27, 2011), <http://kabulpress.org/my/spip.php?article89242> taken by Living under Drones.

²¹² Ibidem. Long War Journal, “Charting the data for US airstrikes in Pakistan 2004– 2014.”

2015 after a formal request of the Syrian government of support to the Russian government²¹³. The Russians in this scenario have employed manned aircraft. the testimonies about the indiscriminate bombing activities of the Russians are numerous.

Chris Woods, director of the recording organisation Airwars, realising an interview to *The Guardian*²¹⁴ declared that in six months at least more than 2000 people have been killed by the Russian Airstrike. Amnesty International have documented²¹⁵ violations of human rights and accused of war crimes the Russian and Syrian governments²¹⁶ using banned weapons extremely dangerous for the civilian population, like the cluster bombs. The *Human Rights Watch* also denounced direct attacks to hospitals, ambulances and very high rate of civilian victims, in just three days 400 people have been killed by the Russian-Syrian coalition²¹⁷.

What seems clear from the data collected is that both planes may complete the same kind of operations, but the drones better, reducing the risks to mistake target, the conventional bombers may do operation of greater explosive power dropping a greater number of bombs, but with unguided bombs, causing greater damages and eventually a greater number of civilian victims because of their incapacity to discriminate between fighters and civilians. Drones can accomplish the same missions of their jet equivalent, but better and with lower risks.

11.2 Chemical weapons and antipersonnel mines

Is necessary to consider the reasons that have brought to the creation of international treaties prohibiting chemical weapons²¹⁸ and antipersonnel mines²¹⁹. Doing so is necessary to confront the weapons already prohibited for their incompatibility with principles regarding also the Just War Theory, with drones. That will give the chance to consider if drones as well as those already banished

²¹³Ibidem. *Russia carries out first airstrikes in Syria*. Al Jazeera 30 September 2015,

<https://www.aljazeera.com/news/2015/09/russian-carries-air-strikes-syria-150930133155190.html>.

²¹⁴Ibidem. *Russian airstrikes in Syria killed 2,000 civilians in six months*, The Guardian, 15 March 2016,

<https://www.theguardian.com/world/2016/mar/15/russian-airstrikes-in-syria-killed-2000-civilians-in-six-months>

²¹⁵ Ibidem. 'Left to Die Under Siege' War Crimes and Human Rights Abuses In Eastern Ghouta, Syria, Amnesty International; 12 August 2015, <https://www.amnesty.org/download/Documents/MDE2420792015ENGLISH.PDF>

²¹⁶Ibidem. *Syria: Relentless bombing of civilians in Eastern Ghouta amounts to war crimes*, Amnesty International, 20 February 2018, <https://www.amnesty.org/en/latest/news/2018/02/syria-relentless-bombing-of-civilians-in-eastern-ghouta-amounts-to-war-crimes/>

²¹⁷Ibidem. *Syria/Russia: International Inaction as Civilians Die*, Human Rights Watch, 22 February 2018, <https://www.hrw.org/news/2018/02/22/syria/russia-international-inaction-civilians-die>

²¹⁸ Chemical weapons convention, Art.1, 13th Jan. 1993 <https://www.opcw.org/chemical-weapons-convention/articles/article-i>

²¹⁹ Ottawa Treaty, Art.1, 18th sept. 1998, https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XXVI-5&chapter=26&clang=en

weapons share the same characteristics that might bring the international community to banish drones as well.

This part has been inserted in the chapter belonging to discrimination because the most important violation of chemical weapons and mines is their incapacity to discriminate between civilians and combatants.

Moreover, chemical weapons provoke extremely painful sufferance, that normally is used to debilitate the enemy's troops, and not necessarily kill them²²⁰. The sufferance inflicted are, generally speaking, beyond the principle of military necessity, for the implications that they have in the immediate and also in time, indeed a lot of these weapons affect the nervous system, can provoke damages to the brain, and nervous system, implying chronic pain. Moreover, chemical weapons have had the characteristic to be extremely terrorizing.

Antipersonnel mines are another kind of weapon that has been prohibited with a convention, the treaty of Ottawa. Indeed, the treaty reminds that mines affect civilians and children provoking hundreds of deaths every year, even after the end of the conflict²²¹. As reported by the International Red Cross, the impact of mines is extremely intense and needs great economic support for those countries incapable to support and rehabilitate its citizens in an appropriate way²²². In 2018 the calculated victims reported are more than 6 thousand²²³ and over 71% of the verified victims were civilians.

Both for chemical weapons and landmines, the violation of discrimination and Just War theory is clear. Both kinds of weapons can't be controlled in their action and inevitably kill whatever civilians and militaries as well. Both weapons have a negative impact on the social community even after the end of the conflict. This analysis demonstrates that drones can't be defined as incompatible with Just War Theory as landmines and chemical weapons, indeed they both violate the principle of discrimination.

12. The principle of humanity

Indeed, the objective of this principle is protecting human dignity and life. Such aims make the principle of humanity extremely important. Determining if drones violate the principle of humanity

²²⁰ Arms control association, *What You Need to Know About Chemical Weapons Use in Syria*, 14th March 2019. <https://www.armscontrol.org/blog/2018-09-23/what-you-need-know-about-chemical-weapons-use-syria>

²²¹ United Nations, *Convention on the prohibition of the use, stockpiling, production and transfer of anti-personnel mines and on their destruction*, Ottawa 3rd Dec. 1997, preamble. https://treaties.un.org/doc/Treaties/1997/09/19970918%2007-53%20AM/Ch_XXVI_05p.pdf

²²² ICRC, *Anti-personnel mines*, 24th May 2018. <https://www.icrc.org/en/document/anti-personnel-mines>

²²³ Ibidem, *Land Mine & Cluster Munition Monitor*, page 1.

is extremely difficult. To demonstrate such a violation considering also the Just War Theory, is necessary not only demonstrate that drones can cause sufferings to civilians, but that such sufferings are beyond the military necessity, and that the damages provoked are more than those provoked by alternative means.

In the analysis done by Stanford University²²⁴, what emerges is that the nature of the operating of drones, cause an incredible level of stress. People is extremely afraid to go out home, to meet people and socialize or gather together, killing the sociality of the rural community. Analysing this phenomenon, I judged the economic and private consequences of less relevant importance. Although the loss of a relative, sentimental and economic consequences related to such a loss, or the impoverishment of a region due to operations of war, is a terrible effect of a conflict, is reasonable to be considered inevitable.

So, when we evaluate if drones are respecting the moral rule of the principle of morality we should talk of the psychological impact of drones on civilians. For sure the unexpected strike of a drone put under stress the civilians in the areas of attack but is sure that the same happens when jet fighters' incursions start or when in a city under siege the attacking army starts a door by door fight?

Terrain attacks have been demonstrated to be inconclusive. Indeed, the terrain campaign of 2015 of the Pakistani government has been only a partial success according to the commentaries. Moreover, according to journalists reports the ground operation Zarb-e-Azb Has cost the home to nearly two million people²²⁵, and diffused violence has been done with the operation. This means that also the ground operation is not clean and that can provoke serious consequences on the civilian population, with systematic violence and rampage dissent that affects economic development and recovery.

To determine the fact that a specific weapon is absolutely against the principle of humanity there should be great evidence highlighting not just a worsening of life for civilians but something more. Moreover, we should highlight that the greatest violations of human rights did not need any specific new technology, for example, the genocide of Rwanda ²²⁶ has become famous for the employment of machetes for the perpetuation of the violence.

²²⁴ *Living under Drones, Death, Injury and Trauma to Civilians from US Practices in Pakistan*, Stanford University, International Human Rights and Conflict Resolution Clinic, Stanford Law School, Global Justice Clinic, NYU School of Law. <https://www-cdn.law.stanford.edu/wp-content/uploads/2015/07/Stanford-NYU-Living-Under-Drones.pdf>

²²⁵ Meher Ahmad, *Pakistan's war against the Taliban has a hidden cost*, 16th Nov. 2016, Vice. https://www.vice.com/en_us/article/j5vemd/pakistans-war-against-the-taliban-has-a-hidden-cost

²²⁶ Ibidem Philip Verwimp, *Machetes and Firearms: The Organization of Massacres in Rwanda*, Journal of Peace Research, Vol. 43, No. 1 (Jan., 2006), pp. 5-22, Page 17. <https://www.jstor.org/stable/pdf/27640247.pdf?refreqid=excelsior%3A3ca08a882b55d13388a4f11f5e233a40>

The violation of human dignity in this sense is, in my opinion, the result of a systematic strategy. The use of drones has been dictated, according to me by the necessity of US government to reduce its military and political commitment in the Middle East, reducing its accountability and the pressures coming from the civilian world on the reduction of military commitment. The use of drones did not have the objective to terrorize civilians. The point is highlighting the fact that is probably the best alternative compared to other weapons that provoke all the consequences of drones but amplified by their inaccuracy.

13. Conclusion

Throughout the thesis, we have seen a series of data, describing a scenario of warfare. The question that moved this analysis was concerning the compatibility of drones with Just War Theory.

The first part of the analysis has been about those principles belonging to *jus ad bellum*, that are those principles to be respected to start a just conflict. A second part evaluated the compatibility of drones with the *jus in bello*. The principle of discrimination and proportionality have been also discussed comparing drones with the alternatives of drones and with the weapons that have been already banished, that may give an important reference, capable of giving a real dimension of these two principles.

In the end, from the analysis and the data collected has not emerged a defined reason for which drones should be considered incompatible with Just War Theory. The violation regarding the theory has been the result of the decision of government taking advantage of the qualities of this aircraft. That's the point the willingness to commit a crime. This concept is composing the principle of discrimination. The killing of civilians is justifiable up to the point that is involuntary or inevitable to the success in war. Because drones are directly piloted and under direct control, any violation or unjustifiable killing, is imputable to someone, the one deciding the attack and the one pulling the trigger.

What we can actually learn is that there is the necessity for western democracies to take into consideration that some principles should be always defended and to do so is necessary constant awareness on the decision of politicians, because government are taking decision in the name of their citizens inevitably are responsible for the decision taken by the government.

Appendix

Soleimani's Case

Drones have become an instrument to insert in a system of instability to persecute foreign policies, using force without a real framework of war. The last and most famous event connected to this scenario is the strike executed by an American drone the 3rd of January, that have killed the Iranian general Qasem Soleimani and the head of a militia supported by Teheran, Abu Mahdi al-Muhandis and the men of their escort.

The UN charter, and the Just War Theory as well, considered that the resolution to force can be employed only for self-defence, the US government has indeed justified the strike as a self-defence operation. The fact that Soleimani was in some way preparing attacks to American sites is highly possible, the point is to prove it, but at the moment proves of it have not been shown. We should first consider that has been a strike executed outside the condition of war violating a legal condition.

Another justification that has led to the attack has been the fact that Soleimani would have been responsible for the death of 608 ²²⁷ Americans. Revenge is not a criterion through which is admissible the beginning of a conflict, war can be initiated only when under a clear and strong threat or attack, the killing of Soleimani, morally speaking has broken the main principle sustaining the International system, the preservation of peace. Indeed, according to me, the greatest violation was putting in jeopardy peace without a clear danger of American integrity. Preserving peace and human lives is the highest and important intent of Just War Theory, and a strategy of calculated risk, brinkmanship, exposes national communities to possible conflict, that for absurd were not desired.

The attack was immoral due to the absence of a clear state of war. The killing was an act of war without any legal condition or permission. In the end, the attack against Soleimani was neither legal nor moral.

²²⁷ Ibidem. Geoffrey S. Corn and Rachel VanLandingham, *Lawful Self-Defense vs. Revenge Strikes: Scrutinizing Iran and U.S. Uses of Force under International Law*