

**CHARLES UNIVERSITY IN PRAGUE**

**FACULTY OF SOCIAL SCIENCES**

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**Assessment of Drone Strikes as Just  
Counterterrorism Method**

*Master Thesis*

Prague 2016

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Year of defense: **2016**

## **Bibliographical record**

TŘEŠTÍK, Marek. *Assessment of Drone Strikes as Just Counterterrorism Method*. Prague, 2016. 114 s. Master Thesis (Mgr.) Charles University in Prague, Faculty of Social Sciences, Institute of Political Studies, Department of International Relations. Thesis supervisor PhDr. Radana Makariusová, Ph.D.

## **Abstract**

This thesis focuses on the issue of drone strikes as a means of targeted killing of high value targets suspected of terrorist activities or affiliations. The United States of America has been using this method of elimination since the year 2001 as part of the Global War on Terrorism. However this practice raises a series of moral questions. It creates a new environment of alienation of the target and the person pulling the trigger. This thesis examines the compliance of drone strikes and the Global War on Terrorism as such with the Just War Theory. This theory is the leading concept in warfare ethics and offers a comprehensive research pattern. The finding of this thesis is that the use of drones, as it is employed today, is in conflict with the principles of this theory and therefore unjust. This finding is demonstrated by the research of two concrete drone strikes. Additionally, the Global War on Terrorism is also assessed to be an unjust war and therefore this thesis offers a comprehensive insight into the topic as it assesses both the practice and the overall context of drone strikes.

## **Keywords**

Drone strikes, Just War Theory, War on Terrorism, Ius ad Bellum, Ius in Bello, Anwar al-Awlaki, Chenagai

## **Abstrakt**

Tato diplomová práce se věnuje problematice užití dronů, či bezpilotních letounů, jako prostředku pro cílenou eliminaci osob podezřelých z terorismu a souvisejících aktivit. Spojené státy americké aplikují tuto metodu od roku 2001, jako součást globálního boje proti terorismu. Nicméně tato praxe generuje zásadní morální otázky. Vytváří odcizení mezi cílem a útočníkem skrze koncept užití bezpilotních letounů. Tato práce aplikuje principy teorie spravedlivé války na zmíněnou problematiku. Tato teorie je tradičním a detailně vyvinutým konceptem etických pravidel války. Závěry této práce ukazují, že používání dronů, dle současné logiky jejich nasazení, je v rozporu s pravidly této teorie. Tento závěr je vyvozen na základě výsledku dvou konkrétních případových studií. V neposlední řadě je skrze teoretický koncept zhodnocen i celkový kontext globálního boje s terorismem, který je rovněž shledán v rozporu s pravidly spravedlivé války. Práce tak přináší pohled na problematiku dronů v konkrétních případech eliminace cílů i širším kontextu.

## **Klíčová slova**

útoky bezpilotních letounů, Teorie spravedlivé války, válka proti terorismu, Ius ad Bellum, Ius in Bello, Anwar al-Awlaki, Chenagai

**Thesis extent:** 198 692 characters with spaces.

## Declaration

1. I hereby declare that this thesis was written entirely by myself and all the sources have been listed and cited properly.
2. I declare that this thesis has not been used for obtaining any other academic degree.
3. I consent to this thesis being available for purposes of study or academic research.

Prague 05/03/2016

Marek Třeščík

## **Acknowledgements**

I would like to sincerely thank PhDr. Radana Makariusová, PhD., for her invaluable guidance and patience throughout the creation of this thesis. I would also like to thank Mgr. Štěpán Braňka for his assistance with the language correction.

**Institute of Political Studies**

**Master Thesis Project**

Charles University in Prague

Faculty of Social Sciences

Institute of Political Studies

Master Thesis Project

Topic: Assessment of Drone Strikes as Just Counterterrorism Method

Author: Bc. Marek Třeščík

Academic year: 2015/2016

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## 1. **Topic extent**

This thesis will research the use of Unmanned Aerial Vehicles, in this particular case attack drones, which has been extensively used since the events of September 11<sup>th</sup> 2001. The War on terrorism that has been declared immediately after these atrocities has been waged with the help of attack drones as a means of targeting and eliminating high value targets, i.e. leading operatives of alleged terrorist networks. Since the first official appearance of an attack drone in Afghanistan in 2001, this type of weaponry has become a very popular alternative to ground units' deployment and conventional air force use. Since the advent of the drone campaign, these weapons have been deployed mainly over Afghanistan, Pakistan, Yemen and Somalia.

The actual technical effectiveness of drone and its position within the U.S. Armed forces will not be a matter of concern for this thesis. However as the drone strikes continue, question about their legitimacy and justifiability have begun to emerge gradually. For the first time in the history of warfare, military operation is conducted remotely from around the world and prevents any risk of casualties on the perpetrators' part. At the same time drones have been used for the most part on a sovereign territory of states that were not involved in any kind of armed conflict with the United States of America and moreover in particular cases, these countries were official U.S. allies.

## 1. **Significance of the topic**

Drone strikes are commonly presented as an effective method of the war on terrorism effort for aforementioned reasons. This thesis is concerned neither with technical effectiveness nor with official legal aspects of this technique. The significance of the topic lies within and the research will focus primarily on the very core question of this particular conduct of military action, its justifiability, i.e. its moral dimension. The core concern of this matter is that the generally accepted boundaries of violent action committed by a leading world's superpower have shifted. The use of a drone has with high probability caused another Revolution in Military Affairs.

In the sense in which nuclear weapons have introduced conventional military victory redundancy, drone strikes have introduced a level of detachment that has not been known in military history. Combined with an overwrapping leitmotif of the war on terrorism and



defending the freedom and security of the western community (i.e. U.S. and European), the use of drones appears to be justified in that way. Therefore the significance of this topic lies in analysing the core assumption that the western community takes for just and moral.

## **2. Research question and thesis goals**

The goal of this thesis is to apply the concept of Just War, as will be discussed in more detail further on, in order to assess the justifiability of the very idea of using drones and analysing the particularities of the strikes as they have occurred throughout past fifteen years. At this point of preliminary research the main research question is formulated as follows: ‘Can the concept of drone strikes as a counterterrorism method be qualified as just, i.e. in compliance with the Just War Theory’. The secondary research question is expected to be formulated as: ‘Can a particular drone strike be found, that bears any signs of compliance with the Just War Theory, as far as *jus ad bellum* and *jus in bello* go.

## **3. Theoretical framework**

The basic theoretical ground for the thesis will be represented by the Just War Theory that has its core in the ancient Indian Epic Mahabharata and has been evolving within Christian Europe since the dawn of Christianity. From Augustine of Hippo and Thomas Aquinas up to the school of Salamanca, this theory has been postulating the circumstances under which a human, and subsequently a state, can resort to war. This set of rules, above already referred to as *jus ad bellum*, includes: *a Just Cause as a reason of the act of war itself. Following criteria include Comparative Justice, Competent Authority to give the order for war, Right Intention that is never to be focused on material gain, Reasonable Probability of Success, War as a Last Resort and Proportionality.*

Once a state has fulfilled the aforementioned criteria, it can resort to war that is considered to be just in the sense of this theory. The war itself however must be in compliance with rules of the actual conduct of military operation. Only by meeting both *jus ad bellum* and *jus in bello* can the whole enterprise, i.e the preparation and the actual combat operation, be considered just. The *jus in bello* include: Distinction between combatants and non-combatants and fair treatment of the injured or surrendered, Proportionality of military gains and caused civilian harm, Military necessity of an attack

that is always intended to help defeat the enemy, Fair treatment of prisoners of war and the prohibition of torture and abuse committed on them. The last condition among jus in bello is called *Malum In Se* (evil in itself). This rule prohibits the use of practises considered evil such as rape, forced desertion or use uncontrollable weapons (nuclear etc.)

#### **4. Theoretical operationalization**

The actual analysis is going to be consisting of separate case studies of the circumstances that accompanied drone strikes in aforementioned countries, i.e. Afghanistan, Pakistan, Yemen and Somalia. The first phase of the research will analyse the general grounds based on the premises of Just War Theory. In practice this phase of the research will be concerned with bilateral relations that existed between the United States of America and the particular country on whose territory the drone strikes were conducted. The framework of Just War theory will be applied firstly to the general thought of using drones on a third party`s territory. This logic presumes that the reasoning of the research will be based on more general background in order to assess legitimacy of the drone activity in the first place. Each of the cases is going to be analysed within the conditions of jus ad bellum and jus in bello as well.

The second research phase will focus on concrete drone strikes carried out against so called high value targets on the territory of already listed countries. Here the research will strive to support the first phase of reasoning with analysing the circumstances under which these high values targets were killed, the third party country informed of the attack and the compliance of the individual cases with the rules of the theoretical background of the thesis. Admittedly the second research phase might be limited as far as official data and its availability. However it is for this reason that the thesis will research the general idea of conducting drone strikes on foreign territory and then look for particular cases that will support the analysis in order to allow the thesis to thoroughly apply the Just War Theory on each country`s case.

The research will divide each case into two subcategories (if necessary), which will copy the logic of jus ad bellum and jus in bello. The subcategories will then be further divided according to each individual rule included within the respective subcategories. Each individual case study will then be evaluated as far as compliance with a just war theory goes, i.e. compliance with individual rules will be thoroughly examined and assessed.

## **5. Research hypothesis**

The hypothesis about the outcome of the research is that substantial conflicts between the Just War Theory framework and the actual behaviour of the United States of America will occur along the examination of general grounds for conducting drone strikes as well as in the aforementioned detail cases. The thesis presumes, at this preliminary stage, that the answer, on both the primary and secondary research question, will be negative as the concept of Just War does not appear to bear signs of compliance with the actual reality of using drones as a means of counterterrorism.

## **6. Presumed thesis structure**

### **1. Introduction**

### **2. Definition of topic**

### **3. Methodological framework**

3.1. Just War Theory

3.2. Operationalization

3.3. Logic of research

### **4. Pakistan case analysis**

4.1. Drone strikes in Pakistan

4.2. General background and Just War Theory

4.3. HVT targeting in Pakistan

### **5. Yemen case analysis**

5.1. Drone strikes in Yemen

5.2. General background and Just War

5.3. HVT targeting in Yemen

### **6. Somalia case analysis**

6.1. Drone strikes in Somalia

6.2. General background and Just War

6.3. HVT targeting in Somalia

### **7. Afghanistan case analysis**

7.1. Drone strikes in Afghanistan

7.2. General background and Just War

### 7.3.HVT targeting in Afghanistan

## 8. Analysis assessment

## 9. Conclusion

## 10. Sources

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<https://www.thebureauinvestigates.com/category/projects/drones/drones-graphs/>

<http://www.defense.gov/>

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and alike.

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# INTRODUCTION

It is often argued that the introduction of a technological military breakthrough changes the face of the battlefield. The introduction of gun powder, automatic weapons, poisonous gases and nuclear weapon all changed the way war has been waged ever since. With every such breakthrough comes the puzzle of a new moral dimension that is brought upon the entire military practice. These puzzles were often solved by altering the way war was viewed of by shifting the limits of the acceptable. Whether this alternation took place through adoption of particular piece of international law, or the key actors accepted that certain behavior was in place, as they did during the Cold War era. The fight against global terrorism has fully unveiled the character of asymmetric warfare and the role of a non-state actors as new players on the battlefield. It was not for the first time that conventional military forces encountered militants with no official recognition. However, the intensity with which these actors have been fought since September 11<sup>th</sup> 2001 has been unprecedented. Since the beginning of the campaign to capture or kill those responsible and connected to the 9/11 attacks, the practice of targeted killing has gained tremendous importance in this effort. The reason for such an increase in the popularity of this method dwells in the means that are being used to carry it out. The use of unmanned aerial vehicles, or drones, represents a brand new concept of counterterrorism efforts and high value targets elimination in general. A device that is operated from around the globe and armed with lethal weapons has become a mundane tool in the regions where deployment of military units would put them in danger.

Together with this technological innovation a series of question needs to be addressed. It is the question whether or not is the nature of drones automatically bringing evil to the battlefield. Whether or not is there a shift in the perception of the acceptable due to the fact that no pilot is present on board of the aircraft, and whether or not does the remote control routine sway the officials into being more indifferent to the rules of war. These questions are crucial in order to understand the very nature of drone strikes. It is not the technological dimension this thesis is concerned with, as fascinating as it is. The real question at stake is what paradigms have or have not been changed due to this phenomenon. Such paradigms are represented by one of the oldest theoretical approaches to the ethics of war and its conduct. It is Just War Theory that has been evolving for centuries and that has served as the basic principle on which the modern rules of warfare

are based. The roots of this theory run back to the times of ancient Greece. Since then, this theory has reflected on the changes and experiences in the field of warfare ethics.

The use of remotely operated devices to eliminate targets is a brand new concept and its ethical boundaries have been researched by leading scholars in the field of warfare ethics. It is the alienation of the triggerman and his target that is often examined as a complicated psychological feature of drone strikes. The fact that, to a certain extent, the process of target elimination resembles a computer simulation is an unprecedented dimension of warfare and counterterrorism. The factors of fear, hesitation and compassion suddenly give way to a computer screen and a joystick. Undoubtedly safer and less expensive practice of search and destroy tactics. However, the absence of human contact with the target and the simplicity of using a drone to eliminate practically any target pose a risk of abuse and temptation of immediate resorting to the easiest solution.

The efforts of the United States of America and its allies to bring down terrorist networks responsible for the largest terrorist attack in history represent the essential example of drone strikes practice. This thesis will focus on the broader framework that grants drone strikes their position within the counterterrorism tactics as well as on concrete cases. Such a research will offer an assessment of drone strikes through the rules of Just War Theory and will unveil the most controversial aspects of this kind of targeted killing. It will also characterize the relationship between the overall effort to fight terrorism and the tools, in this case drones, used to do so. The power to kill any person with a mere push of a button with non-existent risks to military assets requires an inquiry into its character and morality. The Just War Theory represents the most suitable framework for this task.

# 1. Theoretical Background

## 1.1 *Topic Significance*

The reasoning behind the choice of this particular topic is rooted in the fact that although the use of UAVs (unmanned aerial vehicles) and targeted killing as such has been thoroughly examined since this phenomenon has appeared, there have been little attention paid to the moral implications of this particular means of warfare (Holmes, M. B., 2011, p. 26). Although there are other theoretical frameworks to be applied when dealing with justification of particular means of warfare, Just War Theory represents the most comprehensive one. It has been evolving since the time of Thucydides (5<sup>th</sup> century B.C.) (Taslaman, F., 2014, p. 3) , and this evolution will be discussed in more detail in following sections. When assessing the justification of war efforts, as well as the premises for resorting to war in the first place, this theory stands for a reliable set of rules.

The importance of this topic dwells precisely in the aforementioned significance of a theory that has been forming the rules of warfare for centuries and that gave grounds to a contemporary acknowledged set of laws applicable to waging wars even in 21<sup>st</sup> century. It can be argued that there is enough grounds on which an act of violence can be assessed either as just or unjust when a conventional war between states occurs. The troublesome dimension of just war is determined by the emergence of asymmetric warfare and the involvement of non-state actors in any conflict. This phenomenon raises the question of feasibility when trying to apply Just War Theory to situations where one or more sides of the conflicts are not officially led and by recognized states that are bound by particular rules of warfare.

The use of UAVs as means of counterterrorism is often defended by the narrative that this type of HVT elimination brings an unprecedented precision while minimizing collateral damage. Especially when compared to collateral damage that would have to be suffered if military units were to be deployed (Stanford Law School, NYU School of Law 2012, p. 5). However, this argument has been rendered false in the extensive study mentioned above. Such an approach, serving as the justification tool for the use of UAVs, is not sufficient and exhaustive enough for the purposes of this thesis and any other research trying to determine whether the use of drones can be legitimized and justified. It

is for this reason that this thesis overlooks the legal bases of this phenomenon, as the author recognizes lack of legal erudition of himself to conduct such an analysis, and focuses solely on moral and ethical dimensions of the problem.

## **1.2 Methodology**

This thesis will use and work with a qualitative research design. Given the nature of the researched topic, the concrete qualitative design used for the purposes of the research will be a case study. The reason for the choice of this design lies in the fact that the research will explore particular events occurring during a specified timeframe and at concrete locations (Creswell, 2014, p. 187). Given the fact that the research will apply a theory to particular cases in order to assess its plausibility, the nature of the case study will be that of instrumental nature (Berg, 2001, p. 229). Within this type of a case study, this thesis will aim to clarify the complexity of the topic at hand and offer a unique insight into the issue of drone strikes. The particular design of the case study approach will be equivalent to the Descriptive Case Study, which is concerned with the application of certain theoretical framework in order to describe and interpret particular actions and deeds (Berg, 2001, p. 230).

The theoretical framework of the research will be further examined in a special section. Just War Theory will serve as the cornerstone model applied to the empirical data through the research design. Given the fact that a pre-existing theory is being used to explore the characteristics of a particular phenomenon (case), this thesis will use a deductive approach (Rule, John, 2015, p. 5), which will test the plausibility of a traditional theory through the case of a very specific and controversial phenomenon of drone warfare. It is important to note, however, that neither the selection of the theoretical basis nor the selection of the cases themselves are coincidental and they arise from the significance of Just War Theory and from the relevance and the complexity of the drone warfare phenomenon. The research operationalization of the theoretical approach will be offered in the following section.

The data used for this research will be comprised of academic sources involving monographies, articles and on-the-ground research material. Another source of data serving the purposes of this research will be extrapolated from official statements of

relevant authorities e.g. CIA (Central Intelligence Agency), USG (United States Government), official authorities of the states affected by drone strikes, media reports etc. Lastly, there are numerous agencies and initiatives standing outside the realm of politics and academia. The findings of organizations such as the NAF (New American Foundation), CMC (Conflict Monitoring Center), GTD (Global Terrorism Database) and others will be respectfully taken into account as they represent a rare phenomenon of independent observers focusing on the issue of drone strikes through media coverage. At this point, the limitations of the research have to be brought up. Given the fact that this thesis does not fall under any classification regime, the data used for the empirical analysis are exclusively public or accessible through academic portals and libraries. This limitation is significant, however, the author has no means of obtaining non-public information. On the other side, the secondary sources are numerous and comprehensive for the analysis to offer contributory and relevant results.

Since the nature of qualitative research dwells upon the principles of interpretative assessment embedded within given theoretical and methodological pattern, the researcher`s position towards the topic is to be addressed. The author has no ties to any institution or person, whose research data and other works will be used as resources to this thesis. Additionally, the author has no connection to any of the countries that will be mentioned in the research, nor are any relations with people having personal experience with drone strikes existent on the researchers` part.

### **1.2.1 Operationalization**

As mentioned earlier, the research itself will be conducted through the rules of Just War Theory and the case study method. In order to give the research a clear and logical character, this section will determine categories applied to the collected data and the characteristics of these categories. The theoretical base of Just War Theory supplies the research with distinct rules, which are examined in detail in sections 1.6.1 and 1.6.2 respectively. However, given the nature of the theory and the fact that certain rules are not relevant to the research of drone strikes itself, it is crucial to list and specify the logic of the application of the theory. The operationalization of the theoretical framework will be done as stated in Table 1 (see Appendix no. 1). This table depicts the categories that

will be applied in the empirical section of the thesis. Rules that are marked with green are those of high importance and at the same time they are determinable and verifiable based on the research. Yellow cells represent rules with a high level of interpretative approach. Nevertheless, these rules will be of secondary importance as they are interconnected with the other aspects of just war. Lastly, the rules marked in red color will not be included in the empirical research due to their high level of abstraction as well as nearly no verifiability.

The criteria assigned to each individual rule are devised by the author based on the Just War Theory principles as well as the contemporary challenges to conduct of military operations. In order to clearly define what the research will be looking for, these criteria are formulated in a concrete manner in order to reflect on real-scenario practices. From this point onward this thesis will use abbreviations listed in Appendix no. 1.

### **1.2.2 Research Logic**

Firstly, it is crucial to determine the time and the geographical scope of the research. Since this thesis focuses its attention to the use of drone strikes as a counterterrorism method, the relevant time period for the research of the use of UAVs as means of targeted killing will be marked by the first use of such means in a campaign against global terrorism. It is widely believed nowadays that the very first deployment of a UAV for the purpose of killing in the WOT (War on Terrorism) campaign occurred on October 7<sup>th</sup> 2001 in Afghanistan (Woods, 2015). As for the geographical scope, this thesis renders any geographical restraint obsolete, as long as the justification logic of the operation stems from counterterrorism efforts. As explained later on in this section, the research will focus on the WOT as such and on the issue of drone strikes separately. Thus the relevant time period for the examination of the WOT differs, although not significantly, from the one used in case of drone strikes themselves. In the case of the research section devoted to the WOT as such, the beginning of the relevant time period is marked by the events of 9/11 and subsequent reactions of US administration and other countries throughout the international community.

Using the aforementioned theoretical and methodological framework, the research will be organized into a logical structure aiming at assessing the justifiability of drone

strikes as a method of fighting terrorism. The research is to address two complicated sides of the topic. It is to distinguish the context within which drones are a mere tool of operation and the nature of drone strikes operations themselves as means of violence and war. At this point the research adheres to the position of Michael Walzer (2006, p. 21) who argues that just wars can be fought by unjust means and at the same time just means and practices are possible to be employed in a war that was started for unjust reasons. This argument stands behind the incorporation of *ius ad bellum* as well as *ius in bello* into the research. At the beginning of the empirical part of this thesis, the former group of just war rules is going to be applied to the contextual background within which drone strikes are used as a tool of force.

In order to present a contributive result and approach to the topic, there is one key aspect that constitutes the aforementioned background of the overall context that is to be addressed. It is the question whether the WOT can be rendered as a war in the sense that the rules of Just War Theory can be applied to it and its conduct. This thesis openly admits that the WOT indeed is not a declared war in a conventional and legislative sense, i.e. an officially and legally declared war against a state by a state, a war in which, regular armies engage one another and adhere to legal and ethical principles of symmetric and regular warfare. Just War Theory, as will be examined in detail further on, has evolved around the precondition that declaring and subsequent waging of war is an exclusive right of a state, with different forms of ruling in different time periods (Heinze, Steele, 2009, pp. 10–11). The first phase of the research will determine the plausibility and the method of applying Just War Theory to the WOT, which introduces the clash between formal state authorities and non-state actors. Based on preliminary research, this thesis presumes that the application of just war rules will be plausible and therefore applicable to *ius in bello* principles for targeted drone strikes.

It is crucial to assess the WOT as a whole while, using the operationalized criteria of *ius ad bellum* to determine the basic nature of the use of drones to hunt down and eliminate designated targets. Using the result of the WOT analysis, the research will determine whether targeted killing with UAVs represents a just tool set within an unjust scenario or, quite the opposite, whether drone strikes are an inherently unjustified method of conduct of war. Following the analysis of the WOT as a war, the latter question will be answered by applying the criteria of *ius in bello*. The significance of this distinction between the context and the method itself lies in the desire to control, as effectively as

possible, the misinterpretation of the drone strikes issue. By researching the two aforementioned questions separately a clear distinction will arise and, at the same time, the two categories will not interfere with one another and will not create bias and presumptions about the former based on the characteristics of the latter and vice versa.

The research of the relation between the WOT and Just War Theory will be conducted through means and data that have already been listed earlier. However, the research itself will be, apart from scholarly work and expert publications, comprised of the analysis of the justification of the WOT by the initiator, in this case the USA (United States of America). It is crucial to research the methods and means of persuasion and justification of the belief that the WOT is in fact a global effort equivalent to war of any other nature. At this point the research will adhere to the principles of constructivism, namely to those of Alexander Wendt and his account for constructivist approach to international relationships (Wendt, 1999, pp. 1–7).

The research will strive to unfold and clarify the fundamental reasons for the WOT justification and the processes that possibly created a war equivalent effort out of a phenomenon that would otherwise remain outside of the definition of war. The presumed outcome of this part of the research is that the WOT is in fact a social construct defined by the rhetoric and reasoning of official authorities. And therefore as such it equals to a conventional war effort as the means and methods that arise from applying this construct are of high accordance with means and methods employed in war. With that said, is it appropriate to state that this thesis does not seek to conduct a discursive analysis of the evolution process of the WOT and its justification. Rather, the aim is to conduct a joint analysis of key official standpoints and justification principles and reflect upon them using the premises of Just War Theory itself, as well as the academic findings on the matter.

In this way the research will arrive at a conclusion of the relationship between the WOT and Just War Theory. It will then be able to continue further on, having a clearer insight into the background of drone strikes and the justness of the overall effort to which UAV targeted killing is a means.

The issue of drone strikes themselves will be addressed through case studies of concrete operations conducted in the name of a state, in this case the USA exclusively. Despite the issue of source limitations due to classified regime under which these



operations fall which will be further addressed later on, several cases of targeted killing operations have been well documented and researched. The first of these case studies will be concerned with the operation that led to the elimination of Anwar al-Awlaki in Yemen. The second case will be devoted to the 2006 US drone strike in Chenagai, Pakistan. The selection of these cases is based on the logic of difference in US administration as well as the method of identification and actual conduct of the operation. These issues will be examined in detail in the empirical part of this thesis. The number of cases is also limited by the amount of detailed information available on particular targeted killing operations.

### **1.3 Literature review**

The main reason for conducting an existing literature review lies in the need to identify and justify the contributing nature of this thesis. As the research has stated so far, the Just War Theory is a long-standing theoretical approach to war and thus many authors have been preoccupied with studying its nature during the past centuries. The aim of this section is to identify crucial, according to the viewpoint of the author of this thesis, works focused on linking the theory with the unprecedented phenomenon of drone warfare. The review itself is categorized according to the type of the particular work, be it a monography or an academic article, and according to the relevance to the topic of this thesis. It is important to note that the following works do not represent an exhaustive list of researched and used publications. However the further stated works are deemed to be of highest relevance and importance for the purpose of this thesis.

#### **1.3.1 Monographies**

The key obstacle regarding monographies on the subject is identified as one of lack of the practical application of Just War Theory rules to the use of drone strike cases. As the literature research dealt with identifying the aforementioned linkage, the relevance of certain works emerged. The landmark work that shapes the relationship between the just war criteria and modern practices of warfare is the monography written by Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (2006).

Walzer provides a deep insight into the applicability of Just War Theory to modern practices of war such as humanitarian intervention, guerilla warfare and terrorism. In this respect his work provides a strong support for the goal of this thesis. Walzer, however, does not research the issue of drone technology and its lethal dimension in a practical and concrete way.

Similarly to Walzer the publication edited by Stephen P. Lee (Lee 2007a), arrives, at various instances, at the problem of connecting the reasoning about just nature of war and the emergence of new tactics and asymmetry within the framework of warfare. Even though the collective effort does not address the very linkage between drone strikes and the rules of just war, it provides a substantial contribution to this thesis as it identifies challenges to Just War Theory, stemming from changes in technology and tactics.

The work that has exceptional value for this thesis, as it meets the logic that is applied to the relationship of just war and drone strikes by this research, is the publication bearing the name *Killing by Remote Control* (Strawser, 2013). The collective of authors thoroughly applies the principles of both *ius as bellum* and *ius in bello* to the phenomenon of drone technology as a means of lethal action against HVTs. It is in this work, where *ius ad bellum* are applied to the general setting within which drones are employed as a tactical tool. At the same time, the authors also strive to put the compliance of drone strikes with the *ius in bello* to test. Chapters of this book pay their attention to the RMA (Revolution in Military Affairs) and its significance for the theory, the overview of the situation in Pakistan since the beginning of drone strikes in this country and also the overall public perception of the problem. This monography represents a framework that this thesis pursues as well. However this research will attempt to add to the conclusions of the authors by examining concrete cases and their permissibility and accordance to the theory.

The significance of the aforementioned complied work by Strawser and the collective of authors is further strengthened by the work of Ann Rogers and John Hill (2014). Their work contributes substantially to the debate about the position of drone warfare within the just war framework. The authors introduce a detailed analysis of the controversies that drone strikes cause, especially to the logic of *ius in bello*. The value of this text dwells not only in the depth of the analysis but also in the particular questions and aspects researched. The authors address perhaps the most controversial practice connected to

drone warfare; the signature strikes and their compatibility with the discrimination rule. Complementary to the previous monography, the work of Rogers and Hill brings further detail to real-life aspects of the issue and works with official discourse to underline key problems regarding the matter.

Generally, the effort of the literature research identified the key publications that had been listed above. Additional works on ethics in modern warfare environment have also been found, researched and incorporated in the resources used for this thesis. Works related to the topic, but not addressing it in the particular way needed, are represented for instance by the work of Michael L. Gross, *Moral Dilemmas of Modern War* (2010). The feature represented by this title is the fact that the author takes the premises of Just War Theory into account, but doesn't center his research on it. Gross pays attention to the position of combatants and non-combatants and the overall challenges that emerge to these two groups from various practices of modern war.

### **1.3.2 Academic articles and other studies**

In researching the field of academic articles, theses, reports and case studies, the logic of identifying the crucial and landmark works for the purposes of this thesis aligned with the one used in the case of monographies. The filtering criteria for discovering relevant works were focused on the ethics of warfare, Just War Theory and the connection of these aspects to counterterrorism, RMA and drone strikes as such. Following these settings, the research found a limited, yet contributing set of titles relevant for this thesis's topic.

As far as relevance and contribution, the article by Daniel Brunstetler and Megan Braun (Brunstetler, Braun, 2011) points out the crucial aspects of the use of drones for targeted killing and the just war tradition, particularly the rule of discrimination and proportionality within the *ius in bello* framework, but also *ius ad bellum* as well. The authors point out the change in the understanding of what can be rendered just under the influence of UAV technology. In particular, the fundamental change of the agent of war and the fact that it is often untraceable under whose authority the strike was conducted. This brings the authors to a detailed analysis of Just War Theory rules and the emergence of drones. Brunstetler and Braun disagree with the premise that drones represent just

another new type of weaponry and argue that they represent an undeniable shift when it comes to the assessment of the just and acceptable. In line with the reasoning of this thesis, this particular work represents a significant support in the effort to clarify the overall position of drones within the theater of modern warfare.

However, the academic debate on whether or not the drone strikes bring a major shift into the just premise and conduct of war has two logical sides of viewpoints. The opposite viewpoint to the one of the lastly mentioned article, is put forth by Diederik W. Kolff (2003). Kolff argues that it is of little importance which type of weapon is deployed on the battlefield. His argument is simple in its nature and that is the claim that drones represent a tool and a tool only and factors that are crucial to determine the justifiability of an act are in no way connected to drone technology. However, Kolff's commentary does not provide a thorough analysis of the problem as it omits to address individual rules of just war in a detailed manner. Moreover, there are various psychological impacts of the drone use, for instance the possible inclination to move up the threshold for the use of violence given the fact that military personnel are not put in danger. The author does not take such problems into consideration.

The problem at which the research of academic articles arrives is similar to the one that had been identified in the monographies analysis. The works identified seldom connect the drone strikes with the rules of Just War Theory. Articles such as the ones by Nicolas J.S. Davies (2009), Shakeel Ahmad (2013), Ian Holliday (2003) and alike identify fragments of the issue that is of concern to this thesis. These authors, as well as other researchers whose works were examined, turn their attention to the overall challenges that modern warfare poses to Just War Theory, or on the other hand they conduct a research of drone strike practices on the background of international law, effectivity or strategy. Few authors set the use of drones as counterterrorism tools and tools of warfare in general into the firm frame of Just War Theory to determine its applicability and the dynamic that drones bring to the understanding of the theory. Nevertheless, the contribution of these works to this research is still invaluable as it offers a meaningful insight into individual aspects of the overall matter.

Apart from journal articles, the importance of other studies and reports is to be recognized. Such importance is brought by the extensive joint study by the Stanford and New York Universities (Stanford Law School, NYU School of Law, 2012). Although this

study does not incorporate the principles of Just War Theory, it represents the most detailed insight into the reality of drone strikes in Pakistan. It also serves as an important dataset for the effort to reflect on this means of targeted killing from the perspective of Just War Theory.

### **1.3.3 Assessment of existing literature**

The previous two sections aimed at determining the position of this thesis among the existing literature in order to identify its contributing potential. The review found that works that connect the principles of Just War Theory with the unprecedented role of drones indeed exist and they do so thoroughly. However, as the review found out, the number of these works is limited and they rarely attempt to address real drone operations. Nevertheless, this thesis recognizes the limitations and complexity of such attempts, as was already mentioned earlier. Additionally, very few sources address the question of the relationship of drones as a tool of conduct and the overall setting of the WOT to determine whether drone strikes represent a just method in an unjust war or vice versa.

The contributing potential of this work then, based on what was mentioned above, is in the attempt of addressing the parts of the topic that are missing or are merely touched in the existing literature.

## 1.4 Research questions and hypotheses

Based on what has been stated until this point and in compliance with the aforementioned research design, this thesis formulates the following main research question. *“Is the use of drone strikes, conducted by the United States of America as a part of the war on terrorism, justifiable by the criteria of Just War Theory?”*

Additionally, there is a secondary research question to be formulated in order to determine the very nature of drone technology and its position within the theatre of war. Stemming from logic that was put forward, the secondary research question reads as follows. *“Are drone strikes a just means in an unjust war or an unjust means of just war effort?”*

The formulation of the main and secondary research questions is rooted in the premise that the sole determination of the justifiability of drone strikes is not sufficient for evaluating the true position of drones within the environment of modern warfare methods. This reasoning is in line with the research hypotheses that are formulated along with the two aforementioned questions.

Regarding the main research question, the hypothesis is that *US drone strikes that have been carried out within the war on terrorism efforts are likely to be found unjustified by the preconditions set forth by Just War Theory*. The reason for this presumption, based on the preliminary research of available resources, stems mainly from problems with the IB1 and IB2. Statistical data about the proportionality of inflicted casualties, which will be examined in further detail in the empirical part, suggest a conflict between on the ground situation and the conditions set for rendering the IB1 fulfilled. Similar issues seem to arise as far as the IB2 is concerned. The presence of the so called signature strikes is presumed to be in direct conflict with the very nature of this rule. However further research will determine the plausibility of designating these rules as fulfilled or unfulfilled when confronted with the research data.

As far as the secondary research question is concerned, its importance dwells in the possibility to determine the very nature of drones. By trying to determine whether this technology leaves a stain on the overall picture of the WOT or whether it is the other way around, this thesis will attempt to bring a better understanding of the technology as a means that in itself is independent on an ethical dimension. This reasoning represents the

basis for the second research hypothesis which presumes that: *Drones as means of warfare are unlikely to be found unjustified by Just War Theory. Although bringing an unprecedented innovation to the battlefield, their nature is not likely to be found unjust in itself.*

The aforementioned research questions as well as given hypotheses are formulated based on the presented research logic and methodology as well as the research of Just War Theory that is offered further on. The author of this thesis proclaims that neither the research questions nor hypotheses formulated in this section were influenced by any personal stance or inclination of the author. They merely represent a logical results of the applied research design.

## **1.5 The Evolution of Just War Theory**

### **1.5.1 St. Augustin and St. Thomas Aquinas**

The theoretical framework of this thesis will be constituted by the Just War Theory. This theory has been the contextual frame of rules of war since its concrete postulation by St. Augustine. It is crucial to point out that St. Augustine was not the pioneer of this theoretical approach as such and other philosophers (Plato, Socrates, Cicero as well as the ancient Egyptians and Hindus) before his time had discussed the ethical and moral questions connected to the premises of justified war and the rightful conduct in war itself.

Saint Augustin however is the key thinker involved, albeit not directly, in the development of a comprehensive and elaborate version of Just War Theory containing specific rules of just war divided into categories of *Jus ad bellum* (rules for justification of war) and *Jus in bello* (rules of conduct of war). It is important to state however that St. Augustine did not postulate Just War Theory as an independent concept<sup>1</sup>. In other words, nowhere in his works can one find a phrase “Just War Theory” as it is understood today. Nevertheless the rules of just war are up till this day traced back to this thinker more often than not (Mattox, 2006, p. 4).

As to the reasoning used by St. Augustine, he recognized the necessity of war in cases of amending great evil. Nevertheless this was the reason for him to research a set of rules that have to be honored in order for the decision to go to war to be identified as just and right.

Another crucial philosopher for the postulation of Just War Theory is St. Thomas Aquinas. In his greatest work *Summa Theologica*, he laid out the key principles for war to be waged justly. In the *Secunda Secundae Partis* (Second Part of the Second Part) he answers the question of just war in a detailed and thorough manner, building upon Augustine’s presumptions.

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<sup>1</sup> It is in dispute whether St. Augustine actually approached rules of war systematically and intentionally to reveal the underlying premises for any war to be called just. The example of this ongoing debate is represented by the stances of Lynn H. Miller (Miller, L. 1964) and Roland H. Bainton (Bainton, R. 1960). Whereas Miller argues that St. Augustine did not seek to formulate legal rules for regulating war, Bainton recognized Augustine’s underlying assumptions and argues that St. Augustine formulated a code of war.



For St. Thomas war has to be commanded by a sovereign authority. In his reasoning there is no place for a private individual in the process of war declaration in order to prevent personal interests leading to violence. For St. Thomas there is no other authority allowed to declare and wage war but the official and superior, and by that he means the supreme authority of the state(Aquinas, 2006, p. Q:40).

Furthermore, war as such has to rest on a just cause as its triggering mechanism, in other words, war is unjust without a cause that is just. At his point Aquinas borrows from St. Augustine when he takes upon his definition of what is meant by just cause. Just cause is then understood as the right to seize what had been seized unjustly or punishing a nation if it fails to make amends for any wrongs inflicted by its subjects (Aquinas, 2006, p. Q:40).

The third rule of just war in Summa Theologica is described as having a rightful intention for engaging in war efforts. Being in compliance with the opinion of St. Augustin again, Aquinas states that even when war is declared by a sovereign and legitimate authority and for a just cause, it can be waged out of unjust intentions and thus such war is rendered unjust. Both Aquinas and St. Augustin understand the rightful intention as the desire to spread and uplift good or punish evil-doers (Aquinas, 2006, p. Q:40).

The following three principles are the core of the *ius ad bellum* premises of Just War Theory and stand at the dawn of rules of war as the basic principles of ethics of war. St. Augustine and St. Thomas Aquinas laid the cornerstone of war ethics by agreeing on these principles and allowing for following thinkers to develop them further.

### **1.5.2 The School of Salamanca**

The School of Salamanca represented a significant contribution to the formulation of Just War Theory and particular rules of legitimacy and justifiability of the declaration of war as well as the very conduct during a conflict.

The most relevant thinker within this school in regard to just war and its principles was Diego de Covarrubias. Building upon the principles of *ius genitium*, which was derived by from the Roman law concept by the School of Salamanca, he described a set

of natural principles and rules stemming from natural reason and defining the basic principles of international conduct (Alves, 2010, p. 59). In this respect the scholars of Salamanca define two basic categories of *ius genitium*. The first of these categories defines *ius genitium* as a set of rules applicable to domestic law of states that was, at that time, common to most states. Even though these principles are not directly connected to the theory of just war, as it describes common laws of international interactions, they constitute a defining concept for the Just War Theory from the Salamanca perspective.

In his time Covarrubias stood between the pacifist and the Machiavellian notion of Just War Theory. The key contribution of his perspective dwells in the approach to the theory being connected to just international order. Such order is inseparable from the principles of *ius genitium* and vice versa (Alves, 2010, p. 61). From this particular perspective, the just cause for waging war has to involve injury (or potential injury) emerging from the violation of *ius genitium*. At this point it is possible to distinguish and identify the shift from the approaches of St. Augustin and St. Thomas Aquinas, as Covarrubias strives to define Just War Theory as a comprehensive and interconnected concept, rooted in the principles of law.

Eventually, Covarrubias puts forward three basic categories of war. Firstly he defines defensive war (*bellum defensium*). This type of war represents a clearly visible link between Covarrubias and the reasoning of Augustin and Aquinas as it states that it is always just for a state to take up arms against an aggressor in order to recover illegitimately and violently taken property. The second category of war distinguished by this Salamanca thinker is *bellum vindicatum* i.e. war that aims at avenging a suffered wrongdoings. The essential logic behind *bellum vindicatum* is the belief that states are the highest legitimate authorities and therefore are entitled to vindicate such wrongdoings as a sovereign authority. Finally the last basic type of war is one that is closely tight to the second category as it concerns the punishment of the wrongdoers through punitive war (*bellum punitivum*) (Alves, 2010, pp. 61–62)

This typology is of great importance for the development of Just War Theory and consequently, as this theory is being used as the main concept, for this thesis. The crucial contribution of the Salamanca School is the widening of the theory and establishing of a clear link of Just War Theory to the principles of international law. It is in the period of the Salamanca School when the theory becomes conceptualized and applied to a state as

a decisive actor. The concept of just cause in the Salamanca teachings adheres to the two aforementioned thinkers and deepens the logic behind this crucial precondition of just war. The key principle of defining a just cause is the absence of any other peaceful solution to the dispute in question. This particular rule was undeniably shaped by the Salamanca thinkers and their experience with wars at their time. However, this principle survives up until today and is inherent to the basic norms of modern warfare principles.

In respect to religious bases the Salamanca School thinkers introduced a noticeable shift towards partial secularization of the theory as such. If war is to be declared based on a just cause it cannot aim at resolving religious differences between states. This principle however applied only to Christian states as pagans were harshly condemned. Although this thesis does not deal with religious preconditions of just war stemming from Just War Theory, it is important to note the aforementioned relationship of the Salamanca School to religious bases of just causes for war.

Except for religious differences between states, a just cause was not to be constituted by the desire to punish idolatry, with the exemption of cases of grave suffering of the innocent (Alves, 2010, p. 62). This logic, although still connected to religious bases of states, resembles the logic of humanitarian intervention principles and the concept of human security as a key principle of the justification of the use of armed force.

### **1.5.3 Hugo Grotius**

Probably the most influential thinker, at least for the postulation of the modern Just War Theory, was Hugo Grotius. The extensity of topics covered by Grotius is remarkable and war can be found amongst his topics of interest as well. In his rather unique work, *The Rights of War and Peace, Book I-III* (2005), Grotius sets the framework of just cause of war and also the righteous conduct of an armed conflict in an exhaustive manner. Rightly so he thought to be the father of the international law principles and as far as just war and war in general, he indeed researched a much broader spectrum of consequences and root principles than any of his predecessors had ever done regarding this matter.

As Grotius dealt with great many of just causes of war that are not relevant to this thesis, a number of these principles will therefore be omitted for the sake of structure and relevance to the topic. These omitted causes of war include matters related to newly

explored areas, arranged marriages, and matters related to the principles of monarchies of his time.

In his research of just cause Grotius took into consideration the very basics of the human nature. He borrowed from historical examples to distinguish between reasons and motives for waging a war. The former is identified as the claims that are usually openly assigned to war and officially admitted as the grounds for any action against the adversary (Grotius, Tuck, 2005, pp. 1096–1097). Grotius used this particular distinction of the two categories in order to argue that even if the reason for engaging in war might be considered just in its nature, the commanding authority may start to manifest their motives during the actual conduct of war and such motives can be rendered unjust. Grotius demonstrates this ambiguity of reason and motives in his idiosyncratic manner by using an example from ancient eras when he states that: “...*that the Phocians were deservedly destroyed, but that King Philip did very ill in so doing, because he put them to the Sword, not for Religion, as he pretended, but on account of enlarging his Dominions*”(Grotius, Tuck, 2005a, p. 1113).

Grotius is very pragmatic in his reasoning about just war. He puts reason in the center of his interest, even Christianity and the authority of the Church give way to reason and justice when resorting to war. With that said, reason is defined as the basic precondition of war and a war without it is no better than a simple act of robbery in Grotius’s eyes. Furthermore Grotius recognizes the problem of human cruelty and the fact that one often engages in war for the sake of danger and bloodshed as such. These desires, if used as a catalyst for starting a war, are deemed deeply unjust in Grotius’s mind (Grotius, Tuck, 2005a, p. 1099).

Following his extensive research of the system of natural and Roman law, Grotius finds that, in addition to the objective side of natural law, there is the existence of a subjective part related to the individual. The subjective meaning of law for Grotius is the moral quality of a person that allows one to do something lawfully (Straumann, 2006, p. 2). Furthermore, he elaborates that only in the case of absolute pureness of this moral quality can it be a part of a natural justice system. Such pure moral quality is labeled as “*facultas*”. This reasoning is extremely important for the construction of the categories of just causes of war, because Grotius extrapolated these categories based on this logic. The basic rights stemming from “*facultas*” are freedom i.e. power over oneself, the right to

ownership of private property, the right to contractually stipulated debt and the right to punish (Straumann, 2006, p. 3).

The first three fundamental rights are not of an original nature and Grotius does not claim them to be his discovery. However, the right to punish is a concept with which Grotius himself struggled in the sense of appropriateness as far as listing of basic rights was concerned. The right to punish rises from the violation of the former three basic rights and is not, according to Grotius, exclusive to the power of a sovereign state for it is inherent to every person as it had been exercised long before the institution of state had appeared. The right to punish belongs to an individual and state inherited such power from the community of individuals (Grotius, Tuck, 2005, pp. 970–974). Therefore in the name of all of the aforementioned natural rights, including the right to punish, a just war can be waged.

When determining Grotius’s significance for the postulation of just war principles, it is crucial to point out that he connects the ancient principles of Roman law, the principles of natural law and the practice of his time. He then sets these doctrines into a comprehensive framework that, in an overwhelming fashion, determines the reasons for just undertaking of wars and the morality and ethics of the actions taken during armed conflicts.

#### **1.5.4 Michael Walzer**

The evolution of the Just War Theory connects contemporary authors with the very founders of the just war tradition as well as with pioneers of the theory such as Grotius. The nature of this connection is best seen when assessing the work of Professor Michael Walzer. In his signature work “*Just and Unjust Wars: A Moral Argument with Historical Illustrations*” (2006), Walzer offers a modern assessment of the justness of wars and acts of violence. He presents an account that he himself calls “*practical morality*”(Walzer, 2006, p. xxiii). This approach presents actual historical examples of war and assesses them in the light of the theory. Naturally, given the time in which the work was published, the range of the cases and challenges to the theory entails phenomena of grave importance to this thesis.

Walzer is a strong advocate of moral dimension of war. His approach to the Just War Theory is, in certain aspects, analogical to the one used by Grotius and described in the previous section. Walzer operates with the term “*crime of war*”(Walzer, 2006, p. 21) which connects the logic of war and its conduct to the domestic law environment. In other words Walzer makes an analogy and a firm connection between the principles of criminal law within a state and the international norms. The crime that is committed by a state when war is unjust is for Walzer the crime of aggression. In this respect Walzer references to aggression to be an equivalent of an armed robbery or even murder (Walzer, 2006, p. 51). The general logic of determining of when a war is declared and fought justly is consistent with the very principles of individual violence and coercion.

For Walzer the *ius ad bellum* and *ius in bello* do not necessarily always occur fulfilled together. In other words wars that were started for a set of just reasons and based on just principles can be fought unjustly and vice versa. This is one of the key contributions of Michael Walzers` perspective to this thesis. For him the deeds of a soldier in war are his to be held accountable for. However the war as such is not of his making.

Walzer defines aggression, or the theory of aggression, as composed of elementary pillars that are devised from Just War Theory principles. The basic premise is the existence of an international society comprised of independent actors, i.e. states. These actors are inevitably operating within a regime of international law and such a system defines the basic rights of its members. For Michael Walzer, both the rights of territorial integrity and political sovereignty represent the cornerstone necessities. In light of the aforementioned, any act of war or violence that aims against these two fundamental rights has to be designated as a criminal act. Once aggression is committed, war can be justified in two instances. The first instance is self-defense and the second a war aimed at law enforcement by a victim state. Eventually, only the act of aggression it recognized by Walzer to be significant enough, that a just war can be waged to counter it (Walzer, 2006, pp. 58–62).

As stated above, only the defense of rights, particularly independence and political sovereignty, represents a justifiable reason for waging a war. Walzer rules out any other types of war such as preventive, commercial, wars of conquest and expansion, religious crusades and interventions.(Walzer, 2006, p. 72). However, Walzer does permit certain level of discussion in the question of the character of the threat that may be countered by

war. Such a threat is needed to pose an imminent danger to the actor. In other words a state has to be certain of the fact that it is going to be attacked by that concrete threat. This is the most contributive statement Walzer offers in respect to the phenomenon of targeted killing by drones. The actual imminence of a particular threat and the need and right for its elimination represents a controversial feature of the drone campaign. This particular conundrum will be examined in the empirical part of this thesis.

Being a contemporary thinker Walzer turns his attention to features of Just War Theory connected to his time, notwithstanding drone strikes. He formulates his position towards terrorism very clearly. Since terrorism is based on the idea of indiscriminate targeting and killing, Walzer condemns the practice of terrorism completely. He explains his position by the lack of any moral code or obligation that would create a set of rules in which terrorists would operate. Walzer does not sympathize with assassination either, but the fact that a particular target is picked still makes assassination more acceptable.

Walzer stands by the original principles of the Just War Theory. However he stresses the importance of particular rules. The contribution to this thesis is represented by his position towards the issue of reprisals. The idea of revenge, or a reprisal, is completely condemned by Walzer in all cases where potentially innocent people might suffer (Walzer 2006, pp. 207–215). Since drone strike are a part of a campaign that was started with the task to punish and bring to justice those responsible for 9/11 attacks, Walzer brings up an important aspect of the theory. The issue of reprisals will be closely examined in the real life cases.

Professor Walzer represents Just War Theory thinkers who connect the most contemporary challenges of warfare to the roots and evolution of Just War Theory. He reflects on the topic on drones, although not exclusively, and his reasoning is in line with the goal of this thesis. The work of Michael Walzer represent an evidence of Just War Theory's applicability to modern features of warfare and their moral dimension.

## **1.6 *The rules of Just War***

The aim of the previous section was to analyze and track the reasoning of, according to the author's opinion, the key thinkers in Just War Theory evolution. Following this reasoning further, a set of rules that are to be applied to any war in order to render it just,

can be extrapolated. Although these rules, commonly referred to as “*ius ad bellum*”, “*ius in bello*” and most recently “*ius post bellum*”, are widely known, it is essential to define their nature as they will constitute the operational framework of the empirical part of this thesis and determine the possibility of the drone strikes justification.

Thus far the focus of the Just War Theory evolution rested upon the outline of *ius ad bellum* principles. However the aforementioned thinkers, Grotius and Walzer do so in an elaborate manner, outline the rules of conduct in war, “*ius in bello*”, as well. At this point it is to be acknowledged that the third set of rules, “*ius post bellum*”, concerned with the actions following the resolution of war, will not be of concern to this thesis, as these rules are not a relevant framework for the drone strikes analysis.

### **1.6.1 Ius ad Bellum**

Based on what was already mentioned, it is clear to identify the key principles upon which a just war must rest. St. Augustine, St. Thomas Aquinas and Hugo Grotius all stated that the basic *ius ad bellum* principles are: a just cause of war, the right intention and the fact that war is declared by a sovereign authority.

To elaborate on the third basic rule, the legitimate sovereign authority is indeed a formally established leader or a leading body placed into power by the population and, at the same time, such authority is internationally recognized and therefore possesses a right to declare war (Evans, 2005, p. 13). The definition of this authority was, during the time of the aforementioned philosophers, connected to the significance of the role of Christianity. In spite of shown tendencies to secularize Just War Theory, the legitimate authority was, especially in times of St. Augustine and Aquinas, closely tied with the will of God as the monarchs were perceived as God`s representatives on Earth. For the purposes of this thesis, in line with the modern understanding of this theory, such an authority is represented by a sovereign state with no regards to religious principles.

The evolution of the theory and further studies of the works of St. Augustine and Aquinas up until today formulated another four criteria that joined the list of *ius ad bellum* principles and they follow the logic of the two founders of these principles as a whole.



The first of these rules is the obligation of the authority considering war declaration to reasonably assess the hope for success. It is important to note at this point that this rule is perhaps the most complicated one among the *ius ad bellum* principles. In its nature, the reasonable hope for success stands for the assessment of economic and human resources and the determination whether or not these resources would be wasted, should the state go to war. In other words, if the conflict is clear to be hopeless and unwinnable, other means should be employed in order to prevent wasting these resources. These means can involve civil disobedience or coalition making to balance the odds (Moseley, A., 2003). However, in its consequences, any form of resistance against a much stronger enemy would be deemed unjust. Yet, throughout history, mankind has seen many examples of overcoming this misbalance and triumphs of the weaker sides. As this particular rule poses a significant challenge, due to the fact that authorities tasked with reasonable success assessment are operating in a classified regime, this rule will be applied based solely on an interpretative approach that will follow the logic of the overall situation examined.

The second additional criterion of the *ius ad bellum* framework is represented by the logic of proportionality. This principle calls upon the authority that has the right to engage in war to analyze the desired outcome of the war efforts. The means employed in order to achieve such an end then have to be proportionate. In plainer words, the legitimate authority has to employ only the minimal force necessary to achieve its objective (Butler, 2012, p. 74).

This rule is best explained in reality by the example of nuclear arms possession. Once a nuclear state considers the possibility of war, it could automatically resort to its most powerful weapon in order to achieve a quick and effective victory. This particular rule aims at restraining such reasoning. The very same logic however applies to the decision to deploy the entire conventional arsenal in order to e.g. suppress and eliminate insurgencies and civil wars. The decisive authority has to assess the power of its arsenal and carve out a minimal necessary portion of it that would successfully wage war with the objective to win and at the same time, to restore peace.

Another rule that is to be examined is the obligation to resort to war only after all other options available had been exhausted. War has to be the last resort to which the legitimate authority turns once all other options have failed or have proven to be

impossible to employ (Moseley, A. 2003). The reasoning behind this rule emerges from the fear that was best explained by the work of Carl von Clausewitz. In his masterpiece “*On War*” (2006), Clausewitz operates with the term “*fog of war*”, when he states that: “*War is the realm of uncertainty; three quarters of the factors on which action in war is based are wrapped in a fog of greater or lesser uncertainty*”(Clausewitz, 2006, p. 46). Therefore the rule of the last resort is strongly accented because there is a great risk in a war in which the goals and motives are going to be reshaped and the “fog of war” alters the initial reasoning and desires for which war had been entered into in the first place. For these reasons, war should always be the last option for any legitimate authority.

Lastly, the most recent rule embedded in the *ius ad bellum* list of principles is the logic of comparative justice. The basic presumption tied to this principle is that the sense of justness in war is always strongly felt at both sides of the struggle. Comparative justice tries to determine whether this justness is sufficient enough to overcome the basic presumption that war should not be fought (Johnson, 1981, p. 178). As this rule leaves no maneuvering space for empirical research, due to the fact that the feeling of justness is not an objectively determinable entity, this rule will be omitted in the empirical part of this thesis.

In order to summarize *ius ad bellum* in an orderly fashion it is appropriate at this point to sum up the list of these rules as follows:

1. Just Cause (reaction to particular wrongdoing)
2. Right Intention (achieving peace eventually)
3. Sovereign and legitimate authority (legitimate state representation)
4. Reasonable hope for success (interpretative due to classified regimes)
5. Proportionality (adequate use of arsenal, benefits proportional to harm)
6. War as the last resort option
7. Comparative justice (omitted)

### **1.6.2 Ius in Bello**

Based on what has been stated in the previous section, the evolution of the *ius ad bellum* might appear as the dominant part of the Just War Theory evolution. Yet, this is not correct chiefly due to the lack of distinction between the category of *ius ad bellum*

and *ius in bello* by the key thinkers who stood at the crucial phases of Just War Theory evolution. This phenomenon is perhaps most noticeable in the case of Thomas Aquinas. Although Aquinas is considered to be the center figure of the theory he makes no clear distinction between the category of rules required for entering a war and the rules applied to the very conduct of combat operations (Hittinger, J., 2000).

*Ius in bello* logically stem from the works of the Just War Theory creators and their overall reasoning about the rules of conduct after a war has broken out. This process is for instance demonstrated by particular overlaps of *ius ad bellum* and *ius in bello* as in the case of the rule of proportionality. This particular rule is one of the preconditions for entering into a just war, as demonstrated in the previous section. At the same time however, the conduct of war itself falls within the rules of proportional use of one's arsenal as well. This phenomenon is well understandable due to the fact that Just War Theory evolved under differing circumstances, at different times and it was based on contributions of many thinkers.

However, there is still a possible distinction between the two proportionality rules when it comes to their true meaning. Whereas the proportionality within the *ius ad bellum* stresses the initial planning and the size of an arsenal that is to be deployed in respect to the objective, the proportionality of *ius in bello* is concerned with the rate of violence and destruction during the conflict (Moseley, A., 2003).

With that said, it is important to stress here that it is the *ius in bello* set of rules that most attention will be paid to. The reason for this is that the use of UAVs is a manifestation of particular conduct of war as already explained in the methodological part of the thesis. As mentioned already, one of the rules of *ius in bello* principles is the rule of proportionality. Another principle that emerged throughout the history of the theory is the obligation of discrimination during war operations. The rules of proportionality and discrimination between combatants and non-combatants are the two basic and possibly oldest principles of *ius in bello* (Lee, 2007b, p. 4).

The logic of the discrimination rule says that a party which engages in war operations is to distinguish and target only those who are considered to be a threat and bear signs of the enemy, i.e. uniforms and other official symbols. However the contemporary challenge to this rule is constituted by the phenomenon of non-state actors and groups that engage

in asymmetric warfare who do not follow the obligation of bearing clear identification symbols.

At this point the clarity of the theoretical background for the conduct of war becomes blurred by the fact that despite being called a theory, Just War Theory is more of a tradition of behavior than a theory in the sense of a unified framework (Childress, 1978, p. 427). It is due to this fact that the particular rules within the *ius in bello* category differ with individual scholars. It is possible, however, to identify crucial obligations that have endured throughout the evolution of the theory and that are, at the same time, of great importance to this thesis.

Apart from the rules of proportionality and discrimination, the obligation to follow and uphold all international laws on weapons prohibition is a logical output of the *ius in bello* evolution process (Orend, 2008). This particular rule is connected to the logic of proportionality as well as to the rule of *malum in se*, which will be examined later on. The development of binding rules of warfare has been shaped by particular treaties and conventions (Hague and Geneva Conventions) that are commonly known and that have set the rules and limits as far as the use of particular types of weapons is concerned.

Another rule of just war conduct that is to be mentioned is the set of conditions under which POWs are to be treated. This particular rule has been thoroughly codified by the Geneva Conventions and, apart from the prohibition of killing and physically abusing the prisoners, stresses a fair and non-demeaning treatment of POWs as they are no longer posing a threat to the military (Diplomatic Conference of Geneva of 1949 1949). Although this topic was taken up by Hugo Grotius in his time, the treatment codified in the Geneva Conventions mainly evolved on the background of 20<sup>th</sup> century war atrocities. It is worth mentioning that although Grotius talks about the treatment of POWs, he still acknowledges the right of the captor to enslave them (Grotius, Tuck, 2005b, pp. 1360–1373).

There are two more rules of just conduct of war that this thesis is concerned with. The first of the two is the prohibition of means classifiable as *malum in se* or *mala in se* (plural). It was already mentioned that this rule is connected to other *ius in bello* principles and it is indeed so.

*Malum in se* (evil in itself) stands for practices and means that are considered to be highly unethical and unjust and therefore prohibited for soldiers to use. Such deeds

include for instance acts of genocide, mass rape campaigns, ethnic cleansing and use of poison. Additionally militaries are not to commit treachery in the sense of masquerading their units as individuals possessing special rights during combat, e.g. International Red Cross workers (Orend, 2008).

Lastly, there is the issue of reprisals in war. Going back to Grotius`s work, the issue of reprisals is not just and permissible when it comes to taking a human life solely for the sake of reprisal (Grotius, Tuck, 2005b, pp. 1242–1243). His reasoning is coherent with the development of Just War Theory. At times when the principles of *ius in bello* are violated by one of the parties of the conflict, the other is not to violate these principles as well, seeking to make the enemy to follow them once more by doing so. This logic is highly dangerous as it leads to violence escalation and greater casualties. A reprisal is therefore an unjust behavior in war (Orend, 2008).

As in the previous section, the *ius in bello* principles are listed for the purpose of clarity.

1. Proportionality (violence and destruction inflicted)
2. Discrimination (combatants and non-combatants, non-state actors)
3. International law (treaties and conventions)
4. POWs treatment (dignified, non-lethal)
5. Malum in se (thing “*evil in themselves*”)
6. Reprisals

## **2. War on terrorism and Just War Theory**

### **2.1 Constructing the war on terrorism**

#### **2.1.1 Official authorities**

Throughout the history of warfare, many different wars, based on various narratives have been declared, fought and settled. War, in a traditional sense, has represented a military clash between two or more legal authorities, i.e. states, via their regular armies deployed on the battlefield. Apart from that, even traditionally conceived wars have been enriched by the phenomenon of non-state actors as additional parties to the conflict. Revolutionary guerilla forces have fought in wars alongside or against the established state and often, as was the case of Vietcong, played a crucial role in the result of a given conflict. The WOT, however, represents a major shift of the understanding of war effort in the modern military era. Since its beginning, it has stood for a conflict between a major military and political power and a network of highly mobile, interconnected and often decentralized units of non-state actors. It is this nature of one of the sides of the conflict that has brought complications into the very nature of the WOT. As this section will strive to argue, the WOT is perceived as comparable to wars in a traditional sense, i.e. declared by a state against another state.

Indeed the WOT in these exact words has not been declared by a responsible and empowered body that possesses constitutional rights to do so. In the case of the USA this right belongs to the United States Congress (*Constitution of the United States*, 1788). However, on September 18<sup>th</sup>, 2001, the United States Congress approved what was called Joint Resolution. This law authorized the President “...to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed or aided the terrorist attacks that occurred on September 11<sup>th</sup>, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons” (The United States Congress, 2001). The rhetoric of this law offers a full account of actions to the President of the United States against a scope of actors so broad that it is very complicated to determine where such a scope begins and where it ends. Although this particular law reacts on the events of 9/11, its wording de facto gave a blank check

to George W. Bush in his effort of punishing those responsible for the deadliest terrorist attack in history.

The term “war on/against terrorism/terror” was introduced to the American public for the first time in the 9/11 *Address to Nation*. While offering his condolences to those affected by the atrocities of the acts committed on 9/11, President Bush announced that “...*we stand together to win the war on terrorism*” (Bush, 2001a). Only several hours after the most destructive terrorist attack in the history of the country, the commander in chief of the US armed forces used the term war. It is not only the sole use of this term that requires attention, but the binding effect of the phrase as a whole. By his statement, George W. Bush offers a collective perception of the struggle. All citizens of the USA are to be united and thus stand together in a newly emerged kind of war.

When addressing the 107<sup>th</sup> Congress, President Bush held, now a well renowned speech in which he used the term “war on terror” for the very first time in front of the Congress. He emphasized that it is not only AQ (Al Qaeda) that is the target of the counterterrorism effort but all nations and groups that are in accordance with its cause and beliefs. Furthermore, Bush announced that the “war on terror” will not end with the dismantling of AQ units but “...*it will not end until every terrorist group of global reach has been found, stopped and defeated*”. (Bush, 2001b). Altogether, President Bush used the word war, affiliated by its contextual position to the WOT, 6 times and several times in different contextual meaning (Bush, 2001b). The reason for such a desire to persuade the Congress as well as the American public that indeed the USA are at war on a global scale is identified as twofold. Firstly, as the President, George W. Bush was in need of a congressional approval of the use of force overseas and he also might have strived for a demonstration of his own resolve regarding the effort of punishing those responsible for 9/11. The second reason, as this research assesses, is connected to the fact that although the President talked about war in his speech, he could not have been entirely certain of the real scope and the time frame of his endeavor. The reason for this assumption is the brief description of AQ itself in this particular speech. The President defined AQ as “...*a collection of loosely affiliated terrorist organizations*”(Bush, 2001b).

The term war is and has been used in many contexts and meanings to describe the severity embedded in various struggles endangering the security and welfare of given population. War on drugs, war on organized crime, war on famine and alike have been

introduced and constructed within politics. War on terrorism differs from these examples in one crucial aspect. This particular construction created an environment that turned out to be the willingness to accept acts of war carried out overseas by regular military forces without the presence of traditional understanding of what constitutes war. And indeed the desire to construct an actual war with all its attributes, seems dire when it comes to the efforts of the USA administration following the 9/11 attacks. The emphasis on portraying the upcoming events as necessary due to the fact that the USA is at war can be identified in nearly every public announcement made by President Bush shortly after the September 11<sup>th</sup>.

On September 12<sup>th</sup>, 2001, a press conference that took place in the White House hoped to reveal additional information on the particularities of the terrorist attacks in New York City and Washington D.C. Indeed the President announced that America faces a completely new kind of enemy with strong dedication, no regard for human life and unpredictable movement (Bush 2001c). Although the nature of the enemy was depicted, it was done so in a very general and inconcrete manner. With that said, however, this speech, similarly to other public announcements of that time, bore a particular emphasis. In the second sentence of the proclamation, President Bush stated that “*The deliberate and deadly attacks which were carried out yesterday against our country were more than acts of terror, they were acts of war*”(Bush 2001c). This claim made by President Bush is of crucial importance. Not only is it categorical but it leaves no space for another interpretation since an act of war is a clearly defined and distinct deed. Furthermore the term act of war is an established legal term, not only within the law of the USA. Title 18 of the United States Code provides with a definition of the term act of war when it lists three categories of actions possible to be deemed acts of war.

The first category entails acts resulting of declared war. The second category involves acts during an armed conflict between two nations, declared or undeclared. And finally the third and last category addresses focuses on an armed conflict between military forces of any origin (*Title 18*, p. §2331, 4).

The perpetrators of 9/11 attacks were identified as civilian individuals tied to an organization that was described by George W. Bush himself to be of loosely affiliated nature, as was already stated above. AQ is not associated with one particular state or a nation and no armed conflict of any kind had been waged between its military divisions



and US military forces before the commercial airliners hijacking occurred. Even though AQ had been associated with attacks against US civilian and military personnel represented by the bombing of US Embassies in Kenya and Tanzania and the bombing of USS Cole, no conflict that would have been in compliance with US law had existed. At this point the President, aware or not of this discrepancy, equated the actions of several individuals managed by a non-state organization to possible invasion or military strikes of any kind against the USA.

It is argued at this point that is it for these aforementioned reasons that the construction of the WOT as a conventional war is crucial and to be examined. In determining whether or not the WOT can be rendered as war, the power of the social and political construct plays an essential part. In the aftermath of 9/11, Bush's administration created a strong structure that formed the perspective of the American public, as will be shown further on. In light of the evolvement of the war itself, at that time represented mostly by the progress of Operation Enduring Freedom in Afghanistan, the argumentation and reasoning behind the WOT began to alter except for the emphasis put on its collective nature. In November 2001, George W. Bush held a speech in front of the United Nations General Assembly. During his talk, the President again stressed the importance of the WOT as an effort in which every person plays a crucial part (Bush, 2011a, p. 87). However, as soon as January 2002 Bush admitted that the WOT was at that time at its mere beginning and that it is possible that the following administrations would inherit the WOT given its long term nature (Bush, 2011b, p. 106).

The announcements dated back to the beginning of the WOT are considered by this thesis to be of the greatest importance. The public atmosphere following the greatest terrorist attack on the American soil did lay a foundation for strong susceptibility to any construction based on the premises of revenge and justice. It is not the aim of this thesis to determine any psychological aspects of the permissibility of this construction. However, as it has been documented above, the aftermath of 9/11, the very beginning of the WOT was marked by two key factors. These factors are the marking points of the constructed reality that became inherent to the WOT. They also represent the cornerstone attributes which prove that despite the fact that the WOT cannot be rendered as a war in accordance with the US domestic and international law, it is a war nonetheless.

It is argued here that the first of the aforementioned factors can be described as a collective dimension of the WOT construction. As demonstrated by this section, the desire to depict the campaign as a fight of all American citizens and even of all people living in free societies, became inherent to the rhetoric and logic used when addressing the WOT. Numerous references to the unity of the country in the WOT (Bush, 2011c) and its determination to fight terrorism repeatedly occur throughout speeches, press releases and interviews held and given by George W. Bush. However, the foundation of the WOT is not to be found solely in the nature of its interpretation by the President. It is recognized that particular interests and power desires are major contributing factors that had shaped the background of the campaign itself. Yet, the meaning of these factors was defined by the ideas of the leading actors involved (Wendt, 1999, pp. 24–25), in this case mainly by those of George W. Bush.

The second factor, essential for the construction of the WOT dwells in the effort for altering the traditional meaning of the term war and act of war. The 9/11 attacks were no acts of war according to the US law. However the use of both the terms shaped the perception of the overall situation in which the USA found itself at that time. The country was said to be at war based on the fact that acts of war were inflicted upon it. President Bush compared the acts of 9/11 to the events of December 7<sup>th</sup>, 1941 at Pearl Harbor (Bush 2001b). This statement serves as an example of the desire to suggest that the USA was under attack comparable to one committed during the largest war in history.

The summary of the reality subsequent to the events of 9/11 constructed by the statements and speeches held by President Bush can be identified as follows. The USA was under attack along with all American citizens. Acts of war were committed on American soil for the first time since the events of Pearl Harbor attack had taken place. The dimension of the terrorist attacks was depicted not only as a matter of life and material loss but the whole system of values, of which the USA was said to be the leading example, was attacked on 9/11. The WOT was claimed to be the fight of every free thinking person, not only in the USA. The President of the United States of America, the chief of staff, along with his administration created a strong structure that defined the underlying logic of the WOT and argued why it has to be considered a war and how it must be fought.

### **2.1.2 Public and medial perception of the WOT**

The role of the media is undoubtedly strong in the process of a public opinion construction. The beginning of the WOT is thus necessary to be examined from the perspective of the leading US media, be it press or television. The purpose of this section is to identify the leading topic within the WOT framework during the process of its construction. For this reason, trends present in the very beginning of the WOT, i.e. the first two years will be considered of greatest importance. The reason for focusing this section on the very beginning of the campaign is the argument that the first months of the WOT were crucial as far as creating public perception is concerned.

In order to assess the role of the media in constructing the concept of the WOT, key trends and topics of media coverage have to be identified. Boydston and Glazier (2013) analyzed the trends and categories covered by the New York Times and Wall Street Journal during the period from 2001 until 2006. In their study the authors analyze four sets of frames that were constructed and emphasized by these two newspapers.

The first two frames are labeled as self-referential and they are divided into gain frames and loss frames. In other words, what will the USA gain or what can it lose by fighting the WOT. The gain frame consisted of arguments that fighting abroad will keep the homeland safe, American patriotism will ensure recovery and that security is the best investment into American economy. Within the category of losses on the other hand, the USA were allegedly likely to be forced to fight terrorists at home if they had not been fought overseas. Other trends within the category of losses were identified as concerned with the death toll of US soldiers, costs of the campaign and intelligence failures (Boydston, Glazier, 2013, p. 717).

The second group of frames, labeled as other-referential, deals with emotional reaction to the beginning of the WOT and its purpose and significance. Examples of framing the gains of the campaign in this category are in their nature connected to pride and duty. The USA is the world leader and as such has to fight back. American troops overseas are winning the WOT and making the country proud. Framing of the losses of this category is summarized by examples of the facts that intervention will destabilize the Middle East, life of Middle Eastern citizens will deteriorate, civilian casualties will be inflicted by using drones etc. (Boydston, Glazier, 2013, p. 717).

The results of this particular analysis describe the perception of the WOT by renowned media actors. The nature of this description is not very distant from the one shown in the previous section. The self-referential category offers an account of frames that bring certain level of securitization of the topic. Once again the argument that security of the country is at stake and that it is closely tight with overseas military operations is strengthened. Furthermore, media discourse also acknowledges the menace of the need to fight on the US soil, if terrorists are not fought abroad. During the initial phase of the WOT the perception of the American public was shaped by the factor of patriotism and the prospect of victory, i.e. victory in war.

Apart from the frames, discussed above, trends in the media discourse can be traced during the first years of the WOT. Since October 2001 up until the outbreak of the war in Iraq, particular issues represented the main topics of media coverage. During this time period, topics of terrorism, 9/11 and American soldiers shaped the discussion about the WOT (Boydstun, Glazier, 2013, p. 719).

It is only natural that such topics would resonate in the media theatre after the experiences of 9/11. However, when combined with the rhetoric described in the previous section, these two phenomena construct a reality that allows for military operations to take place abroad in the name of security at home. It is this kind of reality that offers the consumers of war an emotional dimension centered on abstract concepts. And it is these concepts that people identify with (Huhtinen, 2005, p. 9).

It is argued at this point that indeed the American public did identify itself with the overall atmosphere of the WOT construct. The WOT represents a significant workload of one of the most respected public survey organizations, Gallup Inc. Since October 2001, Gallup has been conducting surveys among the US public to collect data on various topics connected to the struggle. As early as October 2001, a survey was conducted, dealing for the first time with the WOT, as its question was stated as follows: “*Who do you think is currently winning the war against terrorism*”(Gallup, 2016). The answer of the respondents in October was 42% the USA, 11% the terrorists and 44% neither side. (Gallup, 2016).

The perception that the outcome is tied changed rapidly over the following few months. In November 2001 the ration shifted by more than ten percent in favor of the USA as 53% of the respondents stated that the country is winning in the campaign. This

trend reached its strongest figures during December 2001 and January 2002, when the percentage of individuals who considered the USA to be the winning side reached 64% and 66% respectively (Gallup, 2016). Since this time period the ratio has never come close to these figures and more and more people were expressing their skepticism about the success of their country and turned to the opinion that the terrorist or neither side is in the lead. Admittedly, the fact that the public opinion of the US citizens underwent this shift is very likely to be connected to the initial progress of Operation Enduring Freedom in Afghanistan. It was during these months that the combination of air strikes and special operations supporting the Northern Alliance achieved liberation of Kabul and Jalalabad (GlobalSecurity.org, 2000).

However, the logic behind this reaction is not self-explanatory. Although the main opposing force of the USA in Afghanistan was the Taliban regime, the main goal, as President Bush stated and previous section demonstrated, was to bring in the perpetrators of 9/11, the AQ executive leaders. Even though Qandahar, the last stronghold of the Taliban at that time, was secured in December 2001, it was the forces of Hamid Karzai that carried out this task for the most part, albeit with the US support. Additionally, in the same month, the offensive against the cave complex of Tora Bora was launched. However, despite the fact that UBL (Osama bin Laden) was strongly believed to operate in this complex, this offensive ended unsuccessfully (GlobalSecurity.org 2000). In reality, there were very little indicators that the USA, together with its allies, are closing in on the designated targets and, as the example of Tora Bora shows, the allied forces were in fact short of success in the fight against the terrorists in their crosshairs.

As shown, the booming trend of the support and belief in the success of the campaign is very hard to connect with any tangible evidence of the success. However, the American public perceived the country as a clear leader. It is argued at this point that the trend observed by Gallup Inc. is more likely connected to the emotional and constructed nature of the WOT rather than to the rational assessment of on the ground results of the military operations in Afghanistan.

Another argument supporting this claim is the fact that since January 2002 the public opinion has shown growing dissatisfaction with the evolvement of the WOT effort. This trend is almost universal up until 2011 with one abnormal plummet in April 2003 connected to the beginning of the Operation Iraqi Freedom (Gallup, 2016).

Another aspect of the evolution of the WOT construction is the formulation of the research questions that Gallup used as a part of the WOT surveys. As early as October 2001, the company already incorporated the term war against terrorism into all the questions concerning the overall effort to bring the 9/11 masterminds to justice.

Additionally, expressions such as winning and losing, us versus them and alike were used for building particular questions. Even an institution interested in gathering objective datasets focused primarily on the answer of the respondent took the concept of the WOT as its referential entity one month after its establishment. The framing of the WOT being a war of a special importance and extent is underlined by the suggestion that wars in Afghanistan and Iraq are mere battles within a broader fight. The research question “*If you had to choose, which is the more important war for the United States*”(Gallup, 2016) (*meant within the WOT struggle*) suggests this perception.

The WOT is considered more than an ordinary war and it is depicted as a struggle encompassing individual armed conflicts that can be compared to the role of battles. This logic of wars within a war, unusual as it is, demonstrates that the WOT can not only be rendered as a war but it is a superior enterprise to wars as they have been traditionally understood. As a matter of fact, this narrative is clearly visible on the example of the responses collected by Gallup on the war in Iraq. Despite the fact that the invasion of Iraq was justified by the desire of Saddam Hussein to acquire WMDs (Weapons of Mass Destruction) and by threatening the USA, the majority of respondents deemed it as an inherent part of the WOT (Gallup, 2016).

### **2.1.3 Is WOT a war?**

The treatment of the WOT<sup>2</sup> as a higher instance of war, as an effort that entails individual wars aiming at fulfilling a common goal is a key characteristic of the WOT phenomenon. The concept of a long-lasting war with abstract boundaries and timelines is one in need of strong support from the actors possessing the power and means to shape the opinion of the public, not only in the homeland. The role of President George W. Bush

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<sup>2</sup> It is recognized that the term “war on terrorism” or “war on terror” is no longer being used by the contemporary US administration. However it is argued that the term “Overseas Contingency Operations”(Wilson, Kamen, 2009) does not change the nature of the effort significantly enough that the WOT concept could be dismissed altogether.

in the forming of the concept during its birth phase, was crucial and decisive for gaining a broad support for a war that is not one in the context of international law and tradition. The definition of a new struggle that is essential in order to ensure security of American citizens was introduced immediately after 9/11. Moreover, as shown above, the frequency with which the terms war on terrorism, war on terror or war against terrorism were used was substantially high in the first months after 9/11. The American public was repeatedly told that unless military action is taken, their security at home will be in jeopardy and the fight might take place on US soil. The whole concept was thoroughly securitized and marked as a number one precondition for preventing attacks similar to 9/11 in the future. As pointed out in the previous section, the emotional and patriotic dimension of WOT played a leading role in the effort to establish a new kind of war the USA was going to fight. To underline this attribute, the word crusade was used by the President to further characterize the nature of the newly emerged conflict (Bush 2001d). This particular statement brings another dimension to the dynamic of the construction and that is the religious foundation of the WOT. It is not the aim of this thesis to further analyze the influence of this particular attribute. It is however considered as an illustrative example and a contributing factor to the overall process of establishing the WOT as a regular war.

Renowned and traditional media and organizations assumed the term swiftly, as shown in the example of Gallup Inc. During its first two years the WOT even became a unifying war within which the wars in Afghanistan and Iraq stood for mere parts of the whole framework. From a formal point of view, the construction based on strong circumstances of 9/11 managed to justify the description of the terrorist attacks as acts of war. The use of the term war in case when no properly declared and defined war is waged is not a new concept. The USA and USSR were engaged in a Cold War. Numerous states fight wars on drugs, wars against organized crime and alike. The WOT, however, is a unique phenomenon in this respect. Two large scale military operations waged by official and conventional national armed forces were conducted in the name of the WOT. Moreover, little regard for the opinion of the international community, namely the UN Security Council in the case of Iraq, was given.

The aim of the analysis of the WOT construction was to demonstrate the power of its narrative. Unprecedented circumstances together with strong and persistent rhetoric used by various actors of great influence managed to create a new kind of war. A war that is of a higher purpose and that is waged against an enemy with no firm legal status or

subjectivity. Nevertheless, despite these facts the WOT is a war. It has been portrayed as a war and received as such by various influential actors of the public life in the USA. New and often controversial practices were introduced in the name of winning the WOT. In order to assess its justifiability, the WOT will be treated as any war that has been waged and this thesis will apply the Just War Theory set of rules to its conduct.

## **2.2 *Ius ad Bellum and the WOT***

### **2.2.1 Just Cause**

In accordance with the research logic of this thesis the AB1 rule has to rest on specific conditions in order to be applicable to a particular war. In order to determine the nature of the WOT regarding the AB1, a distinction within the WOT itself has to be made. Three basic pillars of the campaign are identified at this point. The first two of these pillars are represented by two open military conflicts in Afghanistan and Iraq. The third, which will be examined based on individual case studies, is the targeted killing carried out by UAVs.

As this thesis argues, battles within a war, fought for an unjust cause, turn the overall cause into an unjust one. The first operation under the WOT banner was conducted in Afghanistan. The AB1 rule considers itself with just retaliation in reaction to a particular wrongdoing. Such a deed in case of Afghanistan was clearly represented by the 9/11 terrorist attacks. As was already analyzed in previous sections, Operation Enduring Freedom in Afghanistan was aimed at bringing those responsible to justice and prevent further atrocities from happening. As Bellamy (2005) observes, the wars in Afghanistan and Iraq were depicted as a defensive effort on the USA part. Indeed in the case of Afghanistan such definition is permissible given the circumstances at that time.

As the USA allegedly possessed intelligence leading to AQ and UBL and intelligence that pointed to the affiliation of AQ to the Taliban regime, the action in Afghanistan bears the AB1 characteristics. UBL publically admitted responsibility for the attacks (CBC, 2004). The nature of the evidence leading to the decision to launch a military operation in Afghanistan is undeterminable due to its classified character. However, the fulfillment of the AB1 preconditions is in place in the case of Afghanistan.



Even despite the fact that the operation itself was based upon principles of a preventive war, the idea of a reaction to an act of terrorism, was clearly present in the decision making process. Admittedly, the progress of the conflict derailed from the original course of the campaign after the difficulties of finding the masterminds of 9/11 attacks had presented themselves. However, as it is not the concern of this section to analyze war operations as such but to determine the fulfillment of the AB1 criteria, the progress of the conflict is of secondary importance for the purposes of this thesis.

As the focus of this section turns to the second of the two military campaigns conducted in the name of the WOT, an important question is needed to be addressed. It is the question of whether the Operation Iraqi Freedom can be considered as a part of the overall struggle that was, has been and is the WOT. The commonly known reasons for the invasion into Iraq introduced by Bush's administration were the need and desire to eliminate a serious threat to the USA and the world.

On the night of March 18<sup>th</sup> 2003 George W. Bush held a speech concerning an ultimatum to Saddam Hussein. The dictator was to abandon Iraq within 48 hours or else he would face military conflict. However, as the President stressed several times, the threat impersonated by Iraq was not of a terrorist kind, it rested with the WMDs that the regime allegedly possessed at that time. Nevertheless, the concern that terrorist organization might eventually get the opportunity to acquire the WMDs through Hussein's regime was briefly suggested by the President. (Bush, 2003). As Bush himself expressed, the prospect of terrorists getting their hands on WMDs was only a hypothetical possibility. No concrete evidence of such possession at that time were publically introduced. Moreover, the overall concept of terrorist organizations striving for WMDs is of fragile integrity. The use of WMDs denounces in many ways the purpose of a terrorist activity. The manipulation with these weapons is problematic and expensive and the casualties inflicted might undermine the psychological dimension of terrorism since it would most likely not come unexpected. Also, the religious influence of Islam regarding the prohibition of mass murder plays its role in the attitude towards WMDs (Post, Sprinzak, Denny, 2003, pp. 180–181).

The Operation Iraqi Freedom was aimed at eliminating a threat that, regardless of later revelations, rested on the belief that the local regime represented an existential threat stemming from its WMD arsenal. However, no particular wrongdoing was suffered by

the USA under the flag of the Iraqi regime nor under the name of any organization or group known to be operating with local regime's assistance.

The abovementioned arguments indicate a contradiction in the true nature of the war in Iraq. On one hand the war was started in order to prevent the WMD threat represented by the regime of Saddam Hussein and therefore had no ties to the WOT effort focusing on punishing terrorists related to 9/11. On the other hand, the narrative of the war suggests that it was perceived as an inherent part of the WOT. The latter argument is based on the proclamations of main leaders of the Iraq war at that time, G.W. Bush and The Rt. Hon. Tony Blair. The President of the United States of America expressed the belief that Iraq is a decisive ground in the WOT efforts as it gives a base of operations to many groups eager to carry out terrorist attacks (Bush, 2005). The Prime Minister linked the conflict to terrorism in his motion in front of the British Parliament stating that the threat of terrorist acquisition of WMDs is too great to be overlooked (Blair, 2003).

In light of the Just War Theory and the AB1 rule, the cause of the war in Iraq was unjust. The USA and its coalition did not retaliate due to any wrongdoings suffered by Iraq. The nature of the war was preventive, based on a premise of a potential threat. As for the conundrum of Iraq war being part of the WOT, the logic of the argumentation at this point is consistent with the argumentation put forth in section 2.1. The initial connection of the war to the WOT was formulated very carefully, especially by the US administration. However, as the two cited announcements by the leaders of Great Britain and USA suggest, the war quickly became perceived as the frontline within the WOT campaign. As demonstrated in section 2.1, the influence of these perceptions eventually became a public understanding of the nature of war in Iraq. Therefore, the Operation Iraqi Freedom is rendered by this thesis as representing an unjust element of the WOT. The war was not launched in accordance with any criteria needed to identify the presence of the AB1.

It was a just move for the USA to commence military operations in Afghanistan with the determination to find and bring in the perpetrators of 9/11 attacks. At the same time the decision to invade Iraq cannot meet the principles of Just War Theory in respect to the AB1 as it represents an unjust element within the WOT.

## 2.2.2 Right Intention

When assessing the WOT in light of the AB2 rule, it is important to state that the word “intention” is not self-explanatory. It is of no importance what material or political objective played a role in the decision to launch military operations in the name of the WOT. The only intention at stake for the purposes of this research is peace. Additionally, it is of no importance to this section whether the efforts to achieve peace eventually failed or succeeded. It is the intention as such and evidence supporting an effort to fulfil it that will be looked for in this section.

As specified by the criteria listed as essential for the AB2 fulfillment, it is of great importance to seek and identify efforts aimed at reconstructing the country that serves as the theater of war, and reinstating its peaceful operation ability. The Special Inspector General for Afghanistan Reconstruction (SIGAR), established by The National Defense Authorization Act for FY 2008 and charged with oversight and auditing of the reconstruction process is a key institution in the reconstruction assessment. As a part of the quarterly reports handed over to the United States Congress, SIGAR regularly presents the reconstruction budget with subcategories divided into three major groups of expenses – Security, Governance and Development, Humanitarian and International Affairs Operations (SIGAR, 2016, pp. 186-187). Since the year 2002, the USA funded extensively the aforementioned main categories of reconstruction. It is also well documented by SIGAR that the funding of all of the reconstruction elements had been growing each year before the growth was stopped in 2011. The total amount of funding aimed at reconstruction of Afghanistan adds up to more than 113\$ billion over the course of fourteen years. (SIGAR, 2016, p. 187).

It is hardly imaginable that such an amount of funding allocated to training of security forces, drug prevention, education, development assistance, refugee assistance etc. was paid with any other major goal than achieving peace and stability over the shortest period of time possible.

Turning to the war in Iraq, an almost identical establishment to SIGAR can be found in this case as well. The institution of the Special Inspector General for Iraq Reconstruction (SIGIR) was meant to serve the same purpose as in case of Afghanistan SIGAR did. Iraq is commonly known to be an example of troublesome results as far as

its reconstruction is concerned. However, as already stressed out, it is the intention of peacemaking and stabilizing the theatre of war that matters. As of September 2012 the USA allocated more than 60\$ billion and expended more than 53\$ billion in the name of the reconstruction of Iraq (SIGIR, 2013, pp. 55–56). The major funds that had been established before the war ended entailed funds concerned with security forces, economic support, emergency response law enforcement and reconstruction (SIGIR, 2013, p. 56). The rate of this support was highest during the first five years of the conflict.

In wars in Afghanistan and Iraq the desire for achieving peace and relative prosperity was present. Moreover, Provincial Reconstruction Teams were deployed in both countries. These teams operated in semi-permissive environments and were tasked not only with security and counterterrorism but for the most part with promoting social and economic development as well (USIP, 2013). The evidence is found about the intention to promote the activities leading to peaceful transition of power and growing prosperity. As already emphasized, the effectivity and success of these measures is not a part of the concern of this thesis.

The intention of the fighting party is well described by the measures it applies in combat. This is not to say that in order to determine the fulfillment of the AB2 rule, IB rules are going to be examined. It is not possible to analyze the specific ROE as such due to the classified nature of these regulations. However, it is safe to say that the overall setting of the ROE in Afghanistan and Iraq was rather strict and often complicated in certain severe combat situations as the restricting nature of the ROE even put lives of military personnel in danger (Amore, 2013, pp. 40–43). Despite the fact that the constraint imposed on soldiers through the ROE can have various reasons, a contributing factor to the AB2 fulfillment can be hypothesized. Not only would an inhumane setting of the ROE collide with legal commitments of the parties involved. It would make the prospect for achieving peace very complicated, as the crucial element for working on the restoration of peace and prosperity is the public opinion on the alien force inside one's country.

The last criterion that is to be addressed when determining the AB2 presence is the official standpoint of state leaders. Throughout this chapter various official claims and announcements were cited as a testimony to the nature of the WOT itself and the proclaimed goals and intentions of the wars. Section 2.1.1 provides an account of

proclamations that suggest the officially declared intention of both the conflicts to be minimizing collateral damage and achieving peace and prosperity in both Afghanistan and Iraq. Once again it is acknowledged that the content of an official announcement and the true nature of one's intention may differ significantly. However, no method available to this thesis is capable of disclosing the true nature of motivations and aims in Afghanistan and Iraq wars.

As in the previous section, the logic of the three pillars of the WOT is followed regarding the AB2 rule as well. The third pillar, represented by the targeted killing efforts, is a troublesome obstacle for the just principles of the AB2 rule. The killing of HVTs has been carried out in the name of self-defense and prevention of plotting against the homeland (Obama, 2013). However, the true intention of this campaign is hardly to achieve a stable and long term peace. It is partly so because of the fact that achieving peace with terrorist organizations is very complicated since they operate with particular abstract leitmotifs, e.g. religion, ethnicity etc., that are very hard to overcome. The true level of willingness to resort to strategies and tactics that would allow for building peace is unknown.

However, the conflict of building peaceful and friendly relations with states suffering from drone attacks is not new to the discussion. The main problem dwells in the alienation of local populace and creating an environment of fear and uncertainty. The trustworthiness and credibility of the USA declines with every miscarried and inaccurate drone strike killing civilian personnel (Stanford Law School, NYU School of Law 2012, pp. 56–73). For the strategy of winning the hearts and minds, drone strikes are a complicated tactic. It is self-evident that the intention behind the drone campaign does not extend itself beyond the elimination of potentially dangerous individuals. By failing to control the externalities of drone strikes, the intention of the third pillar cannot be found in compliance with the AB2 rule. It is not argued that drone strikes are inherently unjust because of the circumstance under which they are being used in contemporary counterterrorism strategy of the USA. Nor is it claimed that drones cannot be a part of a campaign that would comply with the AB2 criteria. However, the position of this thesis is that drone strikes, in the form as they have been carried out since the beginning of the WOT, have not been carried out with the intention of achieving peace, but merely to prevent potential harm to the USA.

### **2.2.3 Legitimate Authority**

It is briefly suggested in section 2.1.1 that the only authority entitled to declare a state of war in the USA is, by its constitutional right, the United States Congress. In the case of the Afghanistan war, this rule was upheld and honored as the authorization of the use of force was passed through the main legislative body. This fact was already examined as a part of the birth of the WOT construction. The war in Afghanistan or the first pillar as labelled by this thesis is in compliance with the criteria demanded to be met in order to fulfill the AB3 terms.

In case of the Operation Iraqi Freedom, as mentioned earlier in this chapter, the main focus was centered on the repeated breaches of United Nations Resolutions regarding the disarmament of Iraq. Due to the unwillingness of the Hussein regime to cooperate with UN bodies on complete disarmament of its WMDs, the United States Congress authorized the President to use the US armed forces in case of failed diplomatic efforts (The United States Congress, 2002). This authorization was given for all acts aiming at defending the national security of the USA as well as at enforcement of all relevant United Nations Security Council Resolutions regarding Iraq (The United States Congress, 2002). In the light of the AB3 requirements, the Iraq war does not represent a conflicting issue. The military campaign was launched within the boundaries that had been authorized by the legitimate authority entitled to declare a war.

The problematic part of the WOT tied to the AB3 principles was created together with the very first Authorization for Use of Military Force in September 2001 (The United States Congress, 2001). This Law authorized the President of the United States of America to use force against persons and entities connected to 9/11. However, no concrete boundaries were set in order to control for misuse or even abuse of this authorization. The first action that resulted from this law was the war in Afghanistan, as was already mentioned. Considering the facts that have been put forward thus far, it is the position of this thesis that both wars in Afghanistan and Iraq were commenced on legitimate and legal grounds from the point of view of the AB3 rule. However, the third part of the WOT, the targeted killing tactics, has been carried out without any authorization by the United States Congress.

The debate on targeted killings by drones often struggles to address its legality when the sense of the need of a congressional approval for drone strikes is being invoked. It was assessed earlier in this thesis that the WOT is to be treated as a war and that drone strikes have become its inherent part. This inherency has been especially tangible since Barack Obama has taken office in 2009. Since Obama's inauguration, the use of drones has undergone a significant boom as the USA carried out 292 strikes in the first three and a half years of the first term. Under George W. Bush's term, drones were used to attack targets in 45 or 52 cases in total (Stanford Law School, NYU School of Law, 2012, p. 12).

But the true question stems from the puzzling nature of drone strikes. It needs to be determined whether or not the targeted killings may be labeled as acts of war. As demonstrated by section 2.1, the attacks of 9/11 were immediately labeled as acts of war. The question is whether the use of drones that violate foreign airspace and conduct lethal missions is different from the principles of 9/11 to such an extent that drone strikes cannot be considered acts of war and no congressional approval is needed. President Barack Obama attempted to address this question and solve its controversial nature. In a report on activities in Libya, addressed to The United States Congress, Obama stated that: *"...military operations in Libya are consistent with the War Powers Resolution and do not under that law require further congressional authorization, because U.S. military operations are distinct from the kind of "hostilities" contemplated by the Resolution's 60 day termination provision."*(Department of State, Department of Defense, 2011, p. 25). Obama then follows up and adds that: *"U.S. operations do not involve sustained fighting or active exchanges of fire with hostile forces, nor do they involve the presence of U.S. ground troops, U.S. casualties or a serious threat thereof, or any significant chance of escalation into a conflict characterized by those factors."*(Department of State, Department of Defense 2011, p. 25)

These two passages offer a possible answer to the true nature of the perception of drones by the highest US authorities. The reason why the operations in Libya were described as being different and not involving active exchanges of fire is the fact that the USA was using drones to carry out its missions and eliminate targets on the ground. In other words drone strikes are not to be perceived as acts of war but as a distinct category of tactics falling into its own category.

Be it as it may, it has become clear that the actors who make the decision to target and eliminate are in no way affiliated with The United States Congress. These decisions are made, according to the individual targets, by the CIA, JSOC or by the President (Stanford Law School, NYU School of Law 2012, pp. 13–14). Neither JSOC nor the CIA is a legitimate authority to approve acts of war. And drone strikes, based on what has been formulated until this point, are no less an act of war than the terrorist attacks of 9/11. They are conducted over foreign soil (often unannounced in advance) under official command and they result in life loss. Using this logic, it is not possible to declare a terrorist attack conducted by non-state actors under no official state command to be an act of war and at the same time asses that drone strikes are not. However, as shown above, the position of the Obama administration renders drone strikes to be legal as they do not fulfil the criteria for the need of congressional approval. But drone strikes were implemented into the framework of the WOT and ever since their first use have become increasingly more important in the efforts to eliminate potential threats. In this respect, drone strikes are equal to the military operations in Afghanistan or Iraq. They are a part of a war, the WOT, and therefore constitute acts of war conducted regularly since 2001.

To sum up this section, the clear precondition set by Just War Theory as well as by the methodological framework of this thesis is the existence of an authorization issued by legitimate and entitled body. No such document was identified by this research in the case of drone strikes. Therefore it is not possible to render the criteria, set for the AB3 rule as fulfilled as one of the pillars lacks a just character.

#### **2.2.4 Last Resort**

Given its status as one of the primary rules in the *ius ad bellum* category, the AB6 rule it to be examined after the AB1, AB2 and AB3 respectively. In this section the research seeks an indication that a war in any form was declared as the absolutely last option available to the given party. As in the previous section the logic of three basic pillars of the WOT will be used to analyze its true nature from the Just War Theory perspective. The WOT, as already demonstrated in this chapter, was declared as a wholesome war, shortly after the 9/11 attacks. For the AB6 to be recognizable, efforts such as diplomatic engagements or official meetings need to be identified. Furthermore,



tools of economic or political coercion, such as sanctions, embargos and alike are crucial for the AB6 fulfillment.

The war in Afghanistan was declared de facto simultaneously with the declaration of WOT as it was the first campaign waged in the name of fighting global terrorism in the aftermath of 9/11. The steps on the USA part, preceding the launch of Operation Enduring Freedom in Afghanistan, were hardly exhaustive enough to fulfill the AB6 criteria. The declaration of the WOT was an immediate reaction and the only preceding step undertaken towards Afghanistan and the Taliban regime was merely in the form of an ultimatum (Staff and agencies, 2001). No other possibilities were explored and no evidence which would suggest an effort to compel or coerce the regime to extradite those responsible for 9/11, was found. The exact scenario that had taken place before the order to commence military operations in Afghanistan was given, is best summed up by the words of G.W. Bush. The President stated that: *“More than two weeks ago, I gave Taliban leaders a series of clear and specific demands: Close terrorist training camps. Hand over leaders of the Al Qaeda network, and return all foreign nationals, including American citizens unjustly detained in our country. None of these demands were met. And now, the Taliban will pay a price”* (Bush 2001e). The course of two weeks over which only an ultimatum was given, cannot be rendered exhaustive. War was not resorted to after every other possibility (such as embargoes, sanctions, boycotts, diplomatic attempts etc.) had been explored, considered and exhausted.

In the case of Operation Iraqi Freedom, the situation preceding the commencement of military actions differs from the previous case. The formal ceasefire ending the Persian Gulf War in 1991 defined a set of conditions for Iraq to comply with. Among these demands, there were also those that eventually gave the incentive for the USA to begin military operations in Iraq in 2003.

According to this key resolution, Iraq was to destroy or remove its WMDs, namely all chemical and biological weapons. The third possibility for Hussein’s regime at that time was to render these weapons harmless under international supervision. Furthermore, Iraq was obliged to disclose details on locations, types and amounts of these weapons and agree to immediate on-site inspections. Saddam Hussein was bound by this resolution not to develop or strive for the acquirement of any kinds of WMDs, including nuclear

weapons. Iraq was also not to keep ballistic missiles with a range over 150 kilometers in its arsenal (UN Security Council 1991, p. 13).

During the 1990s the United Nations Security Council struggled with Iraq's noncompliance with this resolution. As early as August 1991, four months after resolution 687 had been passed, a new resolution demanding immediate compliance with the former one had to be enacted. Nevertheless, Iraq did not comply with the key passages of the 687 resolution, namely in the disclosure of all the details and in allowing the inspecting authorities access to all necessary locations. These problems regarding Iraq's disarmament had been dealt with long before the USA along with its allies commenced Operation Iraqi Freedom. Iraq was targeted by diplomatic means as well as political coercion. Only after these measures had failed, action by force was taken. Since the USA represents a permanent member of the United Nations Security Council and since this body is the most influential one within the UN, all possible options appeared to have been exhausted before war was started. Moreover, given the amount of time that had passed between the birth of resolution 687 and military action, it is argued that war can be rendered as a last resort option in this case. Resolutions 715, 1051, 1060, 1284 and 1441 testify the amount of effort that was vested into resolving this issue peacefully (UNITED NATIONS 2016a).

Finally, as far as drone strikes are concerned, the presence of the AB6 rule can be discarded. As will be demonstrated in the upcoming chapter, the character of drone strikes finds itself in a direct conflict with the principles of the AB6. Targeted killing as such overrides the principles of exploring every other non-lethal possibility. Especially when the commonly named signature strikes<sup>3</sup> are conducted. The logical connection of drone strikes and the AB6 principles will emerge from the case studies conducted further on.

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<sup>3</sup> Strikes ordered based on patterns of behavior or assumed affiliation with terrorist groups or individuals connected to such groups. Patterns of appearance are also taken into account. The identity of the target is unknown. (Shane 2015a).

## 2.2.5 Hope for Success and Proportionality

The AB4 and AB5 rules represent a special category within the set of *ius ad bellum* in this research. More than the other rules, these particular preconditions of just war are highly interpretative and their presence and is difficult to verify and prove.

As for the AB4 rule, it is arguable that the USA had no reason to doubt its military superiority neither in the case of the war in Afghanistan nor in the case of Iraq. In the case of Afghanistan, the prospect of finding and bringing in the AQ personnel connected to 9/11, although admittedly not easy, was realistic and reasonable given US capabilities. Similarly, when assessing the probability of successful toppling of Saddam Hussein, the US authorities had no reason to assume that their armed forces are not going to be a match for the Iraqi army. As far as drone strikes in general are concerned, there is even less reason to doubt their capability or render the hope for successful elimination of the target unreasonable. An UAV that is capable of hovering over the attack site for hours and that carries Hellfire missiles can hardly be matched by on-foot personnel armed with assault rifles (U.S. Air Force 2015a). In fact, the drone technology is often the reason for the certainty of success on the part of the authorities.

The AB5 criteria are dependent on the means used in order to achieve the proclaimed objective. The nature of this rule is the concern that one side of the conflict will deploy disproportionately large and destructive force to achieve its objective and thus inflict more evil than the war itself would eventually relieve. The two WOT pillar wars are known to be waged for reasons which have been repeatedly stated thus far. The war in Afghanistan was started out using covert groups of special operation units preparing the ground for additional forces (Schroen, 2005). At no point during the following phases did the war exhibit signs of disproportionality. Given the military capability of the USA which is a nuclear superpower, the tactics of Special Forces deployment, drone strikes and precision air strikes do not indicate a conflict with the AB5 criteria. Similarly, the Operation Iraqi Freedom did not stomp Iraq completely to the ground. The proportion of the arsenal employed and the proclaimed objective which was toppling Hussein's regime was adequate in respect to the AB5 criteria. No intentional mass destruction of civilian property or mass killing of civilians was found by this research. It is not argued that both wars could not have brought about more evil than they had intended to remove. If that is

the case however, this thesis argues that it did not happen due to the violation of the AB5 principles.

Lastly, the question of proportionality and drone strikes will be dealt with in the following case studies. Despite coming from distinct categories, the nature of the AB5 and IB1 is very similar in the essential quality of respecting and protecting human life and property and preventing their unnecessary destruction. The question whether drones relieve more evil than they bring about or not will be one of the core issues demonstrated by particular case studies of drone strikes.

### 3. Drone strikes in reality

#### 3.1 *The Nature of Drones*

This following sections will address the core question of this thesis. It is the question of whether or not drone strikes are an unjust or unjust method of countering terrorism. In order to offer a comprehensive account of particular strikes, a brief summarization of the method itself is in place.

The drone campaign, ongoing since 2001, rests on two key defining technological cornerstones. The pioneer of the Hunter-Killer operations that have been conducted since 9/11, is the General Atomics MQ-1 Predator Drone. This remotely piloted aircraft or UAV, has been in operation since 1996 when it was assigned to the United States Air Force Arsenal. Since then the Predator has undergone a process of modernization and change of its main purpose. Whereas until 2002 the device was designated as RQ-1 (Department of Defense reconnaissance aircraft), since then the designation has changed to MQ-1 standing for multi-role UAV. This multiplication of roles occurred because of the decision to arm the drone with two AGM-114 Hellfire missiles. This particular UAV is capable of reaching the ceiling of 25,000 feet at maximum speed of 135 mph and it operates within the range of 770 miles. Predators are still in operation and they represent the flagship of the drone campaign (U.S. Air Force, 2015b).

The second pillar of the drone campaign is the MQ-9 Reaper. Being a second generation drone, the Reaper represents a technological improvement compared to the Predator drone. The Reaper is capable of carrying guided bomb units as well as up to 4 Hellfire missiles. Operating within a range of 1150 miles at 230 mph, this device represents a state of the art military UAV. Its operational ceiling of 50,000 feet allows it to be absolutely undetectable by its targets (U.S. Air Force, 2015a). It is the MQ-9 Reaper that was introduced in order to ...”*execute time-sensitive targets with persistence and precision and destroy or disable them*”. (U.S. Air Force, 2015a).

Operated from a military base in Nevada (Pilkington, 2015), flown in at least four countries and nowadays above the territory controlled by Daesh, Predators and Reapers have become an inherent part of the WOT. Drones have raised many questions since they were introduced as a lethal unmanned means of potential threats elimination. These

questions have been of psychological, technological and moral nature. It is the question of morality and justness of using these means that is at the center of the focus of this thesis. The research of the following real life cases will attempt to clarify the relationship between drone strikes and Just War Theory.

### **3.1.1 Drones Evil in Themselves**

Before the concrete cases are examined, it is necessary to address one specific rule among the *ius in bello* principles. It is the IB5 rule that is to be addressed separately because no case study can determine whether or not drones are inherently an evil means in the sense of the IB5. The meaning of this rule is a logical one and does not require much to be elaborated on extensively. A drone can be, and often is, used for various activities that are not connected to any harm to life or property. They can observe, serve as means of amusement or even deliver goods. It is not inevitable to use drones lethally and destructively as it is for instance with poisonous gases. It is the Hellfire or the GBU (Guided Bomb Unit) attached to the drone that is designed solely for killing and destruction. In these cases the IB5 rule is broken. However it cannot be broken by simply stating that because Predators and Reapers carry these weapons, they are automatically inherently evil. They are not, and as such they are a mere means to an end assigned to them regardless of other possibilities of their use.

## **3.2 Killing of Anwar al-Awlaki**

### **3.2.1 Background of the Strike**

On September 30<sup>th</sup> 2011, a drone strike was carried out in Yemen, killing a citizen of the USA, Anwar al-Awlaki, born in New Mexico in 1977. The fact that al-Awlaki was born on American soil makes the case of his killing extraordinary in comparison to the other drone strikes. This dimension will be explored further on. Anwar al-Awlaki was raised in Yemen the homeland of his parents where his father worked at Sanaa University and later in politics. In 1991 Awlaki returned to the USA and began his studies at various universities including the George Washington University in Washington D.C (Morgan, 2011). During his studies in 1990s Awlaki was suspected to having attended jihadist training camps in Afghanistan. However, no proof exists that Awlaki himself was firmly

linked to violent activities (Berger, 2011). Nevertheless, his contacts with AQ during 1990s and early 2000s are documented. It is confirmed that Awlaki found his way to AQ through the Yemeni charity. Founded by an associate of UBL at that time, Awlaki was approached through this organization by Ziyad Khaleel, an AQ facilitator. In 1999 an investigation led by the FBI was launched in order to investigate Anwar al-Awlaki's activities. The detail of this investigation are not disclosed but Awlaki did continue to make contact with AQ operatives during the investigation and well after. Over the break of the millennium Awlaki became more and more alienated from his homeland principles. The most controversial point of his affiliation to terrorist organizations is his contact with the 9/11 hijackers. Although the nature of these meetings and topics of conversations are not known, Awlaki is known to had maintained rather close ties with the hijackers before the 9/11 attacks occurred (Berger, 2011).

It is not certain, however, whether Awlaki knew or not what objective were the hijackers to carry out and how. In 2002 Awlaki left the USA for good and in 2004 resettled to Yemen. From this point on, Awlaki began to express his beliefs rather radically<sup>4</sup> in comparison to his stay in the USA. He was accused of being connected to various incidents and plots such as the Fort Hood shooting or two attempts to blow up commercial airliners. Although Awlaki was involved in AQ activities, his true status within the AQAP (Al Qaeda in the Arabian Peninsula) is not clear. Accounts exist of his strong and leading position. On the other hand, however, there have been testimonies suggesting that Anwar Al-Awlaki was no more important than any other member of AQAP. Be it as it may, in 2010 Awlaki became the first American to be placed on a CIA's target list (Morgan, 2011). On September 30<sup>th</sup> 2011, after previously failed attempts, a missile hit Awlaki's vehicle near the town of Khashef as he was being transported to the Yemeni capital.

### **3.2.2 Proportionality of the strike**

When determining the relationship of Awlaki's death to the criteria of the IB1 rule, it is necessary to assess and analyze the particular situation and context in which the killing took place. The targeting of Awlaki had been going on well before the events of September 30<sup>th</sup> took place. Awlaki was targeted just around the time of the raid in

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<sup>4</sup> Awlaki called for killing American citizens and declared a personal religious war against the USA. This turning point came to be after the Fort Hood shooting when Awlaki left the USA for Yemen (CBS, 2010).

Abbottabad<sup>5</sup> but the attack failed to kill him. Awlaki had been watched for a long time before the events of September 30<sup>th</sup> came to be. On this day he finally stepped out of his compound that had been under continual surveillance. Awlaki boarded a vehicle, most probably an SUV type that was part of a small convoy set out towards the city of Sanaa. As soon as the convoy left the proximity of the compound, at least three Hellfire missiles were fired upon the vehicle transporting Awlaki (ABC News, 2011). The accounts of the number of vehicles hit differ. However, the nature of the drone strike was not one of a signature strike since it was known that Anwar Al-Awlaki was in one of the vehicles, as well as Samir Khan, another American citizen, and two other high operatives. However, these two targets were designated by the USA officials as unidentified and their affiliation to AQAP had only been assumed by the time the Hellfires were fired (Reuters, 2011). According to all the available sources, the presence of other individuals had been known and acknowledged by the time the order to fire upon the convoy was given. However, their identity was unknown.

Despite the fact that the reports of the strike indicate that three to six missiles were fired on the car transporting Awlaki, no destruction of property was documented. The strike itself took place near the town of Khashef east of the Sanaa capital. No indication of urban surroundings or civilian concentration around the kill zone was discovered. Indeed the strike took place in a secluded location bordering the Ramlat al-Sab`atayn desert endangering no adjacent infrastructure or civilian property. It is safe to say that the drone strike that killed Anwar al-Awlaki was in line with the IB1 criteria as far as destruction of property is concerned. The strike did not cause any unnecessary destruction in this respect. The only property destroyed by the missiles was the vehicle in which al-Awlaki, Samir Khan and the other two victims were killed (ABC News, 2011).

The core problem of the IB1 and the killing of al-Awlaki dwells in the principle of the necessity of the violence. In other words it can be, to a certain extent, compared to the principles of the AB6. Through the logic of this thesis drone strikes form a pillar of the WOT campaign. Each individual drone strike is then an act of war within this pillar as well as within the WOT as such. Therefore, the decision to carry out a drone strike represents an act that is to be examined through the optics of the IB1 and therefore the criterion of necessity. The necessity of lethal violence in case of targeted killing stems

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<sup>5</sup> An air raid conducted by the USA in Pakistan. The result of this action was the killing of UBL.



from the fact that the target is proven to be an imminent threat and at the same time the possibility of apprehending the target is absent or absolutely minimal. In that case the violence and destruction in the conduct of war, in this in the conduct of the WOT, is just and honors the principles of the IB1. Anwar al-Awlaki was depicted to be a person plotting against the USA and as a person being involved in several attempts of harming American citizens or material resources, as was already stated. However, no evidence of these allegations had been put forth by the USA before the killing, nor was this evidence made public after Awlaki's death. The US administration, particularly the U.S. Department of Justice, after being ordered by the U.S. Court of Appeals, released part of a classified memorandum on Awlaki's death. In this document, the necessity of targeting and killing Anwar al-Awlaki is justified as follows. "*High-level government officials have concluded, on the basis of al-Aulaqi's activities in Yemen, that al-Aulaqi is a leader of AQAP whose activities in Yemen pose a "continued and imminent threat" of violence to United States persons and interests.*" (U.S. Department of Justice 2010, p. 21). Based on this argumentation, the killing of this man automatically fell into the category authorized by the Authorization for Use of Military Force (The United States Congress, 2001) from September 2001.

However, the question of whether this argumentation creates a justification framework for killing an American citizen is not answered easily. It is known that Awlaki was investigated by the FBI as soon as 2001. It is also known that the information obtained by the FBI on his personal life and movements were more than detailed (Shane, 2015b). By the time al-Awlaki decided to leave the USA, he chose a country that was not considered hostile. On the contrary, even at that time the USA sought a stable Yemen that would represent a firm actor in the WOT effort. Particular aid programs and political cooperation declarations confirm this course of US policy towards Yemen going back to the time Awlaki relocated his life to this country (Sharp 2015, pp. 24–27). The reason for stating these facts is that Yemen did not present a potential complication in the effort of apprehending al-Awlaki. Yemen was and is known to collaborate with the USA in the effort of fighting terrorism. Anwar al-Awlaki was imprisoned in Yemen for 18 months between 2006 and 2007 on kidnapping charges. He was eventually released without a trial and claimed that his imprisonment was at the request of the USA. This is an unconfirmed allegation. However, Yemen held al-Awlaki and had the opportunity to question him and accuse him. Additionally, the status of US-Yemeni relations at that time

does not suggest that it was not feasible for the USA to demand the extradition of Awlaki during his imprisonment or during the time after it. No evidence of such effort was found by this thesis. Instead, the USA carried out two drone strikes attempting to kill al-Awlaki. The first incident occurred in May 2011 shortly after the death of UBL. During the first attempt a drone targeted and destroyed a car carrying two individuals believed to be AQ operatives, but that was not confirmed (Mazzetti, 2011). One of them was supposed to be identified as Anwar al-Awlaki, falsely, however. The second drone strike was already examined earlier in this section.

These facts have a significant impact on examining the decision to kill Anwar al-Awlaki through the optics of the IB1. If examined as an individual case void of any context, the strike would perhaps represent a case potentially compatible with the IB1. However, given the aforementioned contextual framework of the strike, it is argued at this point that killing of Awlaki is a completely different kind of event. Despite the fact that drone strikes were assessed by this thesis to be consistent with the criteria of AB5 in general, the killing of Awlaki is inconsistent with the IB1. The identity of the target was known and his whereabouts were known as well. Al-Awlaki did reside in a country that indicated no potential problems in an extradition process. The evidence confirming his accusation had not been presented prior to the actual attack. Moreover, Anwar al-Awlaki was a US citizen. This adds a legal dimension to the problem. However, legal analysis is not the concern of this thesis, as was already stated. Nevertheless, the importance of the citizenship lies in the advantage that it provided the USA in case it would have tried to arrest Awlaki and make him stand trial. The attack on Awlaki represents a particular means of war set into the framework of drone strikes as a pillar of the WOT and consequently into the framework of the WOT as a whole. As such, the attack is not proportional in the sense of unnecessary violence and destruction that was inflicted. No effort was put into avoiding the strike and thus avoiding the violence and destruction. The USA decided to resort to targeting Awlaki twice without any attempts to confront him with evidence of his guilt. Therefore, the criteria of the IB1 cannot be rendered fulfilled.

### 3.2.3 Discrimination

The targeting of Anwar al-Awlaki represents a type of drone strikes commonly referred to as identity or personality strikes. Personality strikes are carried out based on knowledge and evidence confirming the target's identity, i.e. name, affiliation, rank within an organization and so on. Plainly said, the perpetrator of the strike knows who is going to be killed and why. In such a case the possibility for upholding the principles of the IB2 opens itself much more than in case of signature strikes. When a personality strike is conducted, the details available determine whether or not the target is a combatant or non-combatant and possible collateral damage can be avoided.

The key question in the effort of determining the relationship of the drone strike and the IB2 is the true position and status of al-Awlaki within the AQAP. It was stated earlier that he had been suspected of attempting terrorist attacks against US targets. However, the true position of al-Awlaki was likely to be much closer to being a propagandist preacher and an inspiring figure for young radicals (Al Jazeera English, 2011). Awlaki was considered to be a great rhetorician and a knowledgeable imam, not a fighter.

Nasser al-Awlaki, Anwar's father, as well as Saleh Bin Fareed, a Yemeni tribal leader who was very close to Awlaki, both indicated that Anwar's position was very different from being a fighter and a plotter. According to these two persons, Anwar al-Awlaki was living peacefully in Yemen without any kind of involvement in AQ operations. During the same time the USA claimed that Anwar al-Awlaki is one of the most dangerous men, Saleh Bin Fareed, one of his closest friends, observed Awlaki's pattern of life in the following way. "Anwar was living in a side—in Awlaki territory, and he was living peacefully, going to the mosque, meeting people in a small village"(Democracy Now, 2013). None of the individuals closely affiliated with Anwar al-Awlaki depicted him as a combatant figure involved in military combat operations of the AQAP. The evidence confirming his involvement in the plots against the USA was not made publically available by the accuser. Nevertheless, Anwar al-Awlaki was identified on a video footage showing himself together with Umar Farouk Abdulmutallab, known as the underpants or Detroit bomber (Spencer, 2015). In this footage Awlaki sends the Detroit bomber off on his mission and gives him final advice on how to behave himself. The video was very likely intended to be a martyrdom message to be played after

the attack would have been successfully carried out. As was stated in section 3.2.1, Anwar al-Awlaki preached against the USA and the western community as such. He did not share the values of his motherland and his sermons suggest that to the full extent. Awlaki seems to have played a role in offering guidance and counsel to young radicals. This activity might have been, at least through the eyes of his associates, perceived as living peacefully and meeting people, as cited above. At the same time, through these activities Awlaki might have been labeled a plotter and an AQAP leading figure by the USA. At this point the determination depends on a highly interpretative logic in line with the saying “*One man’s terrorist is another man’s freedom fighter*”.

With that said, the key factor of the IB2 is to be answered. It is the straightforward question of whether Anwar al-Awlaki could have been considered a combatant and therefore rightfully targeted by the Predator drone. The answer to this question is negative. Anwar al-Awlaki was not a member of any recognizable military forces. The only alleged membership of his was that of an AQAP. However, even this affiliation is questionable, at least as far as its significance is concerned. Nevertheless, Anwar al-Awlaki did pose a threat to the USA, but a threat that was of spiritual and inspirational character. Although Awlaki could have indirectly bring harm to the USA, he cannot be rendered combatant for the purposes of the IB2. He was not armed and did not in any way endanger any US personnel or property.

Furthermore, as already mentioned, the USA had been surveilling Awlaki for almost a month before the administration decided to act and kill. Therefore, the knowledge of the target’s status of non-military personnel is indisputable. The USA was well aware of who is Anwar al-Awlaki and that he was neither a fighter nor a member of any official military. His status was known to be a preacher and possibly a mastermind of several plots but not a militant. The USA knew when it targeted Awlaki’s car that the target is not of a military and generally combatant nature. An allegation or suspicion that Awlaki had planned terrorist attacks against the USA does not change his status to combatant in the context of Just War Theory and the IB2.

In order to fairly asses the relationship of the IB2 with the case of Anwar al-Awlaki, it is crucial to determine the status of other victims of the drone strike. As the identity of two of the victims is unknown, the focus rests with the case of Samir Khan. The relative importance of Khan to al-Awlaki was described by the US authorities as not

high enough to target Samir Khan in a separate drone strike. Samir Khan was known to be an AQAP operative. However, his position was mostly tied to the Inspire magazine, the AQAP propaganda channel (Mazzetti, Savage, Shane 2013). Through Inspire he published and incited many thoughts and beliefs demonstrating his grievances against the USA. Khan inspired young Muslims to join a fight against the USA and conduct attacks on US soil using homemade explosive devices and other lethal weapons. Khan`s reasons for turning on his homeland were not very different from those of Anwar al-Awlaki. Khan pointed to American imperialism in the Muslim countries and took it as an attack on all the people affiliated with the region and its religion (Kelly, 2011). His status was equally unique as Awlaki`s in the sense that he was an English speaking person with profound knowledge of the western way of life. This attribute could have and most likely did enhance Khan`s importance for the intelligence community of the USA that has tracked Khan as well as it did Anwar al-Awlaki. In Kahn`s case, much more than in Awlaki`s, the logic that could have rendered him a combatant figure in respect to the IB2 is missing.

To elaborate on Samir Khan`s role in this drone strike, it is crucial to state that Khan was considered as a potential candidate to be added on the so kill lists mentioned earlier. Nevertheless, the US authorities decided not to do so as they lacked evidence of Khan`s activities against the country (Mazzetti, Savage, Shane 2013). This fact, together with the aforementioned lack of Khan`s significance as a target, confirms that his status was definitely not one of a combatant and an imminent threat. It is very hard to determine whether the US authorities knew about Khan`s presence in Awlaki`s vehicle at the time of the drone strike. However, no intention of killing Samir Kahn along with Anwar al-Awlaki had been suggested prior to the killing and his death was not officially admitted by President Obama as opposed to the death of Awlaki.

To sum up the relationship of the IB2 to the drone strike that killed Anwar al-Awlaki, Samir Khan and at least two other unidentified persons, the following is needed to be said. The decision to fire the Hellfire missiles was made knowing that the main target is not a threat in a military sense. The danger that stemmed from al-Awlaki`s sermons, motivation speeches and personal guidance, did not change his status to a combatant and a just target for extrajudicial killing. Whether knowingly or not, the strike killed Samir Khan, a figure that inspired other to harm the USA. However, Khan did not raise arms against the US. No evidence of him killing US citizens or destroying US property has ever been presented. Khan could not be considered combatant at the time of

the drone strike. Through the scrutiny of Just War Theory and the IB2 criteria, all of the victims of this drone strikes have to be considered as collateral damage and non-combatants. The official collateral damage consisted of Samir Khan and the two alleged AQ operatives killed alongside Awlaki. However, this reasoning cannot be accepted because of the fact that Anwar al-Awlaki was not targeted and killed justly according to the IB2. Therefore he did not represent a proper and legitimate target and no collateral damage could have been inflicted as a result of his killing. Instead, the drone strikes itself, as well as all the life and material loss, are to be considered collateral due to the fact that non-combatants were knowingly targeted and killed without any just reason.

### **3.2.4 International Law**

Despite the fact that this thesis does not aspire to conduct a legal analysis of the topic, the IB3 rule is a significant segment of Just War Theory and needs to be addressed. Killing of Anwar al-Awlaki in Yemen, and drone strikes in general, have raised questions of compliance with the US domestic law. The logic of justification of the drone strike from domestic legal perspective was backed by the post 9/11 decision of United States Congress as mentioned earlier. However, the confrontation of Awlaki's killing with the principles of international law was omitted by the US authorities.

International law, i.e. ratified international treaties, binds the USA to upholding the principles of universal human rights in every aspect of its activity. The most basic but at the same time the most important documents for determination of the legality of US behavior are the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights as its legally binding descendant. In its third article the declaration states that every person has "*the right to life, liberty and security of person*" (UNITED NATIONS, 2016b). Moreover, the right to life is also recognized by the International Covenant on Civil and Political Rights. Article 6, part 1 of this document states that "*Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life*" (UNITED NATIONS 2016c).

The key question in respect to the case of al-Awlaki is whether or not his right to life was honored and respected. In other words, the principles of the IB3 as well as of the aforementioned documents dictate that under no circumstance, except for a combatant in

an open military conflict, can a person's life be taken. The question of whether or not the situation in which Anwar al-Awlaki was killed can be considered a war and whether or not Awlaki was justly targeted was dealt with in chapter 2 and in the previous section of this chapter respectively. The WOT was determined by this thesis to be a construct of war that is possible to be examined through the logic of Just War Theory. Nevertheless, when confronted with the principles of the IB3 it is crucial to emphasize that the WOT has no legal status. By the principles of the IB3 there was no ongoing conflict in a legal sense that would have authorized the USA to deprive a person of their right to life. Even if such a conflict had existed before the decision to kill was made, Awlaki would not have constituted a just as well as a legal target as shown in the previous section.

In addition to the denial of the most valuable right established by the Universal Declaration of Human Rights, there are other principles of this document that require attention in the case of this drone strike. Both of the aforementioned documents establish the right to equal protection of the law without any discrimination that would violate any of the rights granted by them (UNITED NATIONS 2016b), (UNITED NATIONS 2016c). The discussion of drone strikes in general, as well as in this case, often stresses the extrajudicial dimension of the practice. Anwar al-Awlaki was accused by the US authorities of numerous deeds directly or indirectly threatening the country. However, the possibility to exercise his right of a due process granted to him through the discussed documents was denied by the conduct of the drone strike. The conflict of drone strikes with the principles of the right to a fair trial stems from the concept of terrorism as war, not as a crime, that is central to the US strategy.

At this point the position of the USA administration towards the legal nature of this drone strike needs to be confronted with the aforementioned issue. In his speech on drone policy the President addressed the legal controversy that accompanies the death of Anwar al-Awlaki. Once again the President stressed out that the country has been at war since 9/11 and that the USA would have detained and prosecuted Awlaki, thus upholding his right for a due process, if it could (Obama, 2013). The real possibility of Awlaki's detention was examined in section 3.2.2. According to the President then, the attack was necessary and carried out during a state of war. However, given the non-combatant status of Awlaki, the state of war would not have created legal grounds for him to have been a target. This conclusion arises from the logic of this thesis. It is important to note, however, that the USA is not a party state to the Geneva Convention Protocols I and II, which would

possibly create a framework of inquiry into drone strikes in general. The power of Hague and Geneva Conventions as such cannot be applied to this or any other case of a drone strike due to the lack of the state of war.

In addition to the rights of an individual stated above, the attack on a another state`s territory without being in a state of war is also highly problematic. To arbitrarily exercise an act of war within a territory of another country is in a direct conflict with the founding principle of the United Nations. This principle talks about a sovereign equality between all the member states (UNITED NATIONS, 2016d). Despite the fact that Yemen was known to be cooperative at the time of the strike, it is highly improbable that the attack would not have happened had the Yemeni government said no.

Rather than a conflict of killing of Anwar al-Awlaki with international law applying to war, the true clash occurs between the very basic principles of human rights and the strike. At this point this thesis arrives at a conflict with the opinion on drone strikes presented by, among many other authors, Rosa Brooks. In her analysis of the relationship of drone strikes and the international rule of law Brooks (2014) suggests that drones reveal the imperfections of international law and its enforceability. The author argues that the USA are not necessarily in conflict with the international law when it justifies drone strikes by necessity, imminence of the threat or the state of war (Brooks, 2014, pp. 98–99). These aspects of the practice of drone strikes were directly or indirectly addressed by this thesis through the optics of Just War Theory. The general phenomenon of drone strikes in its nature does not necessarily have to find itself in conflict with international law principles. However, the practice examined by this thesis suggests that, at least in case of Anwar al-Awlaki, international law was broken.

The targeted individual was deprived of his right to life based on an arbitrary decision of the Obama administration. Furthermore, Anwar al-Awlaki was stripped from his right to defend himself against said allegation in court. By the decision to kill Awlaki, the US administration effectively put itself in the role of the prosecutor, judge, jury and the executioner.



### 3.2.5 Reprisals

The nature of the IB6 rule is in determination of the motivation of carrying out a particular act in war, in other words justification of a concrete *modus operandi* at war. The core principle of this rule is different than the rest of the *ius in bello* framework. Whereas all the other rules in this category are sought to be confirmed in the case of Awlaki, the IB6 has to be absent from the practice in order for the case to comply with Just War Theory. The theoretical framework as well as the methodology used in this thesis arrived at two core principles of this rule that need to be analyzed in respect to the killing of Anwar al-Awlaki. The first of these principles is based on the logic that *ius in bello* cannot be broken in order to coerce the enemy. To elaborate on this principle, a party to the conflict that broke the *ius in bello* principles cannot be forced to follow them once again by practices that are also in conflict with these rules. In reality, this principle seeks to prevent any unjust coercion that would seek to justify itself through the principle of necessity of setting the conflict back on the just track again.

The question at hand is the one whether the aforementioned first principle of the IB6 can be applied to the practical experience of drone strikes and to the case of Anwar al-Awlaki. For this principle to be applicable to a concrete case, it is essential for both parties of the conflict to be aware of their involvement in the conflict and therefore being able to break the *ius in bello*. As already mentioned in this chapter, Awlaki was accused of being involved in activities aiming at killing US citizens and destroying US property. At the same time, however, no evidence of these activities was publicly presented and therefore it cannot be confronted with the logic of the IB6. Awlaki himself cannot be considered a part of a conflict because of his status and unproven involvement in violent activities. This fact was already examined earlier in this chapter.

However, Anwar al-Awlaki was affiliated with AQAP, as acknowledged earlier, albeit the significance of his position is highly questionable. It is thus necessary to identify the relationship between the IB6 first principle and the position of AQAP and consequently all of AQ in the WOT. At this point the argumentation and used reasoning is based on what was already presented in previous chapters of this thesis. The actions of AQ against the USA that had been carried out prior to the decision to kill Anwar al-Awlaki can be confirmed to be in conflict with *ius in bello*. The most characteristic violation of these rules is that of no respect for the IB2, as the *modus operandi* of AQ

takes little regards of civilian casualties. This fact constitutes a fulfilled precondition for the possibility of applying the first principle of the IB2 to the case of eliminating Awlaki. Nevertheless, for this principle to apply, the USA would have to demonstrate deliberate and conscious violation of *ius in bello* with the motivation to force AQ and thus AQAP to uphold these rules. No such indication was identified by this thesis. Quite to the contrary, when addressing the killing of Anwar al-Awlaki, President Obama pointed out that such drone strikes aim to defeat AQ (Associated Press, 2011). Indeed the conduct of drone strikes does not indicate any signs of aim at fulfilling the nature of this first principle of the IB6. Given the fact that AQ uses tactics of terrorist attacks there is no space for enforcement of the *ius in bello* in reality.

The second principle of the IB6 that is to be addressed when assessing the Awlaki case is the presence of revenge as a motive for the attack. The issue of addressing this principle correctly is of a similar nature as in the case of the first one. The motivation for fighting the WOT was originally generated by the pernicious loss that the USA suffered on September 11<sup>th</sup> 2001. The United States Congress then authorized the use of force against forces allegedly responsible for the attack. AQ represented the main enemy at that time as it was claimed to have conducted the attacks, as stated earlier in this thesis. The conundrum arising from this principle is whether the killing of Anwar al-Awlaki, a member of AQAP, was motivated by revenge for the 9/11 attacks. This issue is well dealt with in the speech President Obama gave to announce Awlaki's death. The President said that Awlaki's death represents a part of the effort to defeat AQ and that he was continuously plotting to kill people (Associated Press, 2011). The affiliation to AQ provided a powerful justification tool in the case of Awlaki. However it is evident, not only from the cited proclamation, that the official reason for the drone strike was the fear of what plots against the US would Awlaki set in motion.

Anwar al-Awlaki was not directly blamed for the 9/11. His relationship with the hijackers was already mentioned above. However, it is very loosely documented and its meaning is not clear to this day. In addressing the killing of Awlaki, President Obama stressed out incidents connected with activities of AQAP, but none related to the events of September 11<sup>th</sup>. When confronted with the nature of the IB6 principles it cannot be argued that Hellfires were fired at Awlaki's vehicle based on the desire of revenge. The attack would have to be openly motivated by punishment for a deed that had been done by the individual and that triggered the process of retaliation. The eliminating of Awlaki

was, as shown by the previous sections as a whole, based on preventive reasoning and on the fear of possible harm that he would have caused had he not been eliminated.

### **3.2.6 Assessment of the killing of Anwar al-Awlaki**

The death of Anwar al-Awlaki is an unprecedented case. For the first time an American citizen was added on a kill list and eventually targeted and killed by a drone. The aim of the preceding sections was to critically assess the conduct of the attack based on the set of rules that need to be upheld in order to render the attack just. It is important to state at this point that the case of al-Awlaki represents the best documented drone strike operation due to the problem of his citizenship and the level of controversy stemming from it. This study does not seek to evaluate the strike on any other principles than those designed by its methodology and Just War Theory.

The conclusion of this case is that Anwar al-Awlaki was killed unjustly. The conduct of the attack was found in conflict with rules IB1, IB2 and IB3. It is acknowledged throughout this text that the WOT represents a new phenomenon of fighting non-state actors without official military force. Even so, however, this case does not comply with the core principles of proportionality and discrimination. Anwar al-Awlaki had long been under surveillance before the attack and he resided in a cooperative country for the USA. This fact undermines the principle of proportional strike as it shows that it was not necessary to use lethal violence and therefore disproportional violence with respect to Just War Theory.

As demonstrated, Awlaki's status could not have been determined to be that of a combatant due to the nature of his alleged activities. It is acknowledged that Awlaki posed a potential threat to the USA. However, he himself was neither an armed threat nor an imminent one. For these and the rest of the stated reasons the USA did not discriminate in line with the logic of Just War Theory. This nondiscrimination applies to all of the victims of the attack because of the known non-combatant status in cases of Awlaki and Khan and the unknown status in the case of the other victims.

The logic through which the WOT and consequently the practice of drone strikes is viewed in this thesis does not permit to apply international law concerning official military conflict to the WOT. However, the IB3 rule encompasses all of the binding

elements of international law that the perpetrating state has ratified. According to this principle, the arbitrary decision to deprive a person of their life and at the same time denying them a trial in court cannot be rendered just. Finally, this case study did not arrive at the conclusion that the killing of Awlaki was driven directly by the desire of revenge or other form of reprisals which is of concern to the Just War Theory. However, it is the only rule among the presented list that can be determined as upheld.

The strike that killed Awlaki represents a perhaps the best known personality strike there is. Leaving aside the problem of Awlaki's US citizenship, this case study aimed at confronting the case with the rule of just conduct of war. The Obama administration defended its legal right to eliminate its target based on the law passed in reaction to 9/11. The legal dimension of this case may be complicated and unclear. However, the moral dimension, judged through the criteria of Just War Theory offers a clear conclusion. Anwar al-Awlaki was unjustly executed on September 30<sup>th</sup> 2011.

### **3.3 *The Chenagai Incident***

#### **3.3.1 Background of the strike**

On October 30<sup>th</sup> 2006 an incident occurred in the village of Chenagai in Bajaur Agency, the smallest of the agencies in FATA, Pakistan. Around 5:00 am. local time, several missiles were fired from the sky on a local madrasa killing more than 80 people with at least 70 of them being children. The local school was ran by the Tehreek-e-Nafaz-e-Shariat-e-Mohammadi. This Sunni militant group was led by Sufi Mohammad who was involved in recruitment of militants to fight the USA after it invaded Afghanistan in 2001. Although the aforementioned organization was a potentially valuable target, the Chenagai strike was meant to target the AQs second in command, Ayman al-Zawahiri (Fair, 2014, pp. 246–247). However, his presence was not confirmed after the attack had been carried out leaving the building of the madrasa leveled to the ground.

Various reports on the particular details of the attack began to emerge during the first several hours and days after the strike had been carried out. The initial responsibility was claimed by the Pakistani government and it complied with the testimonies of unspecified local individuals claiming they saw Pakistani gunships at the site of the attack. Nevertheless, the idea of Pakistani government being the perpetrator began to raise suspicion. The reason for this development was that on the same day as the attack occurred, Pakistan was expected to sign a peace agreement with the local militant units (The Bureau, 2011). Therefore, the motivation to alienate these units on the day of a potential security breakthrough does not comply with the interest of Pakistani government at that time. Under the pressure of the severity of the drone strike as well as the wrecked relationship between Pakistan and the militant units, Pakistan altered its version of the strike. In November 2006, a key aide to the former President Pervez Musharraf admitted that Pakistan did take the responsibility under the impression that it would be less damaging if Pakistan was blamed for the attack than in the case of the USA. However, due to the extent of collateral damage, Pakistan changed its position (Woods, 2015b, p. 96).

The responsibility for the strike was assigned to the CIA by the Pakistani government. Although this assumption has not been addressed by the agency or any other

US official, it is widely considered to be so given the aforementioned motives of Pakistan at that time.

### **3.3.2 Proportionality**

The Chenagai strike remains to this day perhaps the most controversial drone strike conducted in Pakistan. When assessing the necessity for the use of violence, the situation of Chenagai is fundamentally different to the case of Anwar al-Awlaki examined in the previous case. The arena in which this particular strike was conducted is of an extremely specific nature. FATA is a semi-autonomous territory that is very difficult for an alien force to operate in. Moreover, the possibility of achieving the extradition of a desired high value target from this part of Pakistan is minimal due to its traditional tribal composition. The character of the location shapes it to be the most frequent territory within which US drone strikes are carried out. Its mountainous terrain and specific conditions make it predominantly a territory that is in reality controlled by the Taliban and Tehrik-e-Taliban Pakistan and where Islamic law is enforced (Baker, 2007). It is practically not feasible for the USA to effectively search and capture targets in this region that is one of the most specific and enclosed territories in this part of the world. Compared to the Yemeni desert, mentioned in the previous section, FATA represents a practical problem for surveillance and for the conduct of special operations.

Moreover, the true intent of the Chenagai attack contributes to this issue. The October incident was one of two confirmed drone strikes that were planned and conducted with the objective to kill Ayman al-Zawahiri who was claimed to have been moving through the FATA territory with protection of the local Taliban forces (Woods, 2015b, p. 108). HVT of this importance located in this territory could not have been apprehended, at least not without a severe risk to the personnel responsible for his capture. At that time Ayman al-Zawahiri was the second in command in whole of the AQ and represented a target directly connected to the 9/11 attacks with an offer of \$25 million for information leading to his capture (FBI, 2016). The Chenagai incident represents a second unsuccessful drone strike against Zawahiri proving that the US intelligence was not capable to determine the target's whereabouts. Under these circumstances, an operation with the goal to arrest and bring Zawahiri in did not represent a viable and potentially

successful choice. In respect to the IB1 it can be assessed that in this case, the successful defeat of Ayman al-Zawahiri depended on the use of violence as the option to capture the target was not a feasible one. As well as in the case of Anwar al-Awlaki, the assessment of the particular criterion does not suggest the overall justness or unjustness of the strike.

As for the destruction of property, the harm inflicted by the strike does not indicate a high level of disproportionality in a strictly material sense. Based on publicly available sources the drone strike destroyed one building. Judging the case strictly through the optics of the IB1 it is hardly disproportional to eliminate a target as valuable as Zawahiri in exchange for the destruction of one structure.

Nevertheless, the conflict of this strike with the principles of the IB1 does not dwell in the destruction of one building itself. It dwells in the character of the destroyed building. The Hellfire missiles hit a local school, madrasa that was allegedly a meeting place of local militants and AQ affiliates. However, no such reality has been proved to this day. The body count of the strike stopped at 81 dead. This number consist of at least 70 individuals that were younger than 18 years of age at the time of the strike. Only one of the victims was identified as an adult militant individual (The Bureau, 2014).

In other words 70 children were killed in an attempt to eliminate Zawahiri. Hypothetically, if this ratio of collateral damage per one attack were applied to the number of reported attacks in Pakistan since the beginning of the WOT, the civilian death toll would be approximately 30 000 casualties (Stanford Law School, NYU School of Law 2012, p. 40). Based on inaccurate intelligence and usage of pattern of behavior in order to determine the character of the targeted structure, the drone strikes caused the most collateral damage in the history of this practice.

At this point of this section a highly interpretative question is to be addressed. Nevertheless, the answer to this question, is based on the core principle of Just War Theory and consequently of the IB1. The question is whether it is justifiable to tolerate the infliction of such a high rate of civilian casualties in exchange for the chance to eliminate a target as valuable as Zawahiri. The answer to this question, according to what has been identified by this thesis as the core principles of Just War Theory, is no. It can be argued that the unjustness of this particular case is self-explanatory given the number of civilian casualties. Indeed such reasoning is valid in the Chenagai case. However, the conflict of this case with the principles of Just War Theory is more complex. It is the

connection between lacks of respect for the IB1 as well as for the IB2 rules that creates the character of this case. The principles of proportionality and discrimination run together in the case of this particular drone strike. The details of the IB2 rule in respect to this strike are going to be examined in the next section. However, the principles of proportionality are determined by the ability of the perpetrator to analyze the situation on the ground. Furthermore, it is the ability to determine the character of the target and possible risks to civilian personnel or property that define the relationship between the IB1 and IB2.

The conclusion of this section is that the attack that occurred in Chenagai village is not only in direct conflict with the IB1 principles, it stands for the key problem of targeted killing. It is acknowledged that the use of violent force was necessary in order to eliminate Ayman al-Zawahiri inside the FATA region for the aforementioned reasons. Moreover, the prospect of the chance to apprehend Zawahiri in a different, more easily accessible location is highly unlikely. However, strikes that were supposed to eliminate this HVT killed between 90 and 100 civilians (The Bureau, 2011). It is the deadliest attack and the biggest breakdown of a drone strikes operation since it has been first used to target militants. No criterion of the IB1 rule is in compliance with this deed as it represents a severely disproportional waste of civilian lives, most of them children's.

### **3.3.3 Discrimination and signature strikes**

The attack on the madrasa in Chenagai represents a very specific case among drone strikes in general. Such specificity is also borne by this section as it represents an examination of this drone strike through the criteria of the IB2 and at the same time addresses the overall relationship of Just War Theory and the practice of signature strikes.

### **3.3.4 Signature strikes and Just War Theory**

One of the most controversial aspects of the drone strike phenomenon is the practice of the commonly named signature strikes. This practice occurred for the first time in 2002. At that time the drone campaign was still a relatively new concept of counterterrorism tactics. The case of the first signature strike is known to have occurred



in February 2002 when a CIA drone came across a valuable imagery that was thought to be related directly to the events of 9/11. During its surveillance flight the drone identified a tall man surrounded by a groups of individuals thought to treat the tall man with evident and deep respect (Benson, 2014, p. 20).

This pattern of behavior, and the fact that this man was identified to be unusually tall compared to the average height of local males, led to the decision to fire a Hellfire missile on the group. However, the tall man was not UBL and the strikes killed a man named Daraz Khan and two other persons. None of these targets were associated with any terrorist activities at that time. This modus operandi eventually became a standard with President Bush's authorization for more CIA operated drone strikes using this kind of targeting methods (Benson, 2014, pp. 19–21).

The exact definition of the patterns of behavior or appearance that are sufficient for an individual to become a target is classified. Nevertheless, there are indications, and the carried out signature strikes confirm these indications, that these patterns are defined very broadly. This broad definition was confirmed by Mr. Cameron Munter, former US ambassador to Pakistan in 2012. Mr. Munter stated that the definition of an individual to be tagged as a possible target was to be a male between the ages of 20 and 40 (McKelvey, 2012). Indeed the number of collateral damage of drone strikes in all of the countries where drones have been deployed suggests that these information are correct. In plain words, it is sufficient to be of appropriate age, to look appropriately and to be surrounded by persons also fulfilling these conditions to be deprived of the right to life.

The practice of signature strikes is in its nature in a severe conflict with the principles of Just War Theory. The constructive element of strikes of this kind entails deliberate and conscious omitting of the principle of discrimination between combat and non-combat personnel. The following section demonstrates the practice of signature strike and the problem they pose even when combined with intelligence on the whereabouts of a concrete HVT.

### 3.3.5 Discrimination in Chenagai

To introduce the specificity of this case as far as the IB2 is concerned, it is necessary to analyze the reason why the madrasa building was struck. As mentioned earlier the drone strike was meant to kill the AQ number two commander Ayman al-Zawahiri who was believed to be present in FATA at that time. Nevertheless, his concrete whereabouts were very hard to determine for the US intelligence. This fact is underlined by the unsuccessful attack in January 2006 that was also conducted with the objective to eliminate this HVT.

The madrasa destroyed on October 30<sup>th</sup> 2006 was run by a radical cleric named Maulana Liaqat Ullah Hussain, allegedly a deputy to Ayman al-Zawahiri at that time. Hussain had been designated as a militant figure prior to the attack (The Economist, 2006). However, as in the case of Anwar al-Awlaki, the notion of Hussain posing an imminent military threat to the USA is false. Hussain was known to be a radical and rather hateful preacher in matters connected to the USA. However, he did not pose a threat to the USA that would require eliminating him on site. Liaqat Hussain was confirmed to have been killed by the Chenagai strike and his death was considered to be a great success.

Although not sufficient for the fulfillment of the IB2 criteria, the USA did apply a certain degree of discrimination when identifying a facility gathering a mass of people ran by a radical preacher. However, the conflict of this case with the IB2 lies in the presumption that was made based on the information on Zawahiri's presence in FATA and on the status of Liaqat Hussain. Shortly after the attack, Pervez Musharraf, President of Pakistan at that time, announced that there had been surveillance of the madrasa before the strike occurred and that forces carrying it out knew exactly what the status of the targets was (The Economist, 2006). This proclamation, to the extent of the knowledge of the status of the targets, was later proven to be a lie.

On the morning of October 30<sup>th</sup> 2006 an unusually high number of personnel was identified in the surroundings of the surveilled object. The reason for this phenomenon was the end of the month of Ramadan and the return of students to the madrasa. After a long period of calm, up to a one hundred people were concentrated in the building, believed to be a Taliban and an AQ training camp and a safe house. The fact that the object had been surveilled for several days and the attack occurred on the day of increased

activity suggests that an assumption was made about a certain gathering connected to terrorism was taking place, given the alleged presence of the HVT in the region. At this point this section arrives at the key issues concerning the IB2 and the Chenagai strike. The striking party had known the following before the attack. The madrasa was run by a radical cleric Ayman al-Zawahiri was reported to be moving through the FATA region and on September 30<sup>th</sup> there was an unusual concentration of individuals in the object and its surroundings. These facts were confirmed by the count and character of the later listed victims (The Bureau, 2014). The stated knowledge of the US authorities was enough to carry out a lethal action. An action that was based on an assumption, a pattern or behavior, a signature.

When perceiving drone strikes through the optics of Just War Theory and especially through the optics of the IB2, the Chenagai incident represents a defining case. In the previous case, Anwar al-Awlaki was a known and intended target and the other victims were assumed to be AQ operatives, which most likely was so, despite not being confirmed. In Chenagai, the perpetrating party revealed that it had had not information on the details of the targets and their status. The fact that an overwhelming amount of the victims were children under the age of 18, with the youngest victim being only 7 years old, confirms this assumption (The Bureau, 2016). The alternative possibility is that the US authorities had known about the nature of the target and carried the attack nonetheless. However, this alternative is not verifiable and therefore not pursued by this thesis. Nevertheless, the question of whether the USA knew about the nature of the target or not is not decisive for the determination of the relationship of this drone strike and the IB2.

Based on what was stated thus far, the Chenagai case is not only in conflict with the IB2 principles. The conduct of the strike, as evident from the aforementioned, circumvented the effort to discriminate between combatants and non-combatants entirely. From evidence available on the strike the motivation of the US administration could have been twofold.

In scenario one, the intelligence on Ayman al-Zawahiri's presence was in fact assessed to be reliable. The drone strike then followed with or without the knowledge that the alleged terrorist training camp was in fact a madrasa full of under aged students. In scenario two the US authorities were aware that Zawahiri is not present in Chenagai, however, the motivation of the strike was to disrupt the upcoming singing of a peace

treaty. The potential existence of such peace agreement would have made any future drone strikes in the territory impossible provided the US would respect a sovereign arrangement of its ally.

To conclude this section, it is important to summarize the core conflicting principles of the IB2 and the Chenagai strike. The nature of this strike is unique as it combines the features of both personality and signature strikes. However, the ratio of eliminated combatants and non-combatants, already stressed in previous section, proves that the IB2 principles were omitted completely in any possible scenario. The list of victims represents evidence of either not knowing the status of the targeted individuals or not taking this status into consideration. However, this incident is not in line with any of the principles applied throughout this section.

### **3.3.6 International Law**

The Chenagai incident represents an act of lethal violence committed over the soil of an official ally. As in the Awlaki case it is therefore appropriate to assess the possibility of an arbitrary breach of the sovereignty of another state. Indeed the aforementioned proclamation of President Musharraf confirm that the attack was truly conducted by a foreign actor and occurred within Pakistan's airspace and affected its soil and inhabitants. However, the fact that Pakistan admitted covering the US involvement in the attack suggests that no breach of state sovereignty actually occurred and that cooperation between Pakistan and the USA took place. No information suggesting coercion on the US part in order to gain privilege to carry out the drone strike was found by this thesis.

As far as elementary human rights violation is concerned, the Chenagai case is not significantly different to the previously examined case. The conflict of the drone strike with the principles of the fundamental right to life is analogical to the Awlaki case. The targets were deliberately deprived of their lives based on information obtained through surveillance and collected intelligence. Moreover, no official accusation of any of the victims had been issued prior to the attack. Hypothetically speaking, the right to a fair trial was not violated given the fact that the victims were not accused of any criminal deeds. Nevertheless, as shown earlier in this thesis, it wouldn't have impacted the relation of the attack and the principles of Just War Theory had any accusation had been made.

The character and mainly the outcome of the Chenagai attack requires an assessment of the possibility of committing a certain kind of mass murder. The act does not comply with the features of genocide or ethnic cleansing and indeed such accusations would be false. However, there is another concept, although not a legally binding one, that needs to be addressed in this section. It is the category commonly referred to as democide designed by Rudolph J. Rummel (1994, pp. 6–9). Despite the fact that this concept is not a law, it is a complementary principle to the moral assessment of the strike through the optics of the IB3. Rummel defines democide as an action ordered and carried out by a government that results in murdering of a person or persons. Democide includes acts of genocide, elimination of political enemies and mass murder (Rummel, 1994, pp. 6–9). This concept accounts for cases of state-sponsored elimination of targets that occur outside the category of genocide as such. Referring back to the findings of the two previous sections, the Chenagai drone strike in fact represents a case of democidal mass murder as it deprived more than 80 people of their lives.

It is acknowledged at this point that the concept of democide is not a legally binding principle and that the attack on the madrasa is in fact in conflict with principles of basic human rights. These are the principles set by the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. It is indicative that the two examined cases share the violation of these basic principles of human rights. Nevertheless, the fact that the concept of democidal mass murder fits the circumstances of the Chenagai bombing suggests lack of binding international law principles applicable to similar cases. The drone strike was not carried out in an officially recognized warzone and did not fulfil the criteria set forth by the Genocide Convention<sup>6</sup>. For this reason, the conflict of this case with the binding principles of international law is not substantially different from the previous case. The concept of democidal mass murder, however, implies that indeed the moral implications of the Chenagai drone strike are vast, even if uncodified as a violation of international law.

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<sup>6</sup> The Convention on the Prevention and Punishment of the Crime of Genocide (UNITED NATIONS, 2016e)

### 3.3.7 Reprisals

As far as the examination of the case according to the IB6 criteria is concerned, a reference to the application of this rule in the previous case is in place. It was shown in the Awlaki case that the first principle of the IB6 is universally applicable to the case of drone strikes as they are viewed by this thesis. In cases of strikes aimed against AQ, the Taliban or any affiliated organizations of these two major networks, the motives of the USA are not driven by coercing these organizations to return to the principles of *ius in bello*. In respect to this principle, the Chenagai case is analogical to the killing of Anwar al-Awlaki. The strike was ordered against a high ranking AQ operative and even though Zawahiri was falsely presumed present at the madrasa, the motivation of the drone strike was to substantially weaken AQ. The examination of the first principle of the IB6 it therefore obsolete in the Chenagai case.

However, the second principle constituting the criteria of this particular rule needs to be addressed more closely. According to the data available and used by this thesis the, true target of the attack was indeed primarily Ayman al-Zawahiri and not Liaqat Hussein whose significance does not correspond with the scale of the strike. It was also shown that Zawahiri had been targeted prior to the Chenagai incident also in the Bajaur Agency. Moreover, the willingness to inflict such an amount of collateral damage, knowingly or not, suggests that the motivation to strike the complex of the madrasa was enormous. For this reason it is assumed by this thesis and by stated sources that the main goal of the strike was to eliminate Zawahiri. In such a case the influence of the second principle of the IB6 emerges. Ayman al-Zawahiri was second in command of AQ at the time of the 9/11 attacks. Together with UBL he issued a fatwa in 1998 urging jihad against the USA (FAS, 1998). Three years later, the most destructive terrorist attack in history occurred. The motivation to kill Zawahiri is indisputably connected directly to the events of September 11<sup>th</sup>. With that said, it was shown previously in this thesis that the desire of revenge was codified and passed by the United States Congress immediately after the events of 9/11.

The purpose of the second principle of the IB6 is to recognize a lethal act committed out of emotional turmoil of the perpetrator based on wrongdoings suffered in the past. The Chenagai drone strike represents such a case. The desire to eliminate a top AQ commander, undoubtedly involved in the preparation of 9/11 given his rank, led a

negligence of intelligence collection or to the indifference to the basic principles of warfare. In either case the outcome represents the most deadly drone strike in history as far as collateral damage, i.e. lives taken is concerned. In this particular case the desire for revenge led to the death of at least 70 children.

### **3.3.8 Assessment of the Chenagai incident**

Although not as thoroughly documented as the case of Anwar al-Awlaki, the Chenagai incident represents a cornerstone example when assessing the compliance of drone strikes with Just War Theory. The modus operandi of the attack bears the characteristic signs of both personality and signature strikes. It offers a unique insight into the logic according to which targeting of extremely HVTs is being done. The conclusion of this section suggest that the use of violence in the pursuit of Ayman al-Zawahiri was necessary given the circumstances. However, the conduct of the strike and its result points to a grave conflict of the most basic rules within the *ius in bello*, the IB1 and IB2.

The key contribution of this case however, lies in its relation to the IB2. The fact that drones do not match the criteria of the IB5 rule was acknowledged in a separate section. The outcome of the Chenagai case research connects both the IB2 and IB5 logics. The nature of signature strikes such as the one that occurred in Chenagai confirms that it is only the manner in which drones are being operated that is in conflict with Just War Theory. This case demonstrates the core issue of signature strikes and that is the complexity of the cultures and regions in which drones are being operated. The list of victims in Chenagai proves a severe misunderstanding of the signature pattern based on which the decision to fire had been made. Resuming studies after the month of Ramadan, which caused highly unusual activity at the location, was interpreted as a gathering of military personnel due to Zawahiri's presence. This is the conclusion made based on what has been stated on the account of the Chenagai drone strike. The general principle of signature strikes can never be identified in line with the basic rules of *ius in bello*. It is due to the fact that the striking side possesses no reliable information on the nature of its targets.

The action taken on October 30<sup>th</sup> 2006 is unique in one additional aspect of its relation to Just War Theory. It is a clear demonstration of the purpose of the IB6 and its

inner logic. The case demonstrates the power of the emotion over the factual knowledge about the nature of the target and possible collateral damage. This principle can be connected to a political potential of killing an HVT responsible for a national disaster. Moreover, a personal turmoil and desires for revenge can play a significant role in the final decision making. Whether these aspects were present in the Chenagai case is not verifiable. However, the result of the strike is in a direct conflict with the IB6 as well as with the other *ius in bello* rules, except for the necessity of the use of violence. Based on data examined and confronted with the principles of Just War Theory, the Chenagai drone strike was conducted unjustly with an extremely disproportionate rate of collateral damage, with no respect for the principle of discrimination and in conflict with other rules of just war applied in this thesis.



## SUMMARY

The aim of this thesis was to contribute to the topic of drone strikes and the ethical implications of their use for targeting HVTs. The USA, especially under the Obama administration, has enhanced the drone campaign and the combination of military and CIA drone operations has become a key pillar of counterterrorism missions. However, the reasons for the position that the drone operations have gained were found to be rooted in the construction of the WOT phenomenon. The aftermath of 9/11 created a unique environment for devising a concept of global war and ever-present danger that would have supposedly resulted in a domestic catastrophe, had it not been tackled abroad. The perception of the American public as well as that of the media and public institutions was that the country is at war and therefore appropriate means had to be implemented. Although without an official legal status, the effort of the USA to locate and eliminate those responsible for 9/11 was officially labeled and perceived as a war. The role of President George W. Bush was identified as crucial in the creation of the WOT construct as described by this thesis. The frequency and manner in which the term was offered to the public played a crucial role in setting the scene for the upcoming years of counterterrorism operations. The significance of this phenomenon was found to be of essential importance. Thanks to the success of the WOT construct, terms like necessity, imminence, threat to national security and alike started to emerge and served as an explanation for US activities overseas. However, this concept for justification of a military intervention or ad hoc counterterrorism operations was found to be invalid in respect to the Just War Theory criteria.

Throughout this thesis the aim of the research logic was to imply that it is not only the means of counterterrorism, i.e. the drones, but also to contextual framework that aims to explain the necessity for such a conduct. Yet, the WOT cannot be rendered a just war. The research presented on this particular problem suggested that the aforementioned concept was applied to cases of little imminence and actual danger to the country. From the perspective of *ius ad bellum*, the WOT has been constituted out of elements that cannot be justified in light of these rules. Drone strikes, as one of these key elements, were examined in separate case studies due to their central importance to this thesis. It was found that there is a significant conflict between the practice of just war and the method of using drones to eliminate HVTs. The offered cases were found to be in conflict

with the *ius in bello* principles. It is especially the issue of signature strikes that was found to be indifferent to the principles of discrimination in its very nature. The general justification of the need of drone strikes speaking of the imminent threat posed by the designated target that is needed to be extinguished, was demonstrated to be an extremely vague concept. The targets eliminated in the examined cases did not meet such criteria and their potential danger to the USA remains only presumed. It is especially in the case of Anwar al-Awlaki where evidence of the real imminence of the threat posed by this man was not found. It is not so only for the reason of his US citizenship, but also due to the environment in which he was eliminated and the period of time he had been surveilled for before the attack. The second case study suggests perhaps the most troublesome issue connected to the practice of killing by drones. The fact that no risk exists for ground military forces or pilots can contribute to the chance-taking when assessing the probability of an efficient and precise strike. The chance of eliminating an extremely valuable target with no risks to domestic military assets can set the scene for a smaller demand for precise and multiple-sourced intelligence. In fact, the very existence of the signature strikes confirms this logic. Additionally, despite the fact that this question was not addressed by this thesis, the Chenagai incident demonstrates that drone strikes with similar outcomes will hardly win hearts and minds of the local populace and prevent it from being the potential target of recruitment.

It is the conclusion of this thesis that no inherent connection exists between drones, counterterrorism and unjust conduct of war. It is possible to use drones for surveillance, as they often are, and it is possible to use them for various peaceful activities. Arguably, it is even possible to deploy armed drones to kill targets justly, for example in an open military conflict. Similarly, the effort of counterterrorism does not inherently find itself in conflict with Just War Theory. It was shown throughout this thesis that it was the WOT construct that prepared the field for drone strikes. It is the hope and possibility of eliminating the worst of the bad with no risk to military personnel. It is the simplistic interpretation of the cultural and religious customs of the societies in affected states. All of these factors make drone strikes politically and militarily comfortable. But drones are not evil in themselves, they are not destined to cause harm. The second research hypothesis is therefore confirmed by this thesis.

As far as the research questions are concerned the following is to be stated. Although a significant portion of the information regarding drone strikes remains

classified and not available to the public, the available sources are sufficient to reconstruct the logic of particular strikes, as shown in case of the Chenagai incident. This limitation was acknowledged and incorporated into the logic of the research. However the criteria of Just War Theory were possible to apply regardless of the classified portion of the information about particular strikes.

Regarding the primary research question, drone strikes as a part of the counterterrorism operations within the WOT, were found to be unjust due to the fact that both of the examined cases were identified to be in severe conflict with Just War Theory. At the same time, the answer to the secondary research question, which is inherently tied to the primary one is that in the context of WOT drone strikes are an unjust means in an unjust war.

It is possible that drones will be used for a justified purpose and in a justified way in the future of counterterrorism operations. And even today, surveillance done by drones in potentially dangerous areas is in no conflict with moral principles of just war. However, targeted killing of HVTs by drones seems to have created an environment of simplicity and comfort when it comes to taking a human life. It is the threshold of the acceptable and the moment at which the button is pushed. Military units on the ground would not always be a possibility and they would often run a substantial risk. Nevertheless, units on the ground would hardly identify madrasa students as imminent threat to national security. Soldiers on the ground could have apprehended Anwar al-Awlaki in Yemen. The choice of protection of these units is at the same time a choice to inflict collateral damage. Because no matter how sophisticated the drone technology and satellite imaging gets a drone will never think in a context. A drone will never determine the true nature of its target and to do so in an operations room is hardly the way to effectively counter terrorist threats. And even if so, it is not possible without creating potential recruits through their desire to avenge those killed in drone strikes.

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## LIST OF ABBREVIATIONS

|             |  |
|-------------|--|
| AQAP.....   | Al Qaeda in the Arabian Peninsula                      |
| AQ.....     | Al Qaeda   |
| CIA.....    | Central Intelligence Agency                            |
| FATA.....   | Federally Administered Tribal Area                     |
| FBI.....    | Federal Bureau of Investigation                        |
| GBU.....    | Guided Bomb Unit                                       |
| HVT.....    | High Value Target                                      |
| RMA.....    | Revolution in Military Affairs                         |
| UAV.....    | Unmanned Aerial Vehicle                                |
| UBL.....    | Osama Bin Laden  |
| USA/US..... | United States of America                               |
| USG.....    | United States Government                               |
| ROE.....    | Rules of Engagement                                    |
| WMD.....    | Weapons of Mass Destruction                            |
| WOT.....    | War on Terrorism/War on Terror/Global War on Terrorism |



# **LIST OF APPENDICES**

**Appendix no. 1: Operationalization (Table 1.)**

## APPENDICES

### Appendix no. 1: Operationalization (Table 1.)

| <i>Ius ad Bellum</i>        | <i>Abbreviation</i> <sup>7</sup> | <i>Verification criteria</i> <sup>8</sup> ,<br><i>Description</i>   | <i>Ius in Bello</i> | <i>Abbreviation</i> | <i>Verification criteria</i> ,<br><i>Description</i>  |
|-----------------------------|----------------------------------|---|---------------------|---------------------|---|
| Just Cause                  | AB1                              | particular wrongdoing, attack, assassination, kidnaping, blockade, annexing, terrorism  | Proportionality     | IB 1                | necessity of the violence and destruction inflicted, unnecessary collateral damage, unnecessary civilian structure destruction                          |
| Right Intention             | AB2                              | evidence of prioritizing the achievement of peace and reducing damage and death to minimum, official statements, post-conflict strategies, reconstruction teams | Discrimination      | IB2                 | ratio of combatants and non-combatants eliminated, signature strikes <sup>9</sup> and the necessity for their use, awareness of non-combatant targeting |
| Legitimate authority        | AB3                              | state represented by legitimate authority, entitled by constitutional law to approve acts of violence, war etc.   | International law   | IB3                 | compliance with international treaties and conventions to which the perpetrator state is a party (ratified given document)                              |
| Reasonable hope for success | AB4                              | highly interpretative, will serve as secondary criterion, not verifiable  | POW treatment       | IB4                 | verifiable, determinable but not relevant for drone strikes analysis, omitted   |

<sup>7</sup> In order to simplify the referencing system, abbreviations will be used for both categories of just war rules.

<sup>8</sup> A list of characteristics that will be looked for in order to render the particular rule as present or absent.

<sup>9</sup> The phenomenon of signature strikes will be examined through the second case study (Chenagai case)

|                     |     |   |             |     |  |
|---------------------|-----|---|-------------|-----|--|
| Proportionality     | AB5 | interpretative but determinable, proclaimed goal of operations versus the arsenal considered, desired benefits and harm inflicted | Malum in se | IB5 | use of means that are inherently evil, i.e. do not require modification in order to pose a threat to human life and property, genocide, violence based on ethnicity, use of poison |
| Last Resort         | AB6 | exhaustion of every possible way of achieving the desired objective before employing lethal methods and acts of war               | Reprisals   | IB6 | violation of ius in bello in order to make the enemy to follow these rules, revenge as a motive for violence and destruction   |
| Comparative justice | AB7 | undeterminable, cultural and religious basis, omitted   |             |     |  |

Source: Devised by the author based on theoretical framework and methodology.