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1. Introduction

“Targeted killings” is a relatively new notion in the international legal and political discourse. Although its definition is yet to be elaborated, the expression has become a common place when describing the use of lethal weapon against individuals suspected to be involved in terrorist activities. Drones are the major weapons when conducting targeted killings. Initially created as a reconnaissance tool to provide with detailed information about the adversary’s dislocation and means of military operations, and other intelligence data drones obtained new unprecedented power after they were *weaponized* and, therefore, acquired the ability to strike by missiles any target in geographically broad areas.

The United States, the United Kingdom and Israel are the first States that have used drones to obliterate suspected terrorists. After the first rather timid use of drones under the George W. Bush administration the Obama administration adopted a strategy of targeted killings through the use of drones and went in this strategy implementation so far that drones were dubbed “Obama’s weapon of choice”.

It goes without saying that new weapons, especially, in modern times when science and technology develop with unprecedented paces, should replace the old ones to increase the effectiveness of war operations. The use of drones have been commented by many from that point of view. The drone-using governments, as well as numerous analysts, academics and journalists have underlined the capacity of drones to carefully choose the time and the location of the strike avoiding civilian casualties. Furthermore, the drones’ attractiveness, provided a weapon can ever be attractive, is the advantage of not deploying ground troops or engaging in risky operations to capture suspected terrorists, thus sparing soldiers’ lives, arms and ammunitions.

Notwithstanding all these factors, the use of drones proved to be controversial insofar as it raised fundamental problems related to international humanitarian law (IHL) and human rights law. Indeed, however meticulously prepared, drone strikes could not avoid annihilating lives of thousands of civilians. This alone could be enough to question the compatibility of the use of drones with IHL and human rights law. Still, this is only one argument among others against the use of armed or combat drones. Among the other arguments one should point out the fact that obliterating suspected terrorists rather than trying to capture them is paramount to breaching the fundamental principle of presumption of innocence and the right

to fair trial enshrined in the bulk of national legal documents, as well as international covenants and treaties.

One should add that the use of drones reflects only the surface of the problem. The problem is not the drones, which in the final analysis are no more than a tool. The problem is with the strategic thinking of drone-users, who, willing to have recourse to cheap and effective, and politically lucrative means of warfare, often neglect the IHL and human rights law.

Thus, the problem of targeted killings through the use of drones is a complex one. It has triggered controversies that up to date have not received a definite answer. This thesis makes an attempt if not to answer all related questions, at least to analyze and spread light over a number of aspects of the use of drones from the perspective of their admissibility under the existing international commitments.

Chapter One of the thesis deals with the legal analysis of targeted killings. It considers the problems, which targeted killings raise, within the framework of IHL and human rights law, demonstrating the incompatibility of targeted killings with basic human rights, first and foremost with that of the right to life. Other problems such as the use of force against armed groups and on the territory of States that are not involved in any kind of war; the misuse of the principle of self-defense and imminent threat; the compatibility of the use of drones with the principles of international armed conflict and the like have become subject to analysis.

Chapter Two is devoted to the practical aspects of the implementation of the policy of targeted killings through the use of armed drones, the main weapon involved in such kind of antiterrorist operations. Based on abundant facts of the use of drones this chapter makes a comparative analysis between the administrations of George W. Bush and Barack Obama in the context of antiterrorist operations. It clearly demonstrates the similarity of strategic approaches between the two administrations, pointing out, however, that under President Obama the use of drones, i.e., targeted killings, has drastically increased.

Chapter Three can be considered as the central part of the thesis. It is devoted to the major controversies triggered by the strategy and practice of targeted killings through the use of modern technology, i.e., armed drones. A rather detailed analysis of the compatibility of the use of drones with the UN Charter, IHL, human rights law, and the principle of just war doctrine both in the context of *jus ad bellum* and *jus in bello* demonstrates the complexity of the problem. More importantly, the chapter argues that uncontrolled drone proliferation may bring about blatant breaches of IHL and human rights law and suggests that new approaches

at theoretical, political and diplomatic level should become subject to in-depth deliberations in order to find a balance between the use of new technologies and the international legal framework.

The thesis contains numerous references to the United Nations Charter, UN General Assembly and Security Council resolutions, reports to the UN Human Rights Council, ICRC, as well as EU-relevant documents. Apart from these primary sources the author has analyzed monographs, scientific articles, in-depths analytical papers, press publications, as well as publications of a number of international non-governmental organizations dealing with the problems of the impact of modern warfare on human rights and fundamental freedoms.

The controversial character of targeted killings has brought about controversial approaches among the academic circles, and the thesis has attempted to demonstrate different, often conflicting views and opinions in order to discover the complexity of the questions under consideration. The thesis concludes with suggestions on the possible ways of overcoming the problematic issues linked to targeted killings and the use of combat drones.

2. Chapter One: Legal Analysis of Targeted Killings

“When an exceptionally powerful state begins to interpret international law in a substantially different way than most other states, it becomes increasingly difficult to predict that state’s behavior. And unpredictability can spread: one powerful outlier can pave the way for others, and as more states join the outlier, the foundations of the international rule of law begin to crumble.”

Rosa Brooks¹

This chapter undertakes a non-exhaustive legal analysis of targeted killings, occurring in the context of US intra-state drone strikes and counter-terrorism operations. These attacks, which are mostly intended to eliminate potential terrorist suspects, produce many controversial and challenging questions, including legal ones. US-conducted drone strikes or special operations in territories of other states raise, depending on their specific context, questions around

¹ Brooks, Rosa “Drones and the International Rule of Law”, 28 J. Ethics & Int’l Aff. 83-104, 2014, p. 87 at <http://scholarship.law.georgetown.edu/facpub/1287/>. (18 October 2016)

different branches of international law, including international humanitarian law and human rights law. They also fuel multiple concerns regarding the use of inter-state force. In this context, constitutional and domestic constraints also play a significant role, though they often tend to be overlooked.

This paper first and foremost focuses on analyzing crucial political aspects of targeted killings. The below analysis therefore does not cover legal questions in detail, but rather aims at addressing major legal issues in order to give the reader an overview, why the drone warfare is contested, to say the least, from a legal perspective.

2.1. Targeted killings vs. right to life

While it may be surprising to the reader, *targeted killings* are not defined under International Law. The term came in usage in 2000, after Israel published a policy of ‘targeted killings’ of alleged terrorists in the Occupied Palestinian Territories.²

Targeted killings can be committed by governments in war times, as well as in times of peace and can be justified for defending other persons against immediate threats to their lives.

For the sake of this analysis we are looking at ‘targeted killings’ in the context of anti-terrorist operations. These can refer to different execution styles, including sniper fire, missile strikes and drone attacks.

Targeted killings can be considered as a broad concept referring to “*the intentional killing by a state of an individual identified in advance and not on the state’s custody.*”³

In these contexts the lethal force is commonly used intentionally and pre-meditated against an individual or individuals identified in advance with the sole purpose of killing. This is the primary important distinction from law enforcement operations, where the operation’s goal from the outset is never to kill – however, it might be legal to shoot and kill someone based on the threat’s imminence.⁴

² See United Nations, Human Rights Council: “Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions”, Philip Alston, A/HRC/14/24, 28 May 2010, para.7.

³ Finkelstein, Claire & Ohlin Jens, David & Altman, Andrew (eds). “Targeted killings: Law and Morality in an Asymmetrical World“. Oxford University Press, 2012, p. 5.

⁴ See Melzer, Nils: “Targeted Killing in International Law”. Oxford: Oxford University Press , 2008, pp. 4-5.

Normally, whether a targeted killing is legal very much depends on the context in which it is conducted, as in exceptional situations these killings may be justified.⁵

For the purpose of this paper it is of crucial importance to determine whether a killing took place inside or outside of an armed conflict. Before analyzing the *peacetime* and *wartime* paradigms one should briefly focus on the important notion of the **right to life**.

The *right to life* is one of the most frequently invoked fundamental rights, as it is enshrined in core human rights treaties (e.g. International Covenant on Civil and Political Rights; European Charter of Human Rights; European Convention on Human Rights). It is important to understand however that the right to life is not absolute and foresees exceptions (e.g. 2/2 ECHR)⁶. In most of these cases law enforcement officials can use force e.g. to save someone's life due to imminent threat.

Exploring this notion helps us to grasp that, while the use of force might as an unintended outcome result in a deprivation of life, a mere shoot to kill policy violates the right to life, when it had not been controlled and planned to '*minimize, to the greatest extent possible, recourse to lethal force*'.⁷

This demonstrates the already thin line for operations to terminate someone's life. Often only moments decide whether these crucial interventions take place and how they unfold. There are however situations, particularly during hostilities, where killings are justified without the required high threshold mentioned above.

2.2. Applicability of international humanitarian law

For international humanitarian law to be applicable, parties need to be involved in an armed conflict. The International Criminal Tribunal for the former Yugoslavia (ICTY) proposed in its judgment *Prosecutor vs. Tadić* the following definition: "*we find that an armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State*"⁸

⁵ See "Report of the Special Rapporteur", op.cit, para.10.

⁶ European Convention on Human Rights, Article 2/2.

⁷ Maxwell, Mark: "Rebutting the civilian presumption: playing whack-a-mole without a mallet?" pp. 31-59 in Finkelstein, Claire & Ohlin Jens, David & Altman, Andrew (eds). "Targeted killings: Law and Morality in an Asymmetrical World." Oxford University Press, 2012, p. 43.

⁸ International Criminal Tribunal for the former Yugoslavia (ICTY): "*Prosecutor vs. Dusko Tadić, Decision on the defence motion for Interlocutory Appeal on Jurisdiction*", IT-94-1-A, 2 October 1995, para. 70.

The judgment also addresses the temporal and regional applicability of IHL during armed conflicts:

*“International humanitarian law applies from the initiation of such armed conflicts and extends beyond the cessation of hostilities until a general conclusion of peace is reached; or, in the case of internal conflicts, a peaceful settlement is achieved. Until that moment, international humanitarian law continues to apply in the whole territory of the warring States or, in the case of internal conflicts, the whole territory under the control of a party, whether or not actual combat takes place there.”*⁹

Within the notion of armed conflicts one must differentiate an armed conflict between two State parties – an international armed conflict (IAC), as well as an armed conflict between a State and a non-state armed group, that can include alleged terrorists, considered to be a non-international armed conflict (NIAC).

In the context of an armed conflict – a targeted killing is only lawful when the target is a “combatant” or “fighter” or, in the case of a civilian, only for such time as the person “directly participates in hostilities”.¹⁰ However, the killing must undergo an assessment for being military necessary and proportionate, as well as take into account expected harm to civilians.¹¹

2.3. Questions regarding intra-state use of force

Targeted killings are often conducted in the territory of other states and naturally raise sovereignty questions. Article 2/4 of the UN Charter, forbids States from using force in the territory of another State (subject to exceptions).¹² The applicable law of the use of intra-state force looks at questions regarding sovereignty violations, while questions whether the specific individual’s killing is legal or not, is ruled by international humanitarian law and/or human rights law.¹³

A targeted killing conducted by one State in the territory of a second State does not violate the second State’s sovereignty if either (a) the second State consents, or (b) the first, targeting State has a right under international law to use of force in self-defense under Article 51 of the UN Charter, because (i) the second State is responsible for an armed attack

⁹ Ibid. para. 70.

¹⁰ See Geneva Conventions Common Article 3, AP I, art. 52(1) and (2); AP I, art. 50(1).

¹¹ See Geneva Conventions Additional Protocol I, arts. 51(5)(b) and 57.

¹² See UN Charter, art.51

¹³ See “Report of the Special Rapporteur“, op. cit. para.34.

*against the first State, or (ii) the second State is unable or unwilling to stop armed attacks against the first State launched from its territory.*¹⁴

When it comes to the right of self-defense and sovereignty issues one must carefully examine the following components – consent and the right to self-defense.

While consent might not seem legally controversial, it does not liberate concerned States from their obligations to follow specific regulations of human rights law and IHL with respect to use of lethal force against a specific person.¹⁵ In no case it is possible to arbitrarily deprive someone of life.

As mentioned above, States may however also invoke the right to self-defense for justifying the extraterritorial use of force to involve targeted killings. Lethal force is permitted by international law in order to respond to an armed attack (as long as that force is necessary and proportionate). However yet again some aspects are contested – these are related to following questions: Can self-defense justification apply to the use of force against non-state actors and what constitutes an armed attack by such actors; the extent to which self-defense can justify targeted killings; the newly emerging notion of pre-emptive strikes to justify self-defense.¹⁶

After outlining some general notions in international law with regard to targeted killings, let us examine more closely some events that unfolded since the 9/11 terrorist attacks. This will showcase why the ‘war against terror’, conducted by the US, has been legally contested and will try to address some of the critical questions mentioned above.

2.4. The war against Afghanistan - a new era of targeted killings

The 9/11 attacks created an unprecedented situation in international relations. Not only they brought forward many complex political questions, but also posed challenging legal queries, particularly with regard to international law.

The American government under President Bush immediately qualified the terrorist attacks against the twin towers as ‘armed aggression’.¹⁷

¹⁴ Ibid. para 35.

¹⁵ Ibid. see paras 37-38.

¹⁶ Ibid. see paras. 39-41.

¹⁷ See Crettiez Xavier; Sommier Isabelles, „Les Attentats du 11 Septembre: continuité et rupture des logiques du terrorisme“, *Annuaire français des relations internationales*, o.58-69, p.58, 2002.

This expression does not only characterize the situation in political terms, but also gives it a particular legal meaning, which can generate *self-defense* based on Article 51 of the UN Charter. Analyzing this context is of particular importance, as it initiated the war against terrorism and invoked subsequent targeted killings.

The analysis of the notion of “armed aggression”, which was object of the General Assembly’s resolution 3314 adopted in 1974¹⁸, demonstrates that qualifying the 9/11 terrorist attacks as such is legally contested, to say the least.

The resolution 3314 defined armed aggression as the following:

*Aggression is the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations, as set out in this Definition.*¹⁹

Article 3 further defines acts that are to be qualified as aggression. In our context points f) and g) are of particular importance:

(f) The action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State;

(g) The sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein.

It is evident that in the case of the 9/11 terrorist attacks, only these articles can be invoked to accuse Afghanistan of an indirect armed aggression.

International scholars agree that these definitions are vague in legal terms. However, a prominent past example involving Nicaragua and the US, where the latter had given military support to rebels fighting against the government of the former in 1974, sheds more light on the *gravity* element. Even though direct arms deliveries incurred from the side of the US, the International Court of Justice did not qualify the action of the US government as an indirect armed aggression against Nicaragua, but rather as an intervention with use of force. While

¹⁸ UNGA Resolution, 3314 (XXIX), 1974

¹⁹ Ibid.

there was evident support from the US side, it was still not enough to qualify it as an armed aggression.²⁰

Using this example we can say that *a fortiori* the terrorist attacks against the US cannot be defined as armed aggression, since their magnitude was less grave and did not reach a critical intensity or volume. Evidently, this argument is contested among legal scholars.

In addition however, self-defense can only occur against a country where the attack originates. Was Afghanistan really responsible for the 9/11 attacks? Neither the planes were afghan, nor were the terrorists Afghan citizens, who did not even act in that country's name. An indirect armed aggression would only be possible if the forces acted in the name of Taliban. This would mean that Afghanistan either (a) had complete control over Al Qaeda, rendering it a *de facto* state organ or (b) that Afghanistan had effective control over Al Qaeda's conduct in question, i.e. the 9/11 attacks. Albeit the close links between Al Qaeda, who then claimed responsibility for the attacks, and the Taliban, it was never proven that the Taliban were directly responsible for the horrendous acts on American soil in 2001.²¹

Even if we assume that an armed aggression was applicable, it seems that the coalition's war against Afghanistan surpassed the notion of self-defense, as the objective thereof is to counter-attack. In this case, the US-led attacks against Afghanistan took place 25 days after the so-called 'armed aggression', which logically does not fall under the category of self-defense (more on this below).

Another critical question was mentioned above: can terrorist attacks fulfill the criteria of an armed aggression? As there is no clear answer to that in the Geneva Conventions and subsequent guidelines, we might find solutions to the question by looking at *customary law*. Practice however shows that there is neither an established *uniform* approach that a terrorist attack can fulfill the criteria of an armed aggression, nor an *opinio iuris*, as there is no

²⁰ Case Concerning Military and Paramilitary Activities In and Against Nicaragua (Nicaragua v. United States of America); Merits, International Court of Justice (ICJ), 27 June 1986, available at: <http://www.refworld.org/docid/4023a44d2.html> [accessed 3 March 2016]

²¹ Apostolidis, Charalambos, "L'Etat d'exception dans les relations internationales", Droit International Approfondi, Cour de l'Université de Bourgogne, Dijon, Master 1, 2ème semestre, 2012.

conviction for the notion's enlargement. These components are required to allow customary law to prevail.²²

It can also be mentioned that under US law this war can be seen as illegal. The UN Charter was ratified by the US, and according to its Constitution, it is considered as supreme law of the land as ratified treaty.²³

Of course, many arguments are brought forward that the US attacks were justified after all, often citing UN Security Council resolutions from that particular year, including UNSC resolution 1373.²⁴ This resolution laid out various responses to the attacks, which included *matters such as freezing assets, criminalizing the support of terrorists, exchanging police information about terrorists, and prosecuting terrorists.*²⁵ However, the use of military force was not mentioned.

Other arguments mention the Military Order from 13 November 2001, which specifies that the *“scale of the attacks has created a state of an armed conflict that requires the use of armed forces”*. It is also brought forward that armed aggression requires a more flexible understanding, as international law has been written having in mind traditional conflicts, with traditional command structures and mass troops. In light of the modern day capabilities and technological innovation of terrorist organizations, the traditional concept of imminent attack should be broadened.²⁶

Of course it needs to be recognized that in theory large-scale terrorist action can constitute an armed attack that can give rise to the right of self-defense, but in this particular case the author of the thesis intended to show that the attacks against Afghanistan, which initiated a *“war against terrorism”*, were based on a very frail legal foundation.

²² Ibid.

²³ This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land.” US Constitution, Article VI, par.2.

²⁴ UNSC, 1373 (2001)

²⁵ Foley, Brian J. “Legal Analysis: U.S. Campaign Against Afghanistan Not Self-Defense Under International Law,” Lawyers Against the War (<http://www.lawyersagainsthewar.org/legalarticles/foley3.html>) [accessed 3 February 2016].

²⁶ Groves, Steven Drone Strikes: The legality of US Targeting Terrorists Abroad, Backgrounder No. 2788 on Terrorism, April 2013, at <http://www.heritage.org/research/reports/2013/04/drone-strikes-the-legality-of-us-targeting-terrorists-abroad> [accessed 3 February 2016].

2.5. The wartime paradigm

Assuming that the coalition war against Afghanistan was justified, we come to the conclusion that it triggered an international armed conflict – IAC (conflict between States), where international humanitarian law was applicable. This would have made targeted killings against military combatants *per se* legal.

However, as many drone strikes actually happen outside the Afghan territory and without a temporal nexus to the war, let us closely examine the so-called “war against terror”, which practically had and has no temporal and geographical boundaries and, as argued by the US administration, permits the use of international humanitarian law to justify targeted killings.

A war against terror would be seen *prima facie* as a non-international armed conflict – NIAC.

It is important at this stage to recall that in non-international armed conflicts, there are no combatants, but rather civilians who *participate directly in hostilities*.²⁷

Under treaty and customary international law, the elements making up the existence of a non-international armed conflict are considered the following:

(I) *Identifiable non-state armed group, based on objective and verifiable criteria;*

(II) *Minimal threshold of intensity and duration;*

(III) *Territorial confines can be restricted to the territory of a state and between the state's own armed forces and the non-state group or a transnational conflict.*²⁸

While the war against terror can be of transnational nature (though widely contested), it is very hard to prove that there is an identifiable non-state armed group in the specific case of the war against terrorism. Often terrorist groups cannot be considered as one unified party, as there is only a loose connection between the group members. Sometimes States also face so-called micro-terrorists/home-grown terrorists, who are acting lonely while drawing inspiration from major terrorist groups for their attacks. This evidently shows the difficulties of identifying a single group across borders as a party.

²⁷ See “Report of the Special Rapporteur“, *op.cit.*, para.58.

²⁸ *Ibid.* see para 52.

Another contested issue is the threshold of intensity and duration. For this we can use various examples of terrorist attacks in the past occurring in cities like London and Madrid, as well as in Bangkok and Paris. Even if there was a link to Al Qaeda, and afterwards ISIL, the countries ‘under attack’ never qualified the situations as NIAC, as the required high threshold was never attained. Subsequently, these countries rightly did not apply the Geneva Conventions, but followed national laws, namely criminal laws, to prosecute terrorists under consideration of the rule of law and due process principles.²⁹

Interestingly, even if we assume that a NIAC is taking place, it remains widely contested who actually qualifies as a lawful target. In our specific context this would mean that even if humanitarian law was applicable and we find ourselves in a non-international armed conflict – targeted killings might not be justified after all.

In NIAC civilians are protected until their direct participation in hostilities (DPH). Due to absence of a clear definition in international law, it is up to States to decide what defines that notion. The International Committee of the Red Cross (ICRC) has issued guidelines further outlining this notion, which tries to define a) what conduct actually defines direct participation, b) whether a membership to a specific organization is sufficient to justify participation; and c) how long direct participation in hostilities lasts. These key issues remain controversial.³⁰

As we will see in the below chapters, there have been many drone strikes in the past targeting ‘military aged males’, who have been in the vicinity of a prominent terrorist. Also financial/administrative contributors to terrorist attacks have been victims of targeted strikes. While there is no question that these perpetrators needed to face legal consequences for their actions, international law does not approve of their targeted killings considering them as being unlawful.

It might seem difficult to find the right balance between protecting civilians and not rewarding enemies deliberately hiding among civilian populations. Direct participation in hostilities, however, should only include conduct close to that of a fighter or that of the one who directly supports combat. More tenuous links, such as providing financial support,

²⁹ See Apostolidis, Charalambos, “L’Etat d’exception dans les relations internationales”, Droit International Approfondi, Cour de l’Université de Bourgogne, Dijon, Master 1, 2ème semestre, 2012.

³⁰ See “Report of the Special Rapporteur“, op.cit. para.59.

advocacy or other non-combat aid does not constitute direct participation in hostilities and therefore does not justify targeted killings.³¹

The above brief analysis shows that the US-led war against terrorism, as a constant war without territorial borders, hardly fits into any category where targeted killings are permissible. It also opens a Pandora box and undermines the safeguards of international humanitarian law that prohibit the use of violence against groups that are not the equivalent of an organized armed group capable of being a party to a conflict.

The unilateral extension of the law of armed conflict to situations that mirror matters of law enforcement that need to be regarded under a human rights framework renders key distinctions between international legal frameworks meaningless.³²

2.6. The peacetime paradigm

In times of peace the legality of a killing is governed by human rights standards. In this context a State killing is only justified as a last resort that requires a scrutinized post-analysis.³³

While terrorist acts are among major threats to peace and public order, often unfolding in horrendous contexts and killing many innocent people, they are considered as criminal acts that require action of law enforcement bodies within national legal jurisdictions.³⁴

Before the 9/11 attacks terrorist acts were usually qualified as illegal violent acts committed in peace time leading to arrests, due process and eventual condemnations. The big debate and the invoking of the wartime paradigm started with the terrorist attacks on the US soil in 2001, mainly because targeted killings, as mentioned afore, were 'easier' to conduct insofar as they could bypass complex legal problems, including the right of the victims to due process.

- Pre-emptive self-defense

Another controversial notion often invoked during peacetime (as e.g. drone strikes against Yemen are far from being in the situation of an armed conflict) is the extension of article 51

³¹ Ibid. see para 61.

³² Ibid. see para 48.

³³ See Human Rights Committee, General Comment No. 6, HRI/GEN/1/Rev.6 (1982), para 3.

³⁴ See International Committee of the Red Cross (ICRC): *International Humanitarian Law Questions and Answers*, 1 January 2011 available at <https://www.icrc.org/eng/resources/documents/faq/terrorism-faq-050504.htm> [accessed 15 August 2016].

of the UN charter to allow so-called 'pre-emptive self-defense'. In this specific case, States invoke the right to self-defense not just in response to an armed attack, but in anticipatory self-defense, or alternatively, as a pre-emptive measure in response to a *threat that is persistent and may take place in the future, but is not likely to take place imminently*.³⁵

Under a restrictive view of Article 51 the right to self-defense may only be invoked after an attack has taken place. Under a more permissive view self-defense also includes the right to use force against a real and imminent threat when "*the necessity of that self-defence is instant, overwhelming, and leaving no choice of means, and no moment of deliberation*."³⁶

When looking at the US National Security Strategy, it emerges that the US deems the use of force permissible even when a threat is not imminent and '*uncertainty remains as to the time and place of the enemy's attack*'.³⁷

If there is certitude of an imminent attack— a preventive action can be applicable according to some international lawyers. However, the protecting State is required to show material proof of an imminent attack. This is also based on the RDC vs. Uganda case, where the International Court of Justice put the *burden of proof* on the attacking side in order to justify self-defense.³⁸

There are many evident risks in this context. A preventive or pre-emptive attack can create a dangerous precedent also for other countries. There are already countries like Israel and the Russian Federation that use this approach to "eliminate" suspected terrorists in an opaque manner.

The peacetime paradigm suggests that the life of individuals is strongly protected under Article 6 of ICCPR (Right to Life), meaning that a lethal drone strike/targeted killing can only be lawful in very rare cases.³⁹

³⁵ US National Security Strategy 2002 at <http://georgewbush-whitehouse.archives.gov/nsc/nss/2002/index.html> [accessed 15 August 2016].

³⁶ This 'imminent threat' criterion of international law has been elaborated by the American statesman Daniel Webster as he litigated the Caroline case.

³⁷ US National Security Strategy 2002 at <http://georgewbush-whitehouse.archives.gov/nsc/nss/2002/index.html> [accessed 15 August 2016].

³⁸ See "Armed Activities on the Territory of the Congo" (Democratic Republic of the Congo v. Uganda), [2005] I.C.J. Rep., para. 216 (Armed Activities) at <http://www.icj-cij.org/docket/index.php?sum=643&p1=3&p2=3&case=116&p3=5> [accessed 20 August 2016].

³⁹ Chapter Three of this thesis provides with a more detailed analysis of pre-emptive self-defense when considering this fundamental principle of the just war doctrine.

2.7. Targeted killings – why are they contested?

Some international scholars bring forward arguments that justify targeted killings, making extrajudicial assassinations a contested matter. The author believes however that for a brief legal analysis it is important to illustrate the US position on this matter, rather than focusing on counter-arguments of other international scholars.

Most arguments invoked by the US Government in the past and in the present to justify targeted killings are based on the wartime paradigm. The US administration maintains that it finds itself in a “war against terrorism”, which is a constant and global armed conflict without boundaries due to self-defense (be it pre-emptive or not) fulfilling article 51 of the UN Charter.

This was confirmed again in March 2010 by the then Legal Advisor of the Department of State, Harold Koh, who also underlined that the attacks are based on self-defense.⁴⁰

In 2012, Eric Holder, the then US Attorney General, re-stated that the USA find themselves in an armed conflict with terrorist groups authorizing the use of force against enemy belligerents under international law. He also mentioned that the *US Constitution empowers the President to protect the nation from any imminent threat of violent attack*.⁴¹

The situation got even more delicate and complicated with the killing of Anwar Al-Awlaki, a US citizen who had been assassinated without legal procedure in the name of the war against terrorism. The killing of the American-Yemeni extremist imam was for the majority of international legal scholars an illegal act with regard to the US constitution, as well as with regard to international law because of the absence of an imminent threat or danger of life.⁴²

However the US side quickly argued again with the armed conflict/self-defense notion, underlining that President George W. Bush had signed an order on 17 September 2001 authorizing the CIA to track down terrorists in the whole world without distinction in their nationality.

⁴⁰ See Harold Koh, Legal Adviser, Department of State, The Obama Administration and International Law, Keynote Address at the Annual Meeting of the American Society of International Law (25 Mar. 2010).

⁴¹ Holder, Speech at Northwestern University, School of Law, Chicago, 5 March 2012.

⁴² See for instance : « Aulaqi: l'élimination d'un Américain en débat aux Etats-Unis », 2011, at http://www.lepoint.fr/monde/aulaqi-l-elimination-d-un-americaen-en-debat-aux-etats-unis-30-09-2011-1379319_24.php [accessed 20 July 2015].

This briefly reflected the US position concerning targeted killings, which also is based on arguments brought forward by the minority of scholars that deem targeted killings justified.

Conclusion

This brief legal analysis intended to show that the war against terrorism is based on a frail legal pillar and that targeted killings are contested, to say the least.

The terrorist attacks of 9/11 against the twin towers had to be regarded within applicable internal laws. A rather political decision of the American president and his administration triggered a new war that also opened up a whole new ‘legal’ battlefield among scholars to define the dimensions of legal killings and their justifications.

The above analysis not only showed the weakness of some of the main legal arguments brought forward by the US to justify targeted killings, but also demonstrated other critical legal notions (e.g. pre-emptive self-defense, use of intra-state force, right to life) to show that extra-judicial killings remain in most cases covert and opaque with no solid legal basis.

3. Chapter Two: The drone campaign - considerable increase under the Obama administration

Targeted killings as acknowledged US policy began with George W. Bush, but Barack Obama demonstrated extraordinary zeal in ordering hundreds of Predator drone strikes in at least six different countries, thereby dramatically surpassing his predecessor on this front.

Laurie Calhoun⁴³

In the aftermath of the fall of Mosul into the hands of the Islamic State in Iraq and Levant (ISIL) and its rapid advance toward Baghdad in June 2014 President Obama gave a press conference on the situation in Iraq, where he focused on political and military aspects of American involvement in that country and broader in the region. Commenting on the ways to increase that involvement’s effectiveness, the President underlined the following: “[w]e have been able to help to develop their capacities (government of Yemen - G.A.) without putting large numbers of U.S. troops on the ground at the same time as we’ve got enough CT, or counterterrorism capabilities that we’re able to go after folks that might try to hit our

⁴³ Calhoun, Laurie “We Kill Because We Can: From Soldiering to the Drone Age”, Zed Books, London, 2015, p. 36.

*embassy or might be trying to export terrorism into Europe and the United States. And looking at how we can create of **those models** (highlighting is mine – G.A.) is going to be part of the solution in dealing with both Syria and Iraq”.*⁴⁴

President Obama’s statement on the creation of counterterrorism models reflected a new approach in the U.S. government strategy of involvement in the warfare against terrorism. The heavy on-the-ground operations as a result of American invasions in, respectively, Afghanistan (2001) and Iraq (2003) brought about considerable losses in terms of troops, military equipment and arms, huge financial expenditures without no obvious outcome. The Obama administration’s decision to withdraw its ground troops from Iraq by the end of 2011 was a kind of a confession of failure to achieve justice and democracy by military deployment and imposed values. On the other hand, however, the American national interests urged to stay in the region and pursue their strategic goals. Having recourse to new warfare models, including drones, seemed to be a convincing argument in favour of a continued American military presence and political influence through advanced technologies, which might mitigate the harsh criticism internally, and the wave of anti-Americanism externally, both triggered by massive ground invasions in Afghanistan and Iraq.

As compared to the initial years of the war against terrorism proclaimed by the Bush administration after the terrorist attack on the Tween Towers in New York on 11 September 2001, when the drones have started to be used as a means of warfare, remaining, however, in limited scopes, the Obama administration further developed its strategy and tactical engagement, as well as geographic area in the context of use of drones as one of the most reliable weapons to combat international terrorism.

While this thesis’s subject is the targeted killings through drones under the Obama administration, it would be useful to provide with a succinct comparative analysis of the substantive similarities but also considerable differences in strategic and tactical principles and approaches between President Bush and President Obama when waging war against “global terrorism”. All the more so as these approaches have determined the magnitude and the modalities of the use of drones.

⁴⁴ Remarks by the President on the Situation in Iraq, The White House, Office of the Press Secretary, June 19, 2014. at <https://www.whitehouse.gov/the-press-office/2014/06/19/remarks-president-situation-iraq> [Accessed 20 July 2015].

3.1. Bush and Obama's war on terror: similar goals, different approaches

It should be noted from the very outset that the strategic goal of eradicating global terrorism as one of the cornerstones of the American foreign policy proclaimed a quarter of century ago has not undergone any considerable changes. It is obvious that the terrorist attacks on U.S. soil were so unexpected and humiliating for the country considered as being the first and the only superpower after the collapse of the Soviet Union that any American administration should undertake drastic and urgent measures to meet the huge and unprecedented challenge. One of these drastic measures was the change of concept as compared to the previous American administrations in treating the problem of terrorists' annihilation.

It is interesting to follow the evolution toward gradual hardening of that concept under the previous American presidents, which will allow having a deeper insight into the logic of the U.S. behavior when combatting international terrorism.

3.1.1 Evolution of the concept of "targeted killings" under the American administrations prior to George W. Bush

The concept of targeted killings did not emerge in the aftermath of 9/11. Already in 1976 President Gerald Ford issued Executive Order 11905, stating that *"no employee of the United States Government shall engage in, or conspire to engage in, political assassination."*⁴⁵ His successors, Jimmy Carter and Ronald Reagan went even further ruling out killings by contractors.⁴⁶ Thus, the initial policy in the context of targeted killings or, in some other interpretations, political assassinations clearly and unconditionally prohibited extra judiciary executions.

This policy, however, underwent a rather noticeable change under President George Bush Senior. In 1989, the concept was altered in the following way: *"Acting consistent with the Charter of the United Nations, a decision by the President to employ clandestine, low visibility or overt military force would not constitute assassination if US military forces were employed against the combatant forces of another nation, a guerilla force, or a terrorist or other organization whose actions pose a threat to the security of the united States."*⁴⁷ In fact, the ban to use political assassination has not been lifted, but the concept was amended to

⁴⁵ Quotation from Woods, Chris "Sudden Justice – America's Secret Drone Wars", Hurst & Company, London 2015, p.47.

⁴⁶ *Ibid.* p.47.

⁴⁷ *Ibid.* p.48

justify cases of targeted killings that would be indispensable to protect the American national interest. It is worth mentioning that this addendum includes not only actions in ordinary warfare “against the combatant forces of another nation”, but also warfare often undertaken far from the battlefield (“terrorist or other organization”).

In late 1990s, under the Clinton administration, Osama bin Laden, who at that time had not yet become the number one enemy of America, published two fatwas, which could be considered as a declaration of war against the United States. The first fatwa entitled “Declaration of War against the Americans occupying the Land of the Two Holy Places” was published in 1996 in the London-based newspaper *Al-Quds Al-Arabi* (Arab Jerusalem).⁴⁸ In 1998 the same newspaper published the second document signed by Osama bin Laden and four other leaders of Islamic groups entitled “Fatwa Urging Jihad against Americans”.⁴⁹ These two fatwas were meant to incite anti-American, as well as anti-Christian and anti-Semitic feelings amongst the Muslim world. The second fatwa, in particular, stated that: “[T]he ruling to kill the Americans and their allies – civilians and military – is an individual duty for every Muslim who can do it in any country in which it is possible to do it, in order to liberate the Al-Aqsa Mosque and the holy mosque from their grip, and in order for their armies to move out of all the lands of Islam, defeated and unable to threaten any Muslim.”⁵⁰

While initially these declarations had not been taken seriously, the U.S. embassy bombings in August 1998,⁵¹ only a few months after the publication of the second fatwa, urged the Clinton administration to ponder an adequate response to the growing terrorist threat. There are evidences of difficulties in elaborating an adequate conceptual ground to respond the challenges posed by the terrorists. The Clinton administration has drafted three different Memoranda of Notifications (MON) between May 1998 and February 1999 with rather contradictory positions.⁵² The first MON considered “capturing bin Laden, not knocking him out”. The second, signed after the U.S. embassy bombings, allowed the Central Intelligent

⁴⁸ See PBS NEWSHOUR Bin Laden’s Fatwa, 23 August 1996 at

http://www.pbs.org/newshour/updates/military-july-dec96-fatwa_1996/ [Accessed 05 August 2015].

⁴⁹ See “Jihad against Jews and Crusaders”, Text of the 1998 fatwa, Federation of American Scientists, 23 August 1998 at <http://fas.org/irp/world/para/docs/980223-fatwa.htm> [Accessed 15 August 2015].

⁵⁰ *Ibid.*

⁵¹ On 7 August 1998, two almost simultaneous truck explosions at the U.S. Embassies, respectively, in Dar es Salaam, Tanzania, and in Nairobi, Kenya, resulted in a total of 200 deaths. It is after these attacks that Osama bin Laden was placed on the FBI’s (Federal Bureau of Investigations) ten most wanted fugitives’ list.

⁵² This has been witnessed in the memoirs by John Rizzo, the Central Investigation Agency’s (CIA) longtime Acting General Counsel. See Woods, Chris, op. cit., p.48.

Agency (CIA) to “kill bin Laden only if capture was not ‘feasible’”. However, the third MON, issued by Clinton spoke of the possibility of killing bin Laden.⁵³

It goes without saying that the U.S. response to growing terrorism both at the conceptual and practical levels was subject to changes and amendments in view of the actual unfolding of terrorist activities. While at the initial stage the American response as reflected in the above-mentioned presidential Executive Orders was cautious and sought to respect the Charter of the United Nations, when fighting against terrorists, at a later stage the response became harder to the extent of accepting the possibility of extra judicial killings should those be warranted by the prevailing circumstances.

The trend of hardening the U.S. response to terrorist attacks became an overwhelming strategy under the George W. Bush administration who in the wake of the collapse of the Tween Towers in New York was compelled to take up drastic and unprecedented measures to oppose the sudden and unprecedented terrorist attacks planned and implemented by Osama bin Laden and his comrades.

3.1.2 The concept of “targeted killings” under the George W. Bush administration

President Bush’s response was the invasion of Afghanistan, the country strongly believed to have provided safe haven to those who had masterminded the terrorist attacks of 11 September 2001, the organization al-Qaeda, headed by Osama bin Laden.

Before considering the facts and figures with regard to use of drones under the Bush administration as tactical means of waging war on terror, it is necessary to analyze the strategic approaches by the administration in the aftermath of 9/11. This is all the more important as the American leadership faced an unprecedented situation and found itself in front of a necessity to elaborate an entirely new concept as a guidance to its practical actions.

This new concept was adopted only a few days after 9/11. On 17 September 2001, President Bush signed a Memorandum of Notification (MON) reportedly authorizing the CIA to conduct targeted killings or capture al-Qaeda members and to set up a global network of secret detention facilities, so called “black sites”, for imprisoning and interrogating them. The MON also paved the way to draw a “high value target list” setting up the priority of assassinating those engaged in terrorist activities against America, including American citizens. The MON has been classified up to date, but numerous references to the document

⁵³ *Ibid.*, p.48

leave no room for doubt about its existence and content.⁵⁴ Indeed, the logic of the Bush administration subsequent actions perfectly fitted the new strategy of combatting terrorism as believed to be enshrined in the said MON.

One should underline that President Bush's determination to significantly harden the concept of targeted killings and his declaration of waging an all-out war against terrorism enjoyed full support by both the Senate and House of Representatives of the Congress, which, on 14 September 2001, only three days after the terrorist attacks, adopted a Joint Resolution entitled "Authorization on the Use of Military Force" (AUMF). The Congressional document provided that: "[t]he President is authorized 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, 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."⁵⁵ The AUMF provided President Bush with a legal ground for engaging in war against terror. This was also a strong bipartisan political backing stemming from both Chambers as the expression of the will of the American people at one of the most difficult episodes of its history. The Congressional document continues serving as a legal and political basis for President Obama's policy of targeted killings and, to all evidence, will do so for the successive presidents in the foreseeable future.

This new concept was further elaborated in the *National Security Strategy* publicized in September 2002 (hereinafter *NSS/2002*). Chapter III of the document entitled "Strengthen Alliances to Defeat Global Terrorism and Work to Prevent Attacks against Us and Our Friends" contains a number of key elements that will help us understand the logic behind the American leadership's actions for the years to come.

Already the first sentence of the Chapter testifies to the U.S. administration's commitment to engage in a decisive all-out war against terrorism. It reads: "*The United States of America is fighting a war against terrorists of global reach*".⁵⁶ At first glance this phrase looks like being a statement of commitment of a declarative nature. However, a more careful reading

⁵⁴ See, for instance, "Report of the Special Rapporteur", op.cit which stated that: "[T]he US also reportedly adopted a secret policy of targeted killings soon after the attacks of 11 September 2001, pursuant to which the Government had credibly been alleged to have engaged in targeted killings in the territory of other States". See also Woods, Chris *op. cit.*, p. 49.

⁵⁵ Grimmer, Richard F. CRS Report for Congress Authorization for Use of Military Force in Response to the 9/11 Attacks (P.L. 107-40: Legislative History, updated January 16, 2007, p. 6.

⁵⁶ The National Security Strategy of the United States of America, op.cit.

will help us discover its far-reaching meaning in preparing the ground for future American involvement in military operations and warfare in geographically large areas, such as the Middle East, Afghanistan and Pakistan. Indeed, by this single phrase President Bush declared the U.S. being in a state of war, thus paving the way to the military operations overseas and justifying, *a priori*, the tactical means of the war regardless of the atrocities committed during those operations, as well as the many question marks on the morality of the warfare and compliance to ethical norms as enshrined in International Humanitarian Law (IHL).⁵⁷

Furthermore, the NSS/2002 provides with more detailed principles of the war against terrorism, emphasizing that “[O]ur priority will be first to disrupt and destroy terrorist organizations of global reach and attack their leadership; command; control and communications; material support; and finances. This will have a disabling effect upon the terrorists’ ability to plan and operate”.⁵⁸ Further unfolding of events has clearly demonstrated that this priority has become the basis for targeted killings, in general, and the use of drones to achieve a “disabling effect upon the terrorists”, in particular.

Finally, one should cite two other sentences that have laid ground for by-passing the United Nations Security Council as a legitimate and authorized representative of the international community, whenever the U.S. and its close allies would encounter resistance by some permanent members of the Council. The NSS/2002 has stated: “[O]ur immediate focus will be those terrorist organizations of global reach and any terrorist and state sponsor of terrorism which attempts to gain or use weapons of mass destruction (WMD) or their precursors”⁵⁹, and: “While the United States will constantly strive to enlist the support of the international community, we will not hesitate to act alone, if necessary, to exercise our right of self-defense by acting preemptively against such terrorists....”⁶⁰ Perhaps, the best illustration of these principles was the American intervention in Iraq, occurred a year after the adoption of the NSS/2002, when the ill-funded accusations against Saddam Hussein of possessing WMD served as a pretext to engage in a military operation that ended up with fiasco.

This thesis will consider in due time the latest NSS adopted under President Obama in 2015, since the document testifies to Obama’s intention and attempts to change the antiterrorist

⁵⁷ This constitutes a blatant violation of one of the just war principles *jus ad bellum*. For a more detailed analysis of the Just War doctrine see Chapter Three of this thesis.

⁵⁸ NSS/2002, Chapter III.

⁵⁹ *Ibid.*

⁶⁰ *Ibid.*

strategy toward more accountability and compliance with IHL and human rights law. Nevertheless, at this stage it should be underlined that notwithstanding the considerable differences between the politics and personalities of Bush and Obama the major goal of the American foreign policy, i.e., fighting terrorism, did not change. What changed was the approaches and tactics of the warfare itself. While the Bush administration deployed hundreds of thousands of troops in Afghanistan and Iraq,⁶¹ thus, opting for conventional methods of warfare, the Obama administration chose gradual withdrawal of ground troops and increased the use of modern technologies with a special emphasis on drones. A brief comparative analysis of the use of drones under both administrations in separately taken countries will provide us with substantive evidence of this trend. Before proceeding with that kind of analysis, it would be necessary to analyze the transformation of the concept of targeted killings and the war on terror, in a broader sense, under the Obama administration.

3.1.3 The concept of “targeted killings” under the Obama administration: Drones as a weapon of choice

The main conceptual difference in conducting targeted killings under the Obama administration was clearly formulated by President Obama himself. In his 23 May 2013 Remarks at the National Defense University Obama stated: “[w]e must define our effort not as a boundless “global war on terror,” but rather as a series of persistent, targeted efforts to dismantle specific networks of violent extremists that threaten America.”⁶²

Thus, instead of Bush’s all-out war against terrorism, which heavily involved ground troops and massive use of conventional arms with a limited use of drones, Obama opted for “targeted efforts” which would not necessitate deployment of considerable forces on the ground. Rather, these targeted efforts required not quantitative but qualitative engagement characterized by highly efficient military operations with relatively low participation of military personnel and weapons. The drones exactly fitted into this concept, and it is not by chance that many dubbed them as the weapon of choice under the Obama administration.

⁶¹ During the invasion in Iraq from 2003 to 2011 the U.S. deployed more than 1.5 million military personnel. As of June 2014, U.S. military casualties in Afghanistan (Operation Enduring Freedom) stood at 2,186 fatalities and 19,622 wounded. And in Iraq (Operation Iraqi Freedom), the United States suffered 4,411 military fatalities and 31,941 personnel wounded, See *U.S. Department of Defense, Casualty Status, updated June 4, 2014* at www.defense.gov/news/casualty.pdf.

⁶² Remarks by the President at the National Defense University, the National Defense University, Fort McNair, Washington, D.C., 23 May 2013 at <https://www.whitehouse.gov/the-press-office/2013/05/23/remarks-president-national-defense-university>

As mentioned above, the 14 September 2001 Congressional Joint Resolution entitled “Authorization on the Use of Military Force” continued to provide President Obama with a solid legal framework to engage in antiterrorist activities, including drone wars. However, unlike the initial years after the Joint Resolution’s adoption, when the document had garnered unanimous political support, by the time of Obama’s entry into office, the war on terrorism generated less enthusiasm among the American society. Heavy military involvements in Afghanistan and Iraq, loss of lives, as well as huge financial burden imposed on the taxpayers⁶³ had rendered the idea less popular all the more so as no tangible outcome could be seen in the invaded countries in terms of stability, let alone political, economic, social progress or at least some trends of democratic development.

A further blow to President Obama’s war on terrorism by using, in particular, drone strikes was made by the assassination of a number of American citizens. On 30 September 2011, U.S. citizens, Anwar al-Awlaki, a radical Islamic cleric, and Samir Khan were killed by a drone attack in Yemen. Only two weeks after, on 14 October 2011, Awlaki’s son, the 16-year old Abdel-Rahman, was killed during another drone strike, when he along with his other teenager friends had gone barbequing. In this specific case the intended target, according to the American intelligent services, was Ibrahim Al-Banna, the media coordinator of the al-Qaeda in the Arabian Peninsula (AQAP). Nevertheless, it was doubtful even whether the latter was present at the strike.⁶⁴

These assassinations were harshly criticized by the American public not that much in the context of IHL, as in view of the Constitution of the United States, which provides that citizens should not be subject to criminal prosecution and punishment without due process.⁶⁵ However, the Presidential administration has strongly opposed any court involvement in the issue of targeted killings. When it became clear that the life of Anwar Awlaki was threatened by American secret agencies, his father attempted to lodge a lawsuit to prevent his son’s assassination. However, the administration “[d]eclared that courts should play no role in

⁶³ See footnote 17.

⁶⁴ See Chris Woods, *op.cit.*, p.141.

⁶⁵ This provision is contained in The Fifth Amendment of the Constitution of the United States. See The White House, President Barak Obama, <https://www.whitehouse.gov/1600/constitution>

*overseeing the executive branch's wartime targeting decisions and argued that Mr. Awlaki's father had no legal standing to bring the case, and invoked the state secret privilege".*⁶⁶

Not only courts had been systematically denied any access to secret information on targeted killing programmes, but also parliamentary structures, such as the relevant Congressional committees that by virtue of their *raison d'être* were authorized to oversee the American intelligence services, in particular, the CIA had to apply considerable time and efforts to obtain some kind of information. Justice Department's Office of Legal Council (OLC) has drafted a number of opinions and memoranda concerning different aspects of the U.S. warfare against terrorism. However, the content of most of them has become public after leakages and not due to the goodwill of the Presidential administration.

In that context, one of the most important documents that became known to public was a 2010 memorandum of the Justice Department's Office of Legal Council that provides with legal arguments and conditions for using drone aircraft to target and kill American citizens abroad. In its article on the leaked memorandum Eugene R. Fidell describes the major arguments contained in the secret document: a) the targeted person poses an imminent threat of violent attack against the U.S.; b) capture must not be feasible; c) the operation must be conducted in a manner consistent with international Laws of Wars principles.⁶⁷ The article, furthermore, shows the inconsistency of the first two arguments given the lack of concrete definitions on "imminent threat" and "non-feasibility of capture".⁶⁸ One should also add the obvious weakness of the third argument due to often deliberate interpretation of international Laws of Wars principles by American high-ranking officials. Finally, it should be underlined that this kind of arguments have usually been provided to justify targeted killings not only of American citizens but as a matter of fact of any other citizen. Whatever the criticism and growing discontent by the society, the Justice Department's OLC's memorandum of 2010 served as a solid ground for the Obama administration for increased use of Unmanned Aerial Vehicles (UAV).

It is not by chance that drones have become the weapon of choice by the Obama administration. Two major factors played a critical role in adopting a new strategy of targeted

⁶⁶ Mazetti Mark, Savage Charlie and Shane Scott "How a U.S. citizen came to be in America's Cross Hairs", March 9, 2013, The New York Times at http://www.nytimes.com/2013/03/10/world/middleeast/anwar-al-awlaki-a-us-citizen-in-americas-cross-hairs.html?_r=0 [accessed 3 March 2015]

⁶⁷ Fidell, Eugene R., "Drones and Democracy: A Legal Question, But also One of Policy", Spiegel Online International, 08 February 2013 at <http://www.spiegel.de/international/world/obama-s-leaked-drone-memo-a-reminder-of-the-bush-years-a-882326.html> [accessed 10 March 2015]

⁶⁸ *Ibid.*

killings by President Obama. The first factor was the political one, and this thesis has already briefly focused on that aspect. The aforementioned quotation from President's 23 May 2013 Remarks at the National Defense University clearly demonstrates the shift from "*global war on terror*" toward "*persistent, targeted efforts to dismantle specific networks of violent extremists*".⁶⁹ In the same speech Obama unequivocally indicated to that shift, when saying; "*[S]o after I took office, we stepped up the war against al Qaeda but we also thought to change its course. We relentlessly targeted al Qaeda's leadership. We ended the war in Iraq, and brought nearly 150,000 troops home. We pursued a new strategy in Afghanistan, and increased our training of Afghan forces. We unequivocally banned torture, affirmed our commitment to civilian courts, worked to align our policies with the rule of law, and expended our consultations with Congress*".⁷⁰

The gist of Obama's new political approach was withdrawal of American troops and hand over of the military tasks of fighting against terrorism to the national authorities, on the one hand, and employing more sophisticated modern technologies with minimal life-threatening risks and considerably less military expenses, on the other.

Nevertheless, the choice of drones as the main weapon of targeted killings has triggered a new controversy and heightened debates, each side of which is able to provide with sound pros and cons. These controversies touch upon a number of issues; political, legal, military and last but not least humanitarian and moral ones. Perhaps, at this point it would be appropriate to concentrate on those conflicting views and arguments in an attempt to reach some conclusions.

Those who oppose the use of drones refer to a number of arguments, the most important being at the strategic level. They question the possibility of advancing the U.S. strategic goals by relying on drones, indicating that "*[d]rone program has taken on a life of its own, to the point where tactics are driving strategy rather than the other way around*" and that "*[I]t would be a mistake to embrace killer drones as the centerpiece of U.S. counterterrorism*".⁷¹ The next argument is that without denying the devastating effect of drones in terms of destruction of al-Qaeda leadership this and other terrorist organizations have proved their resilience by replacing the killed leaders by the new ones. The critics even argue that the targeted killings led to the proliferation of the terrorist groups and their spread in the other

⁶⁹ Remarks by the President at the National Defense University, the National Defense University, *op. cit.*

⁷⁰ *Ibid.*

⁷¹ Cronin, Audrey Kurth "Why Drones Fail: When Tactics Drive Strategy", *Foreign Affairs*, Volume 92, Number 4, July/August 2013, p. 44.

regions of the world, in particular, Yemen, North Africa and Sahel.⁷² Furthermore, according to those opposing drone strikes as a principal means of warfare against terrorism, these strikes incite anti-American feelings and are skillfully used by the terrorist propaganda to recruit new fighters, thus leading to escalation and intensification of terrorist attacks in their “holy war” against the Occident. Finally, one of the strongest arguments is the unjustifiably high numbers of victims among the civilian population as a result of the use of drones.

Those who support targeted killings through drones have no less sound arguments. In his analytical paper on the advantages of drones as compared to other aerial platforms the American scholar Daniel Byman, points out that: “[d]rones have devastated al Qaeda and associated anti-American militant groups. And they have done so at little financial cost, at no risk to U.S. forces, and with fewer civilian casualties than many alternative methods would have caused”.⁷³ In support of the latest argument Byman refers to the estimate of the Bureau of Investigative Journalism, according to which the ratio of civilian to militant deaths – about one to three – is lower than it would be for other forms of strikes.⁷⁴

A more detailed analysis of the above-mentioned conflicting views on the use of drones will be done in Chapter Three of this thesis. Here, it should be emphasized that the most controversial issue remains civilian casualties as a result of targeted killings and the compatibility of drone strikes with IHL and human rights law. Regardless of whatever strong the drone sympathizers’ arguments might be, it is evident that the U.S. government should justify its strategy of targeted killings and the intensification of the use of drones, as well as establish a set of rules to wage the war by drones in a more orderly manner and according to certain rules and provisions.

With this necessity and responsibility in mind, on 15 February 2015, President Obama signed an Executive Order to create standards for how the Federal government will address the privacy issues associated with drones.⁷⁵ While acknowledging that drones are a lower cost

⁷² Audrey Kurth Cronin emphasizes that “[d]rones have inflicted real damage on the organization, of course. In Pakistan, the approximately 350 strikes since 2004 have cut the number of core al Qaeda members in the tribal areas by about 75 percent.,,, As al Qaeda’s center of gravity has shifted away from Pakistan to Yemen and North Africa, drone strikes have followed the terrorists. In September 2011, Michael Vickers, the U.S. undersecretary of defense for intelligence, estimated that there were maybe four key al Qaeda leaders remaining in Pakistan and about ten or 20 leaders overall in Pakistan, Somalia and Yemen”. *Ibid.* p.45.

⁷³ Byman, Daniel “Why Drones Work: The Case for Washington’s Weapon of Choice”, *Foreign Affairs*, Volume 92, Number 4, July/August 2013, p. 32.

⁷⁴ *Ibid.* p. 37.

⁷⁵ Obama’s 15 February 2015 Executive Order has not been officially published, and reference is made to McNeal, Gregory S. “What You Need To Know About The Federal Government’s Drone Privacy Rules”,

alternative to manned aircraft, and can reduce risks to human life, the Executive Order, nevertheless, points to the necessity to take into account “not only our economic effectiveness and public safety, but also the privacy, civil rights, and civil liberties concerns these systems may raise”.⁷⁶ In particular, the Executive Order requires that drone related activities are performed in a manner consistent with the Constitution, applicable laws, Executive Orders, and other Presidential directives. The Order also requires agencies to ensure they have in place a means to receive, investigate and address privacy, civil rights and civil liberties complaints.⁷⁷

Whereas the Executive Order was not and could not be meant to answer the whole range of concerns raised by the use of drones, it should be assessed as a step in the right direction, insofar as it is, perhaps, the first attempt to bring into order the use of drones and establish a set of rules and mechanisms that would allow minimizing the negative sides of drones as a modern means of warfare.

The below comparative analysis of facts and figures in the context of drone warfare by, respectively, the Bush and the Obama administrations will be helpful to illustrate the trend of increase of the use of drones aimed at maximizing the effect of targeted killings both in political and technical terms.

3.1.4 A comparative analysis of waging drone wars by Bush and Obama: Facts and Figures

Yemen

a) Targeted killings by the Bush administration

The first credibly reported targeted killing by the Bush administration took place soon after the publication of the *National Security Strategy* in September 2002. It occurred on 3 November of the same year in Yemen, when a drone attack killed Qaed Senyan al-Harithi, one of the leaders of al-Qaeda, accused of masterminding the *USS Cole* bombing.⁷⁸ This first targeted killing did not come as a spontaneous decision, rather it was the result of the elaboration of a secret policy of targeted killings reportedly adopted by the United States in

Forbes/Washington at <http://www.forbes.com/sites/gregorymcneal/2015/02/15/the-drones-are-coming-heres-what-president-obama-thinks-about-privacy/#2be459b26039> [accessed 3 April 2015]

⁷⁶ *Ibid.*

⁷⁷ *Ibid.*

⁷⁸ See Report of the “Special Rapporteur”, op.cit., p. 7.

the wake of 9/11. That policy's main implementing structure was the CIA, which used "Predator" and "Reaper" drones for those purposes.⁷⁹

* * *

There are no more reported drone strikes under the Bush Administration in Yemen. The second strike was conducted after a pause of seven years.⁸⁰

b) Targeted killings by the Obama administration

On 12 December 2013, four Hellfire missiles launched from drones targeted a wedding party in al Bayda province, killing 12 men and injuring another 15. Citing American and Yemeni officials, the Associated Press reported that the target was a mid-level al-Qaeda operative allegedly engaged in the terrorist threats that shut down 19 U.S. embassies in August 2013. There were also some media reports about the presence at the wedding party of al-Badani, named on Yemen's Most Wanted List, who was wounded and escaped.⁸¹ The tribesmen present that day denied any knowledge about that person, and the U.S. stated that an investigation into the accident was underway without giving any further explanations.

* * *

Targeted killings in Yemen have become a routine. According to the data collected by the Bureau of Investigative Journalism from January to April 2016 ten confirmed drone strikes were conducted, and the number of possible drone strikes was 8-9. These attacks were conducted against the militants of the AQAP and reportedly killed up to 138 militants. There were no reports on casualties among civilians.⁸²

* * *

Statistic data below from the Bureau of Investigative Journalism provides with the overall picture:

2002 onwards U.S. drone strikes in Yemen⁸³

⁷⁹ *Ibid.* p.7.

⁸⁰ The Bureau of Investigative Journalism via Get The Data: Drone Wars, Yemen Reported US covert actions 2016 at <https://thebureauinvestigates.com/category/projects/drones/drones-graphs/> [accessed 3 November 2016]

⁸¹ See Salama, Vivian "Death From Above: How American Drone Strikes Are Devastating Yemen", Rolling Stone, 14 April 2014 at www.rollingstone.com/politics/news/death-from-above-how-american-drone-strikes-are-devastating-yemen-20140414

⁸² The Bureau of Investigative Journalism, *op. cit.*

⁸³ The source of this and the other statistic data on drone strikes in Afghanistan, Pakistan and Somalia is the website of the Bureau of Investigative Journalism (see footnote 39).

Confirmed drone strikes:	119 – 139
Total killed:	534 – 779
Civilians killed:	65 – 101
Children killed:	8-9
Injured:	95 – 224

Afghanistan

a) Targeted killings by the Bush administration

U.S. drones' bombings in Afghanistan started in late 2001. By mid-November of that year the CIA's drones had reportedly fired 40 Hellfire missiles throughout Afghanistan. However, this was only a timid beginning, if we take into consideration that during the same period of autumn 2001 all other platforms had conducted 6,500 airstrikes.⁸⁴

A fully fledged use of drones started under the Obama Administration. A number of examples of that use provided below are illustrative rather than exhaustive.

b) Targeted killings by the Obama administration

On 23 September 2012, ISAF drones (United States) injured a teenage girl in Kunar province, who later on died of the sustained injuries.⁸⁵

* * *

On 20 October 2012, ISAF (United States) drones reportedly killed four children in Logar province, aged between 11 and 13 years whilst tending livestock. ISAF later issued a statement indicating that it was aware of possible civilian casualties resulting from the operation.

* * *

⁸⁴ Woods, Chris, *Op. cit.* p. 44.

⁸⁵ For this and following cases see Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson, UN General Assembly, Human Rights Council, Twenty-fifth session, A/HRC/25/59, 11 March 2014, p.p. 11-12.

On 12 November 2012, as a result of an attack by drones under the control of ISAF (United States) three children under the age of 16 were reportedly killed whilst working in a field in Logar province.

* * *

On 5 December 2012, ISAF (United States) drones, allegedly, hit to death at least three civilians (two adult teachers and a child, all members of the same family). Reportedly, two other children were killed during the same operation.

* * *

On 24 February 2013, ISAF (United States) launched a drone strike against a village in Nangarhar province resulting in the death of five adult males all of them civilians to all evidence.

* * *

On 15 June 2013, ISAF (United States) drones reportedly fired on a house in Kunar province. Three civilians, including one woman, are reported to have been killed and at least six civilians, including a women, are reported to have been injured. All the victims were members of the same family.

* * *

On 7 September 2013, American drones launched an attack in Kunar province resulting in the death of six combatants and ten civilians. A four-year old girl was injured.

* * *

The above-mentioned cases are meant to illustrate not so the use of drones as such, but the controversy due to the killing of civilians, let alone children. It should be noted, however, that this did not prevent the Obama administration from the increased use of modern technologies. On the contrary, drone attacks were intensified in the following year and reached an unprecedented threshold. For the sake of shortness, it would be worth mentioning the intensity of drone strikes, for instance, in May 2016 as follows.

On 21 May 2016, a U.S. military drone strike killed the leader of the Afghan Taliban, Mullah Akhtar Mansour.⁸⁶ In a statement issued on the occasion of this operation President Obama called Mansour's death "*an important milestone*"⁸⁷ adding that the United States had "removed the leader of an organization that has continued to plot against and unleash attacks on American and coalition forces".⁸⁸

The killing of the Afghan Taliban leader was the culmination of a series of drone strikes directed against Taliban and IS armed groups. Thus, only in May 2016 a number of Afghan Taliban and IS fighters, among them leaders, were destroyed by drone attacks as follows:

- 9 May: a dozen (according to other reports seven Taliban fighters died, including a senior commander in Kunduz province;
- 12 May: Amin Jan, the Taliban shadow district governor was killed;
- 16 May: three reported killed, among them a "notorious commander of the Islamic State", according to Kunar provincial police spokesman. This was Shafiq Abbas, a local Taliban and IS commander;
- 16 May: 20 Taliban dead in northern Kunduz after a drone strike. However, the U.S. headquarters in Kabul denied having any information on that drone strike;
- 17 May: five people killed in southern Zabul province. Reportedly, among them was Mullah Mohammad Ali, a leading figure in al Qaeda;
- 18 May: four Taliban fighters killed;
- 18 May: eight Taliban fighters reportedly killed in Ghazni province. However, the U.S. headquarters in Kabul denied having any information on that drone strike;
- 18 May: this drone attack reportedly killed Mohammud Muzmail, Ab Band shadow district governor;
- 21 May: the leader of the Afghan Taliban, Mullah Akhtar Mansour killed (as mentioned above);
- 22 May: 13 Taliban fighters, among them two commanders, killed in Kunduz city;

⁸⁶ Although the attack took place near the Afghan border in Pakistan, this strike is mentioned under Afghanistan due to the political, rather than geographic dimension of the event.

⁸⁷ Gardiner, Harris "Obama Says Mullah Mansour, Taliban Leader, was killed in U.S. strike", The New York Times, 23 May 2016 at http://www.nytimes.com/2016/05/24/world/asia/obama-mullah-mansour-taliban-killed.html?_r=0

⁸⁸ Ibid.

- 22 May: nine alleged IS fighters, including a commander, killed in Nangarhar province;
- 26 May: four alleged IS fighters, including a commander, killed in Wazir district of Nangarhar province;
- 26 May: two IS fighters killed in Kot district of Nangarhar province;
- 28 May: two killed and six injured in northern Sar-e-Pul province;
- 29 May: a commander was reported killed alongside with five other IS militants in Nangarhar province;
- 29 May: 17 – 22 killed in Kandahar province described by a US Airforce spokesman as “individuals threatening the force”;
- 29 May: two Taliban fighters killed in Nangarhar province;
- 29 May: an IS commander and his bodyguard reportedly killed in Maidan Wardak province.⁸⁹

This intensity of drone strikes in Afghanistan over the period of only one month clearly demonstrates the preference of drones by the Obama Administration as compared to other military aircraft, though different types of aircraft have also been engaged in anti-terrorist operations.

Statistic data below from the Bureau of Investigative Journalism provides with the overall picture:

2015 onwards drone strikes in Afghanistan

Total strikes:	315-320
Total killed:	1,495-1,988
Civilians killed:	75 – 103
Children killed:	4-18
Injured:	163-169

⁸⁹ These reports on drone strikes during May 2016 are taken from the data provided by the Bureau of Investigative Journalism at <https://www.thebureauinvestigates.com/2016/01/07/get-the-data-a-list-of-us-air-and-drone-strikes-afghanistan-2016/#207>

Pakistan

a) Targeted killings by the Bush administration

For the first time the CIA's Predator drones struck lethally inside Pakistan on 17 June 2004. The strike killed half a dozen men and two boys. During the next two years such strikes took place half a dozen times, and every time the Pakistani authorities took up the responsibility of those actions in conformity with a secret deal between the CIA and the Pakistani military authorities on drone attacks in the tribal areas of Waziristan.⁹⁰

* * *

In a single reported drone strike the CIA killed 81 civilians (80 children and one adult) according to public records. This happened in the morning of 30 October 2006, when a U.S. drone strike destroyed a seminary for boys just to prevent the ceremony of signature of an accord between the Pakistani government and an Islamist organization, TNSM, whose leader was at the same time the headmaster of the seminary. The U.S. government, however, has never acknowledged this fact.⁹¹

b) Targeted killings by the Obama administration

The first drone strikes took place on 32 January 2009, only three days after Obama took office. There were two such strikes: the first, reportedly, killed, by mistake, a pro-government peace negotiator who was a tribal leader and four of his family members in the South Waziristan. The second destroyed a private house in a village in North Waziristan, reportedly killing civilians, among them an eighth-grade boy and schoolteachers.⁹²

* * *

On 23 June 2009, precision-guided munitions were reportedly discharged from a drone at a large funeral ceremony in South Waziristan. Reports suggest that up to 83 people were killed. The estimated number of non-combatant fatalities varies between 18 and 50. Credible reports indicate that 10 children and 4 tribal elders were among the dead. In addition, 27 people, including a number of children, were reportedly treated for injuries at a local hospital.

* * *

⁹⁰ See Woods, Chris *Op. cit.* p. 102.

⁹¹ *Ibid.* see p. 94.

⁹² These strikes are described in "Kill or Capture", a book about Obama's counterterrorism policy by the former *Newsweek* reporter Daniel Klaidman. Quotation from Coll Steve "The Unblinking Stare", A reporter at Large, November 24, 2014 Issue.

In 2009, his first year in the White House, Obama carried out more drone strikes in Pakistan than Bush had during his entire presidency. The following year, strikes hit Pakistan's tribal regions at a rate of more than two a week.⁹³

* * *

On 4 October 2010, a drone attack hit a group of men gathered in a courtyard of a house in North Waziristan, killing all of the intended targets. While a number of those people were actively involved in terrorist activities, some others reportedly were civilians.

* * *

A drone strike on 17 March 2011 near the border with Afghanistan resulted in the killing of about 41 civilians and could serve as an outspoken example of indiscriminate action. The victims were representatives of two local tribes gathered together in a *jirga*, a dispute-resolution meeting. According to Pakistani officials a few Taliban may have been present at the *jirga*, but the majority were not anti-American fighters. This strike triggered anti-American protests in Pakistan. Nevertheless, the Obama administration insisted these were folks plotting against the U.S. and therefore they should have been punished. Prior to that, on 11 March 2011, a suspected vehicle bordered by militants was struck, and on 16 March, a drone destroyed a compound near the village where the *jirga* was to take place. From the available evidence, it seems likely that the CIA targeting analysts tracked a suspect to the *jirga* and then decided to kill everyone present.⁹⁴

* * *

On 6 July 2012, precision-guided munitions were discharged in North Waziristan. The first missiles launched from a drone reportedly struck a tent in which a group of labourers had gathered at the end of their working day killing eight of the occupants. A second strike killed other civilians bringing the total number of casualties to 18 with 22 injured.

* * *

On 24 October 2012, drones struck an agricultural land in North Waziristan. The sole victim, a 68-year old women was killed instantly.

⁹³ See Ross, Alice "Drones may predate Obama, but his resolute use of them is unmatched" The Guardian, 18 November 2015 <http://www.theguardian.com/world/2015/nov/18/us-military-drones-obama-afghanistan-yemen-isis> [accessed 14 December 2015]

⁹⁴ Coll, Steve, *Op. cit.*

* * *

The number of American drone strikes in Pakistan has significantly increased since Obama took office in 2009, as demonstrates the following quotation from an in-depth study on that issue: “[E]stimates state that while there were 52 such strikes during George W. Bush’s time, this number has risen to 282 over the past three and a half years”.⁹⁵

* * *

Statistic data below from the Bureau of Investigative Journalism provides with the overall picture:

2004 onwards CIA drone strikes in Pakistan

Total strikes:	423
Obama strikes:	372
Total killed:	2,479 – 3,999
Civilians killed:	423 – 965
Children killed:	172 – 207
Injured:	1,161 – 1,744

Somalia

a) Targeted killings by the Bush administration

According to the Bureau of Investigative Journalism in 2001 the Bush administration considered military strikes against Somalia, accusing it of having ties with al Qaeda. Action was abandoned because of insufficient intelligence.

Although the Bush administration undertook several antiterrorist operations, these involved naval and air force other than drones: yet another proof that Bush has not opted for the use of drones as a weapon of choice.

b) Targeted killings by the Obama administration

⁹⁵ Bachmann, Sacha Dominik “Targeted Killings: Contemporary Challenges, Risks and Opportunities”, Journal of Conflicts & Security Law (2013), Vol.18, No.2, p.p. 259-288, p.285.

On 31 March 2015, a U.S. drone strike targeted three al Shabaab figures in southern Somalia. The Pentagon said the strike had targeted Hassan Ali Dhoore, a senior leader of al Shabaab.

* * *

On 5 March 2016, U.S. drones with jets killed 150 people in a training camp 120 miles north of Mogadishu, the highest death toll registered by the Bureau of Investigative Journalism, which outstripped the previous highest: 81 killed in Pakistan in October 2006.

* * *

On 11-12 April 2016, U.S. drones attacked an al Shabaab militant camp killing about 12 militants, according to Pentagon. There were reports of civilian casualties.

* * *

Statistic data below from the Bureau of Investigative Journalism provides with the overall picture:

2007 onwards drone strikes in Somalia

Drone Strikes:	27-29
Total killed:	218-382
Civilians killed:	3-10
Children killed:	0-2
Injured:	11-21

Other countries

Libya

During NATO's Libya intervention in 2011, armed Predators and Reapers remotely flown by American and British crews carried out 145 strikes, still a modest part of overall aerial strikes during which 7,600 weapons were launched.⁹⁶ These attacks brought about killing of civilians, a fact that was denied by the NATO Secretary General Anders Fog Rasmussen.

⁹⁶ Woods, Chris, *op. cit.*, p. 278-279.

Nevertheless, the UN International Commission of Inquiry on Libya confirmed, for example, 60 civilian deaths and 55 injured in five airstrikes.⁹⁷

Furthermore, the International Commission on Inquiry on Libya reported that: “*NATO had succeeded in conducting a highly precise campaign with demonstrable determination to avoid civilian casualties, but nonetheless found evidence of civilian loss of life and recommended investigations to determine the precise level of civilian casualties*”.⁹⁸

Iraq

At the initial stage of the conflict in Iraq the United States deployed a small number of unarmed Predators, weaponized at a later stage. From July 2005 to June 2006, U.S. drones participated in more than 242 separate raids, engaged 132 troops in contact force-protection actions, fired 59 Hellfire missiles, surveyed 18,490 targets and escorted four convoys and flown 2,073 sorties for more than 33,833 flying hours. In the following years the number of flown sorties drastically increased. Thus, between 2008 and 2011 there were 17,009 UAV sorties, and missiles were discharged on 48 occasions.

According to U.S. officials during the Iraqi conflict drones were used mainly for the purposes of intelligence, surveillance, targeting and reconnaissance.⁹⁹

Syria

In his statement on ISIL President Obama pointed out that the U.S. objective when combating terrorism was to “[d]egrade and ultimately destroy ISIL through a comprehensive and sustained antiterrorism strategy”.¹⁰⁰ As a first component of that strategy President Obama emphasized the following: “[w]e will conduct a systematic campaign of airstrikes against these terrorists. ... I have made it clear that we will hunt down terrorists who threaten our country, wherever they are. That means I will not hesitate to take action against ISIL in Syria, as well as Iraq. This is a core principle of my presidency: If you threaten America, you will find no safe haven”.¹⁰¹

⁹⁷ See United Nations Human Rights Council Nineteenth Session “Report of the International Commission of Inquiry on Libya”, A/HRC/19/68, 2 March 2012, p. 17.

⁹⁸ See Promotion and protection of human rights and fundamental freedoms while countering terrorism Note by the Secretary General, A/68/389, 18 September 2013, p.p. 9-10.

⁹⁹ *Ibid.* p.10

¹⁰⁰ Statement by the President on ISIL , the White House, Office of the Press Secretary, September 10, 2014 at <https://www.whitehouse.gov/the-press-office/2014/09/10/statement-president-isil-1>

¹⁰¹ *Ibid.*

However, in order to strike ISIL in Syria the U.S. and its allies should find a kind of justification and a legal ground within the framework of IHL and human rights law. That kind of justification, as it had always been the case, when the U.S. had taken the decision to strike at any rate, came in a rather original way. The explanation was that, according to a letter of the Iraqi Foreign Minister, signed only 20 days after Obama's above-mentioned statement, ISIL had established a safe haven near Iraqi borders in Syria, and that Iraq, therefore, had requested the U.S. to lead international efforts to strike ISIL's safe haven.¹⁰² In its turn, the U.S. government through a letter of its Permanent Representative to the United Nations had responded positively to that request arguing that: *"[S]tates must be able to defend themselves, in accordance with the inherent right of individual and collective self-defence... when, as is the case here, the government of the State where the threat is located (i.e., the government of Syria – GA) is unwilling or unable to prevent the use of its territory for such attacks."*¹⁰³

It is difficult to see what has to do the right of self-defense of the U.S. with ISIL in Syria and the latter's fighting against the Shiite government in Iraq, in the circumstances when, as Ben Emerson rightly has underlined: *"[t]he non-State armed groups have no operational connection with the host State"*.¹⁰⁴

This thesis will give more detailed and in-depth consideration to this kind of legal cases in the following chapter. Here, it would be appropriate to provide with some examples of the U.S. drone strikes in Syria in order to illustrate the American drone strategy, which in principle does not fundamentally differ from the U.S. strategy in the above-mentioned countries.

* * *

On 12 November 2015, a U.S. drone strike killed "Jihadi John", a British citizen and one of the most odious figures of ISIL known for his cruelty and ruthlessness through a number of videotaped extra-judiciary executions. As an American Army spokesman said on this

¹⁰² Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emerson, A/HCR/29/51, 16 June 2015, p. 15.

¹⁰³ *Ibid.*, p. 16

¹⁰⁴ *Ibid.*, p. 16

occasion: “[T]his guy was a human animal, and killing him is probably making the world a little bit better place”.¹⁰⁵

* * *

On 3 April 2016, a U.S. drone strike killed 21 people including a spokesman of Jabhat al-Nusra. Two days later, this was followed by another strike which resulted in the killing of Rifai Taha, a leading Egyptian Islamist, who had not been directly involved in terrorist activities but had tried to overcome the contradictions and discord between different armed groups in order to unite them in their fight against the regime of Bashar al Assad.¹⁰⁶

* * *

In late April 2016, according to Fox News a married couple of American citizens engaged in recruiting ISIL fighters was killed as a result of a drone strike, though there are no evidence this was done by the U.S.¹⁰⁷

* * *

It should be noted that the American-led coalition rather often had recourse to a combination of different types of air platforms when conducting its strikes. For the sake of shortness, suffice to mention some facts concerning combined military strikes in Syria during three randomly taken months in 2014, 2015 and 2016. These facts are published by Airwars, a journalist-led transparency project that monitors and reports on civilian casualties allegedly caused by U.S.-led Coalition and other international airstrikes in Iraq and Syria.

Thus, in October 2014, the coalition air campaign continued to intensify, with more than 400 airstrikes reported across both Iraq and Syria, in which more than 1,600 munitions were dropped. Claims of civilian deaths continued to mount, with a number of civilians and friendly forces claimed killed in both Syria and Iraq. However the coalition continued to deny any civilian deaths from its operations. Following are a few examples:

¹⁰⁵ Botelho, Greg and Starr, Barbara “U.S. ‘reasonably certain’ drone strike killed ISIS mouthpiece ‘Jihadi John’”, CNN, November 14, 2015 at <http://edition.cnn.com/2015/11/13/middleeast/jihadi-john-airstrike-target/> (accessed 16 February 2016)

¹⁰⁶ See Akkad, Dania “EXCLUSIVE: US drone strike in Syria killed mediator trying to rein in al-Qaeda”, Middle East Eye, 9 May 2016 at <http://www.middleeasteye.net/news/exclusive-killing-egyptian-islamist-syria-blow-deradicalisation-efforts-611322701> (accessed 16 October 2016)

¹⁰⁷ Rahman, Khaleda “Married American jihadis who worked as ISIS recruiters ‘killed in Syria drone strike’”, Mail Online, 2 May 2016 at <http://www.dailymail.co.uk/news/article-3570247/Married-American-jihadis-worked-ISIS-recruiters-killed-Syria-drone-strike.html> (accessed 17 November 2016)

On 2, 3 and 4 October 2014, coalition military forces used bomber, fighter-attack and remotely piloted aircraft to conduct four, six and five airstrikes, respectively.

On 6, 7 and 8 July 2015, coalition military forces used bomber, fighter-attack and remotely piloted aircraft to conduct 15, 11 and 14 airstrikes, respectively.

On 2, 6 and 8 May 2016, coalition military forces used bomber, fighter-attack and remotely piloted aircraft to conduct 4, 6 and 9 airstrikes, respectively.¹⁰⁸

Overall facts

According to the Bureau of Investigative Journalism the Bush Administration ordered 50 drone attacks while the government of Obama, as of September 2015, has launched around 500 such attacks.¹⁰⁹ In view of further intensive use of drones this gap by the time of writing (May 2016) should have been considerably increased.

* * *

The U.S. drone programme has the greatest reach. Since 2008, the United States has conducted more than 1,000 drone strikes in Afghanistan. From 2008 to 2012, the United States conducted 48 drone strikes in Iraq; in 2011, it launched at least 145 drone strikes in Libya. The use of armed drones in more traditional conflicts has been far less controversial, even if it is more prevalent, than their use off the battlefield. Nevertheless, Washington has conducted almost 400 drones strikes in Pakistan, over 100 in Yemen, around 18 in Somalia, and at least one (in 2006) in the Philippines.¹¹⁰

* * *

As Daniel Byman pointed out in his study on the use of American drones: “[W]hereas President George W. Bush oversaw fewer than 50 drone strikes during his tenure, Obama has signed off on over 400 of them in the last four years (i.e., from 2009 to 2013 – GA), making the program the centerpiece of U.S. counterterrorism strategy”.¹¹¹

* * *

¹⁰⁸ See Daily Military Reports at <https://airwars.org/daily-reports/>

¹⁰⁹ Press TV “Obama Ordered Ten Times More Drone Strikes than Bush”, 15 September 2015 at <http://www.dailymail.co.uk/news/article-3570247/Married-American-jihadis-worked-ISIS-recruiters-killed-Syria-drone-strike.html><http://www.globalresearch.ca/obama-ordered-ten-times-more-drone-strikes-than-bush/5475415> (accessed 12 May 2016)

¹¹⁰ See Kreps, Sarah and Zenko, Micah “The Next Drone Wars: Preparing for Proliferation, Foreign Affairs, Volume 93, Number 2, March/April 2014, p. 71.

¹¹¹ Byman, Daniel, *op. cit.*, p. 32.

It goes without saying that the above-mentioned cases cannot reflect the whole range and complexity of American drone strikes in several countries that became battlefields of war against terrorism. Rather, the cited facts and figures were meant to concentrate on the most outspoken examples, which triggered harsh criticism and controversy with regard to limits of the use of these new technologies, as well as their compatibility with the international law and moral standards. Indeed, the strategy of targeted killings, especially, under the Obama administration has raised a number of critical questions that have not been answered yet. The following chapter of this thesis will look into the matter in an attempt to reach some preliminary conclusions without any claim to provide with exhaustive answers.

4. Chapter Three: The Strategic Implications of the Drone Wars

Top intelligence and military officials, as well as rights defenders in targeted areas, affirm that the great escalation in drone attacks has turned aggrieved families toward terrorist organizations, aroused civilian populations against us and permitted repressive governments to cite such actions to justify their own despotic behavior.

*President Carter*¹¹²

The facts analyzed in Chapter Two have demonstrated a steadfast trend of increase of the use of drones by the Obama administration in its fight against international terrorism. As compared to the initial years of the war against terrorism proclaimed by the Bush administration after the terrorist attack on the Tween Towers in New York on 11 September 2001, when the drones have started to be used as a means of warfare, remaining, however, in limited scopes, the Obama administration further developed its strategy and tactical engagement, as well as geographic area in the context of the use of drones as one of the weapons, and even the “weapon of choice”, to combat international terrorism.

The previous chapter briefly focused on the conflicting opinions of those who argue in favour of drone wars and those who strongly oppose them. It should be noted that in both cases the arguments mainly revolve around the comparison of drones as modern weapon with the conventional or traditional means of warfare. The supporters underline the fact that drones

¹¹² Carter, Jimmy “A Cruel and Unusual Record” New York Times, June 24, 2012.

are much more precise and discriminate than the usual aircraft or missiles, while the opponents points to significant number of civilian casualties. The former provide as a major argument that remotely piloted unmanned vehicles allow to achieve major military goals without the need to deploy ground forces and to endanger the lives of solders. The latter counterattack by saying that nowadays exactly for that reason it has become much easier to engage in war and that depriving the combatants of the right to surrender, let alone legal defense, is against the IHL and the Charter of the United Nations.

This thesis would argue that analyzing drone warfare against the backdrop of traditional arms seems to be misleading. It would be methodologically false to consider the huge implications of drone wars in modern warfare and, in a broader context, their strategic and political consequences based on comparison of drones with other categories of weapons. First and foremost, because the magnitude and the depth of cardinal questions triggered by the use of drones are so far-reaching that they require to be answered in their own context. Indeed, these questions involve legal, moral, political, military aspects that have not been known in the context of traditional warfare.

In other words, in this specific case comparative analysis becomes a series of “false dichotomies” as the American scholar Laurie Calhoun has stressed.¹¹³

The essential question at present, after 15 years of practice of the use of drones by the two consecutive American administrations, is to what extent this kind of warfare has been effective and efficient, and, even, whether it has been useful at all in the fight against terrorism. Other important questions are: to what extent the use of drones is compatible with the notion of “just war”; are drone strikes targeted killings or assassinations; whether this new warfare will really lead to more security for America or it will undermine its credibility, thus leading to weakening of its position as superpower in the world, as well as creating domestic controversies and problems. Finally, whether or not the strategy of targeted killings will set a dangerous precedent and lead to drones’ proliferation.

¹¹³ Calhoun, Laurie, *op. cit.*, When speaking of the alleged advantages of drones versus aircraft or missiles the author rightly points out the following: “False dichotomies also abound, as in bold assertions that Hellfire missiles launched by Predator drones should be deployed because they are more precise and discriminate than Tomahawk missiles. If the proverbial ‘options on the table’ are either to use weaponized drones or to launch Tomahawk missiles, then drones naturally win the debate, assuming that the goal is to ‘take out’ an individual or small group as opposed to an entire village. However, by delving a bit deeper, beneath the superficial level of most discourse on this topic, the presumptions underlying policymakers’ adoption of intentional, premeditated homicide as a standard operating procedure can be identified and assessed.”, p. XVII.

In this Chapter an attempt will be done to analyze the above-mentioned issues, bearing in mind that no exhaustive answers can be found and no ready-made recipes can be prescribed to assess once and for all the role of drones in fighting against terrorism.

4.1. Ronaldo's phenomenon or the (in)effectiveness of drone strikes in fighting against terrorism

The day of 10 July 2016 will be long remembered by French football fans and the nation as a whole as a day of nation-wide disappointment and humiliation. That was the day when the French national team was defeated by the Portugal team who scored a single goal in the final of the UEFA's European Championship. Yet, the overwhelming estimates and odds before the match were unequivocally in favour of the French sportsmen. What happened then? How could the French footballers, who had until that moment scored a series of victories, found themselves in such a deplorable situation?

The answer is well known. It has been given by prominent commentators, fans, as well as common people: the trauma of the best and central Portuguese player, Cristiano Ronaldo, at the early stage of the first half-time did not allow him to continue the game. As he was leaving the pitch, all previous estimates and odds became a firm conviction: there is no way that France would not win. What followed was entirely unexpected. Paradoxically, Ronaldo's elimination made the Portuguese to better coordinate their actions, find creative ways of defense and counter-attack and in the end win the UEFA European Championship Cup.

What the commentators and fans did not say was that two French players almost simultaneously suddenly and deliberately brutally hit Ronaldo in the hope that his elimination would have a devastating effect on the rival. But as it often happens, they got the opposite effect. This effect, which could be dubbed 'Ronaldo's phenomenon' may occur in football and sports, in general. This may occur in the fight against terrorism as well.

Indeed, as a matter of fact, the logic of the American administration, when chasing and obliterating terrorists, is similar to the logic and behavior of the French national team in the final of the European Football Championship of 2016. This logic is as primitive as it can be: just eliminate the head (the team leader) of a given terrorist organization and you will easily defeat the enemy. However, history has turned out to be much more complicated than this type of reasoning. It has proved many times that the mere obliteration of the leaders of terrorist groups does not lead, as a matter of fact, to the obliteration of the group itself.

Usually, new leaders take the relay from the killed ones. True, this may take time, but the group usually finds enough capacity to gather together and reorganize itself to continue their straggle in the new circumstances.

As U.S. Lieutenant Colonel Matthew J. Martin, a drone operator said cynically but rightly: “[I]nsurgents were like having a house infested with rats; the more of them you killed, it seemed, the more they bred”.¹¹⁴

The example of *Hezbollah*, widely believed in the West to be a terrorist group and blacklisted by the American administrations, is more than eloquent in that context. Musa Sadr, the charismatic religious leader of Lebanese Shi’a affiliation, disappeared without any trace whatsoever in Libya in August 1978. While considering the causes of his disappearance is beyond the scope of this thesis, it should be noted that Musa Sadr’s disappearance and, most probably, forcible death was a huge blow to the Shi’a movement in Lebanon, which was, thus, deprived of its spiritual, religious and political leader. Nevertheless, after that tragic event the Shi’a got mobilized and a few years later in 1982 founded *Hezbollah* (the Party of God), which has become a significant player in the political discourse in Lebanon and abroad.

Hezbollah was and still is, perhaps, the most prominent Lebanese political force in its intransigent permanent struggle against Israel, a struggle that has at times been successful. There is no wonder, therefore, that in February 1992, Israeli Apache helicopters fired missiles at the motorcade of the party’s Secretary General, Abbas al Mussawi, in the vain hope that his assassination would lead to *Hezbollah*’s significant weakening. Had that event occurred a decade later, the Israelis would have, most probably, used drones instead of helicopters. Along with Abbas al Mussawi his wife, five-year old son and four others fell victim to the strike.

However, the Israeli calculations proved to be more than erroneous. Not only Abbas al Mussawi was risen to the rank of martyrs, not only his name became a new Shi’a symbol inspiring to even more fierce struggle, but also his successor, Hassan Nasr Allah, has become an even more outspoken leader of *Hezbollah*. And whether dubbed ‘terrorist’ by the Americans and Westerners or admired by his countless followers the Party’s Secretary

¹¹⁴ J. Martin, Matthew with W. Sasser, Charles ‘Predator: The Remote-control Air War over Iraq and Afghanistan: A Pilot’s Story (2010), p. 252. Quotation from Calhoun, Laurie, *op. cit.*, p. 147.

General, today, is one of the most influential political figures in Lebanon and in the Middle East.

One may object to this example by opposing it with another obvious one, i.e., the weakening of Al Qaeda after the targeted killing/assassination of its founder and leader Osama bin Laden. True, Al Qaeda, though it is still active and managed to establish its branches in the Arabian Peninsula, North Africa, the Western Africa (Sahel) and elsewhere, has lost after Osama bin Laden's assassination its influence and power of action. Apart from Osama bin Laden, a significant number of other Al Qaeda leaders were obliterated in the aftermath of drone attacks, which led to further undermining of the organizations capability of action.¹¹⁵

Nevertheless, another organization, the Organization of the Islamic State, otherwise known as the Islamic State in Iraq and Levant (ISIL), took the lead position among the Islamist terrorist organizations, and became a serious threat to international peace and security to the extent that no effective means of confronting its expansion, let alone annihilating it have so far been found by the superpowers and the members of the international community.

Amazingly, in a very short period the ISIL was able to conquer large swaths of lands in Iraq and Syria, and to establish its quasi-statehood with population, borders, central and local powers, social services, etc.

More importantly, as compared to Al Qaeda the ISIL brought the terrorism about a new strategic level. While Al Qaeda's major aim was fighting through terrorist attacks against America, Great Britain and those who had invaded Iraq, later on Libya, the ISIS put on the agenda the issue of the restoration of the Califate, the medieval Arab Empire, stressing the necessity of uniting the Arab lands under a single strong leadership.¹¹⁶

To keep it short, these examples are self-explanatory when analyzing the impact of combatting terrorism through military power, rather than political solutions and strategic approaches. To describe the terrorist attacks and the dangers they entail the term of 'asymmetric threats' has been introduced in the modern political lexicon.¹¹⁷ Indeed, if we

¹¹⁵ See footnote 31 on p.15.

¹¹⁶ On the differences between Al-Qaeda and the ISIL see, for instance, Luizard, Pierre-Jean 'Le Piège Daech l'Etat islamique ou le retour de l'histoire', Editions la Découverte, 2015, p. p. 26-27. The author stresses that : "A la différence d'Al-Qaïda, L'Etat islamique se caractérise bien aussi par un souci de territorialisation du pouvoir qui met désormais en avant un Etat en construction, un souverain (le Calife), une armée – et pas seulement un groupe de moudjahidin, comme les combattants de Al-Qaïda – et même une monnaie'.

¹¹⁷ See, for instance, the recently adopted UN Security Council resolution on Mali, where the term of "asymmetric threats" is used six times in a 14-page document. UN Security Resolution 2295 (2016),

admit that the international community, or at least the Anglo-Saxons have been engaged in a global war on terror, we should also admit that the adversary does not have recourse to usual means of warfare. Terrorist attacks and guerilla-like warfare unprecedented atrocities by the ISIL and Islamic extremists' other armed groups really look like posing asymmetric threats insofar as their actions cannot be placed into the hitherto existing means of warfare. The next step will be to admit that one cannot confront asymmetric threats by ordinary warfare, including the use of drones, and that other, equally asymmetric responses to those threats should be employed against terrorists, if we want to succeed in destroying the evil.

Time and again, these asymmetric antiterrorist actions should stem from decisions at strategic/political level requiring from the leading figures in politics fresh approaches and a well-thought, well-balanced and, at the same time, audacious strategic vision, as well as capability to translate that vision into real life. It is worth mentioning what the American scholar Harry van der Linden stressed in this context: *"Generally, militarized foreign policy errs in thinking that war is the answer; it fails to recognize that military force, at best, can bring people to the point of renewing cooperative efforts and finding nonviolent, enduring solutions for what gave rise to violent conflict in the first place"*.¹¹⁸

This topic is much broader than the subject of this thesis. And if a reference is made to it, it is because the drones should be considered in a broader contest and not only as a purely military weapon, which has brought a new dimension to modern warfare.

Lastly, to argue in favour of those who consider the use of weapons as useless for, not to say detrimental to, the effective and efficient fighting against terrorism it is worth mentioning the perception of the American policy of the use of drones among population in different countries, both victims and non-victims of drone attacks. As cited by analyst Audrey Kurth Cronin: *"[A]ccording to the results of public opinion polls conducted by the Pew Global Attitudes Project in 2012, only 17 percent of Pakistani respondents approved of American drone strikes against the leaders of extremist groups. The vast majority of people polled internationally indicated strong opposition to the U.S. drone campaign. The opposition was strongest in Muslim-majority countries, including traditional U.S. allies, such as Turkey (81 percent against), Jordan (85 percent against), and Egypt (89 percent against).*

S/RES/2295 (2016) at http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_res_2295.pdf

¹¹⁸ van der Linden, Harry "Drone Warfare and Just War Theory" Butler University, College of Liberal Arts & Sciences, Part of the Ethics and Political Philosophy Commons, 2015, p. 176.

Europeans are almost as unhappy: of those polled in a 2012 Pew survey, 51 percent of Poles, 59 percent of Germans, 63 percent of French, 76 percent of Spanish, and a full 90 percent of Greeks noted their disapproval of U.S. drone strikes. The only publics that even approach the positive attitudes of the United States - were 70 percent of respondents to a recent New York Times poll approved of drones and 20 percent disapproved – are in India and the United Kingdom, where public opinion is more or less evenly divided. Washington insiders commonly contend that these popular attitudes don't matter, since government officials in all these countries privately envy American capabilities. But no counterterrorism strategy can succeed over time without popular support."¹¹⁹

The author is absolutely right, when referring to the necessity of popular support, if the fight against terrorism is to make considerable progress. The secrecy of American behavior in dealing with the use of drones¹²⁰, justifications of so called “collateral damage”, when a considerable number of innocent civilians, amongst them women and children lose their lives, by the national interest and the necessity of defending the state territory and American nation, while the strikes take place thousands of miles away from the United States, cannot but tarnish the country's image as a champion of democracy and human rights.

The conclusion is that drone strikes are ineffective against the fighting against terrorism. This is not to say that drones are useless in obliterating terrorists. Speaking from exceptionally military point of view they are a modern technology and as such cannot be disregarded. As the American scholar Ethan A. Wright underlined quoting also another scholar, Laurie R. Blank: “[D]rones are legitimate weapons of war: they are not indiscriminate, nor do they cause unnecessary suffering. They ought not be dismissed outright as unethical weaponry. Drones eliminate many of the human costs on for the forces using them, perhaps the clearest and most attractive justification for their use. Through the use of drone technology, we are

¹¹⁹ See Audrey Kurth Cronin, *op. cit.*, p. p. 49-50.

¹²⁰ For secrecy of waging drone wars by the American administration see for instance Harry van der Linden, *op. cit.*, p.p. 172-173. The author stresses: “[T]he Obama administration has never really tried to make the case that its drone killings in Pakistan were justified in terms of self-defense, since it executed these killings largely in secrecy. The only data we have about the number of strikes and people killed have been tabulated by civilian groups, based on reports by local individuals, government officials, and journalists in a region with rather limited access.”

able to accrue intelligence and engage military targets without risking life or limb to our soldiers.”¹²¹

However, as the German scholar Sebastian Wuschka underlined: “..... [i]t is not the drone that raises legal issues. It is the way the strikes are conducted.”¹²² This is a sound counterargument to what have stated Ethan A. Wright and Laurie R. Blank along with a number of other analysts in favour of the use of drones. Indeed, as any other weapon drones are neutral, and the assessment of their compatibility with legitimate warfare depends on a series of factors, such as gathering of reliable intelligence, avoiding strikes that would involve civilian casualties, and the like. Nevertheless, these both pro and con arguments in terms of drones remain at the level of military engagement. What is more important is the political effect of the use of this modern weaponry.

Therefore, one should add: it is not the use of drones that undermines the reputation of the United States as a world superpower and champion of democracy. What devastates the American involvement is the political impotence to destroy terrorism through the use of drones. In the final analysis, drones are a weapon, a military answer to the problem. But the problem should be resolved in another non-military, political dimension.

Another major problem, when considering the use of drones as a reliable means to fight the terrorist groups, is the problem of their compatibility with IHL and human rights law. In other words, a clear answer should be sought to the question: whether or not the introduction of this modern technology has changed the perceptions on the possibility of waging “just war”, a concept that has centuries-long philosophical, political, legal and military traditions.

4.1.1 The just war doctrine in the context of the use of drones

This thesis does not pursue the aim of describing the notion or the principles of just war doctrine.¹²³ Theological and philosophical works (suffice to mention the names of Saint Augustine, Thomas Aquinas, and Immanuel Kant), thousands of monographs, articles,

¹²¹ Wright, Ethan A. “Of Drones and Justice: A Just War Theory Analysis of the United States’ Drone Campaigns”, Ursinus College, U-Imagine Center for Integrative and Entrepreneurial Studies, 2015, p.10. The first sentence is a quotation from Blank, Laurie R. “After ‘Top Gun’: How Drone Strikes Impact the Law of War.” *Journal of International Law* 33.3 (2012): 675-718.Web.

¹²² Wuschka, Sebastian, “The Use of Combat Drones in Current Conflicts – A Legal Issue or a Political Problem?” *Goettingen Journal of International Law* 3 (2011) 3, 891-905, p.905.

¹²³ Here and thereafter the term of ‘just war doctrine’ is used instead of the wide-spread ‘just war theory’, the reason being that doctrine reflects theory and well-formulated intents of practical action all together.

scientific papers and in-depth analyses by past and modern authors have been published up until our days spreading light over many complex specifics of the issue. This makes it redundant to focus on the theoretical and practical aspects of the subject, in general.

Instead, the emphasis here has been placed on the most controversial issues, such as the compatibility of the use of drones with IHL, human rights principles enshrined in international instruments and treaties, finally, their either negative or positive impact, or even both, on the modern and future warfare, the central topic being the relationship between the use of drones and just war.

When analyzing the studies on drones and just war doctrine, one comes to the conclusion that the problem is two-fold. It has two separate but at the same time intermingled aspects.

The first aspect is that those arguing in favour of drone attacks refer to the just war principles as a solid ground to their argumentation. Those who are against the drone strikes advance in their criticism as far as to deny the notion and doctrine of just war as such. In doing so, they reject the very idea and practice of waging wars virtually advocating pacifism and exceptionally peaceful means of conflict resolution.

However, it is evident that not everything is possible to achieve through exceptionally peaceful means: political/diplomatic negotiations, blockades, sanctions, and the like. In a number of situations, when the peaceful means get exhausted, there remains no other option as to have recourse to the last resort: the use of force. As President Obama rightly put in his Nobel Prize Speech: *"[[T]o say that force may sometimes be necessary is not a call to cynicism - it is a recognition of history; the imperfections of man and the limits of reason."*¹²⁴

The question is whether it is possible, when waging war against terrorism, especially by the use of combat drones, not to overstep if not the limits of reason, at least, the limits of the

¹²⁴ Obama, Barack "Remarks by the President at the Acceptance of the Nobel Peace Prize", Oslo, Norway, 10 December 2009 at <https://www.whitehouse.gov/the-press-office/remarks-president-acceptance-nobel-peace-prize> In another fragment of his speech President Obama said: "[W]here force is necessary, we have a moral and strategic interest in binding ourselves to certain rules of conduct. And even as we confront a vicious adversary that abides by no rules, I believe the United States of America must remain a standard bearer in the conduct of war. That is what makes us different from those whom we fight. That is a source of our strength. That is why I prohibited torture. That is why I ordered the prison at Guantanamo Bay closed. And that is why I have reaffirmed America's commitment to abide by the Geneva Conventions. We lose ourselves when we compromise the very ideals that we fight to defend. (Applause.) And we honor -- we honor those ideals by upholding them not when it's easy, but when it is hard." Very eloquent and emphatic. Regrettably, next year practice demonstrated a wide gap between the intentions of the President and what happened in reality.

rules of war as they have been adopted in the Geneva Conventions, its Optional Protocols and other international instruments of humanitarian law. The fact that drone proponents refer to just war doctrine does not mean that drone critics should denigrate the very idea of just war.

Here we come closer to the second aspect of the problem. If we agree that wars are inevitable and that, therefore, their rules should be respected at any rate, we have to consider the real problem: whether the use of drones is consistent with the notion of just war. In other words, if this is not the case, then drone strike supporters may be criticized not because of their “just war argumentation”, but because the use of drones is not compatible either with theory or practice of just war.

Following is a succinct analysis of both proponents’ and critics’ arguments in the context of the use of drones and an attempt to come to a conclusion on the subject of compatibility of drones with the just war concept. This analysis seems to be all the more important as the overwhelming majority of academics and analysts have thus far avoided giving a straightforward answer to this question. One should agree with Ethan A. Wright, when he states the following: “[C]onspicuously absent from the literature on drones and Just War theory is simplest combination of the two subjects: has the United States’ use of drones been consistent with Just War principle? Most scholars hold that American drone warfare is unwise, but the bulk of that literature regards cost-benefit analysis, and still avoids questions of justice.”¹²⁵

4.1.1.a) Just war doctrine as justification of the use of combat drones

One should start with the opinion of those who do not see a contradiction between drone attacks and just war. In his Nobel Peace Prize speech President Obama inevitably touched upon the issue of just war, stressing that: *“The concept of a “just war” emerged, suggesting that war is justified only when certain conditions were met: if it is waged as a last resort or in self-defense; if the force used is proportional; and if, whenever possible, civilians are spared from violence.”*¹²⁶ At the moment of pronouncing the speech President Obama was at the beginning of his presidential office, and one could hardly speak of the drastic increase of drone strikes by the American administration. But what the President said on just war in 2009 will be provided as sound argumentation in supporting the compatibility of drones and just war at a later stage.

¹²⁵ Wright, Ethan A., *op. cit.*, p. 3.

¹²⁶ Obama, Barack, *op. cit.*

One of the prominent advocates of the compatibility of the use of drone and just war doctrine was the former Assistant to the President for Homeland Security and Counterterrorism, later on, CIA Director, John Brennan. Referring to a high-ranking source the analyst Conor Friedersdorf cites the words of Brennan, who has suggested that he and President Obama have similar views on drone strikes, adding that: *“[O]ne of them is that sometimes you have to take a life to save even more lives. We have a similar view of just-war theory. The president requires near-certainty of no collateral damage. But if he believes it is necessary to act, he doesn’t hesitate.”*¹²⁷ Here, the link between the just war principles of discrimination (do not kill non-combatants) and last resort (only use military force after other reasonable alternatives have been tried) is obvious. Thus, Brennan justifies the use of combat drones arguing that drone strikes observe IHL or just war. This thesis argues below that in reality both principles mentioned by Brennan – discrimination and last resort – have been grossly violated by the Obama administration. By the way, the other principles of just war doctrine as well.

4.1.2 Opponents to just war doctrine and to waging wars

Let us now consider the opinions of those who harshly criticize not only drone strikes but also virtually deny the just war doctrine all in all, stating that no war can be just. Perhaps, the most intransigent critic in that context is the American scholar Laurie Calhoun, whose latest publication on the drone warfare already cited in this thesis is an eloquent example of anti-drone rhetoric. In a recent interview to Desert Austrian she stated the following: *“[A]fter about a decade of research and thinking about the morality of war, I came to the conclusion that just war theory is no more and no less than a powerful rhetorical tool of propaganda used by leaders to galvanize support for their wars. The early just war theorists came up with a framework, which expanded the domain of permissible homicide. Leaders needed some kind of theoretical apparatus to rationalize going to war but without violating the most fundamental commandment of Christianity: Thou Shalt Not Kill. The banner of “just war” has been carried into battle by troops at the behest of their leaders ever since.”*¹²⁸

¹²⁷ Friedersdorf, Conor “The Obama Administration’s Drone-Strike Dissembling”, The Atlantic, 14 March 2016 at <http://www.theatlantic.com/politics/archive/2016/03/the-obama-administrations-drone-strike-dissembling/473541/> (accessed 12 May 2016)

¹²⁸ Interview with Laurie Calhoun: Author of, “We Kill Because We Can; From Soldiering to Assassination in the Drone Age”, Desert Austrian, 5 February 2016, at <http://www.desertaustrian.com/2016/02/05/interview-with-laurie-calhoun-from-soldiering-to-assassination-in-the-drone-age/> (accessed 12 March 2016)

By characterizing killing of combatants as homicide, Laurie Calhoun, in fact, denies the possibility of waging just wars, i.e., sticking to some principles and rules of war, thus denying IHL as a whole. However, if we agree that conflicts and the means of their solution through warfare are inevitable, as this thesis stated above, we have to agree that IHL and the international human law not only have the right to existence, but also have to be strictly respected. They have been elaborated against the background of centuries of warfare without mercy, and nowadays serve as a minimum standard that state and para-state actors must observe. While Calhoun's and other anti-drone campaigners' opinion that drone killings are murder from the very beginning should be given a serious consideration, it should not lead, however, to rejecting just war doctrine as such.

The denial of just war doctrine has been sustained in a more sophisticated way by the American philosopher and publicist Patrick Provost-Smith, who underlines that at this stage of historic development just war doctrine is undergoing an existential crisis: *"To speak of just war theory now as precariously situated in a state of existential crisis is to peel away the layers of intelligibility that come with the oversimplified and reductive understandings most often advocated in contemporary contexts, something Brennan's own language often mirrors. Existential crises do imply that a particular approach to just war thinking has imploded in very real historical circumstances, and that the familiar ways of understanding the stakes of just war theory have been shaken."*¹²⁹

This may seem to be true, as drones are unprecedented weapons from the viewpoint of a technologically totally new ways of conducting warfare, which may represent a huge unexpected challenge to IHL and international human law. Based on this consideration, Provost-Smith continues his argument stating that: *".... [w]hatever just war theory is today remains quite unlike what it has been before. Weapons technologies have advanced, and the shape of the conceptual ground upon which the morality of wars and the means of waging them has been theorized has shifted substantially since the first Romans first began to speak of the iustum bellum nearly a millennium before St. Augustine's own influential writings on the topic."*¹³⁰

If one accepts that this argument is true, and that just war doctrine at present is in a critical stage, then the next step in this reasoning will be revisiting the very tenets of IHL and

¹²⁹ Provost-Smith, Patrick "A Drone's Eye View: Global Anti-Terrorism and the Existential Crisis of Just War Theory, in *Journal for Cultural and Religious Theory* vol. 12 no. 3(Spring 2013). 84-110, p. 88 at <http://www.jcrt.org/archives/12.3/smith.pdf>

¹³⁰ *Ibid.*, p. 88

considerably amending them, so that they could reflect the new unprecedented development in modern warfare, creation and evolution of drones from purely intelligence-gathering device to powerful combat weapon. Is there a necessity to fundamentally revise IHL or its principles encompass situations involving drones and, therefore, there is no need to amend them? An attempt to answer this question will be undertaken in a relevant section of this thesis. At this point we have to consider the problem of:

4.1.3 The incompatibility of the use of combat drones with the just war doctrine

The central argument of this thesis is that the use of combat drones is incompatible with just war doctrine, as well as IHL and human rights law, since it contravenes each separately taken principle, as well as the entirety of the doctrine and the provisions of the Charter of the United Nations and those of a number of international instruments, in a broader context. Below argumentation is meant to support this statement through an analysis of the internationally acknowledged relevant principles.

On the other hand, it is difficult to artificially detach and analyze just war doctrine principles, because they are closely interrelated. That is how **the use of force** is linked to an **imminent threat**, an imminent threat should be confronted through use of force only as a **last resort**, etc. Therefore, in the analysis of separately taken principles there occur parallel analyses of the other ones, which is necessary to present the issue in a comprehensive and coherent way.

The Charter of the United Nations

Principle of self-defense

In his Note to the UN General Assembly on Promotion and protection of human rights and fundamental freedoms while countering terrorism the UN Secretary General has underlined that: “[S]elf-defence is the central justification advanced by the Government of the United States for the extraterritorial use of deadly force in counter-terrorism operations.”¹³¹ It is not by chance, therefore, that the analysis of the compatibility of the use of drones with IHL and the UN Charter should start exactly with this principle, also central to just war doctrine, all the more so as combat drones have formed the essential part of that “deadly force”.

¹³¹ Note by the Secretary-General “Promotion and protection of human rights and fundamental freedoms while countering terrorism”, UN General Assembly, Sixty-eights session, A/68/389, 18 September 2013, p. 15, at <https://unispal.un.org/DPA/DPR/unispal.nsf/eed216406b50bf6485256ce10072f637/2daadafc4682762585257c0b00609364?OpenDocument> (accessed 11 November 2015)

While article 2 (4) of the UN Charter calls upon all Member States to refrain in their international relations from the threat or use of force, article 51 provides for individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken the measures necessary to maintain international peace and security.¹³²

In several above-cited statements, speeches and documents of strategic nature both President Bush and President Obama, as well as high-ranking American officials have referred repeatedly on the principle of self-defense when fighting against terrorism. Suffice to mention Obama's 23 May 2013 speech, where he underlined: "[W]e act against terrorists who pose a continuing and imminent threat to the American people."¹³³ The impression is that the country has been in a permanent state of self-defense since 9 September 2001 and has been involved in an open-ended struggle to obliterate the terrorists and eradicate the terrorism as a phenomenon. While in the first years this argument might be acceptable¹³⁴, at a later stage the principle of self-defense can be no longer tenable. As Rosa Brooks from Georgetown University Law Center has underlined: "[a] state's right to respond to an armed attack is clearly subject to some temporal limitations; it does not last indefinitely. ... from an international law perspective, it is doubtful that the 9/11 attacks alone give rise to an indefinitely continuing right to use force in self-defense. This view is consistent with the **traditional understanding** (highlight is mine – G.A.) of the right to self-defense in international law, which limits the unilateral use of force to situations in which a state is responding to a recent "armed attack" or to an "imminent" threat of future attack".¹³⁵

Thus, at least in "traditional understanding" of the principle of self-defense the United States can no longer claim that when conducting drone strikes and military operations by other weaponry they may refer to the UN Charter article 51 principle of self-defense.

More than that, what is problematic is not only the time remoteness but also the lack of evidence of hostile operations by terrorist groups against the Americans or any other population imminently prior to drone strikes. According to a leaked 2011 U.S. Justice

¹³² Charter of the United Nations and Statute of the International Court of Justice, San Francisco, 1945 at <https://treaties.un.org/doc/publication/ctc/uncharter.pdf>

¹³³ See footnote 20 on page 8.

¹³⁴ Indeed, on 20 December 2001 the UN Security Council adopted resolution 1386 (2001) establishing the U.S.-led International Security Assistance Force for Afghanistan (ISAF) thus authorizing the use of force in the context of combatting terrorism as a clear sign of solidarity and consent with the policy of the American administration. See S/RES/1386 (2001) at [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1386\(2001\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1386(2001))

¹³⁵ Brooks, Rosa, *op. cit.*, p. 93.

Department White Paper to prevent an imminent threat: “[d]oes not require the United States to have clear evidence that a specific attack on U.S. persons and interests will take place in the immediate future”.¹³⁶

As Law professor Mary Ellen O’Connell has rightly stated: “[T]he law of self-defense does not permit states to attack before they possess evidence of armed attack occurring – evidence of plots does not suffice”.¹³⁷

Nevertheless, there are countless examples, when the United States has acted without any consideration to the admissibility of the use of force, in general, and through drone attacks, in particular, nor has it really cared about gathering sound evidence against those who would be struck as terrorists. In this circumstances justifying the use of force would simply mean pretending that the Security Council has not yet taken the measures necessary to maintain international peace and security, as foreseen in article 51 of the UN Charter, since September 2001, and it is not clear whether in the nearest future it will be able to take such measures at all.

The conclusion is that referring to the principle of self-defense as a justification of continuous drone strikes by the American administration is not consistent either with the Charter of the United Nations or contemporary IHL.

Jus ad bellum

Principle of imminence

Prior to engaging in war a given State should have a clear understanding of whether the adversary poses an imminent threat to its territorial integrity, peace and security. The word “imminent” is key in the sense that military means of conflict settlement should be used only as a last resort, and the self-defense actions should not be initiated prematurely so that the conflicting sides could have the chance to reach a peaceful settlement. However, it seems that the American administration has a different approach when interpreting the term “imminent threat”. Above-mentioned leaked 2011 White Paper is more than outspoken on that issue. It stated that any person deemed to be an operational leader of al Qaeda or its “associated forces” inherently presents an **imminent threat at all times** (highlighting is mine – G.A.) –

¹³⁶ Quotation from Brooks, Rosa, *op. cit.*, p. 93-94.

¹³⁷ O’Connell, Mary Ellen “Drones under International Law”, Washington University Law, Whitney R. Harris World Law Institute, 8 October 2010, p. 7 at <http://law.wustl.edu/harris/documents/OConnellFullRemarksNov23.pdf> (accessed 22 October 2016)

and as a result, the United States can lawfully target such persons at all times, even in the absence of specific knowledge relating to planned future attacks.¹³⁸

One should add the opinion of another scholar, Daniel R. Brunstetter, who pointed out that: “[T]he notion of imminence is diluted in the all-encompassing aura of threat, to the extent that one could strike terrorists, or suspected terrorists, anytime and anywhere.”¹³⁹

This kind of interpretation leading to, virtually, an open-ended fight against terrorists is typical also for Israel. In 2006, the Supreme Court of Israel found that Israel was engaged in “[a] continuous state of armed conflict with various terrorist organizations due to the constant, continual, and murderous waves of terrorist attacks and the armed response to these”. Terrorist attacks are generally treated as crimes, therefore not subject to self-defense. The court described the situation that was more than crime and would seem to share the important features of a textbook case for self-defense under the U.N. Charter.¹⁴⁰

The principle of imminence has attracted due attention in UN documents, in the reports by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism to the UN Human Rights Council, and the Notes by the UN Secretary General to the General Assembly. In particular, in his Note of 18 September 2013, the latter transfers the report of the Special Rapporteur to the General Assembly for consideration. A number of just war doctrine principles have been discussed in the report, including that of imminence. In full respect of impartiality the UN Secretary General presents two opposite interpretations of the principle of imminence, underlining that “[A] further area in which there is currently no clear international consensus is the scope of the right to anticipatory self-defence.”¹⁴¹

The first interpretation stems from Article 51 of the Charter of the United Nations, as well as the *Caroline* formula, under which a State may act defensively when the necessity of self-defense is “instant, overwhelming, leaving no choice of means and no moment for

¹³⁸ Quotation from Brooks, Rosa, *op. cit.*, p. 94.

¹³⁹ Brunstetter Daniel R. “Can We Wage a Just Drone War?”, the Atlantic, July 19, 2012, p. 8 at <http://www.theatlantic.com/technology/archive/2012/07/can-we-wage-a-just-drone-war/260055/> (accessed 12 June 2015)

¹⁴⁰ See O’Connell, Mary Ellen, *op. cit.*, p. 6.

¹⁴¹ Note by the Secretary-General, *op. cit.*, p. 16.

deliberation”. According to this interpretation the right use of force implies a response to an imminent attack.¹⁴²

The second interpretation is based on the argument that when facing asymmetric attacks, planned by terrorist groups, it is extremely difficult to have a clear idea about when the attack might occur. Therefore, those who argue in favour of this interpretation, appeal to be flexible when it comes to the principle of imminence. Furthermore, the proponents of flexibility underline that more time span in preparing and launching the self-defense attack may be helpful in reducing casualties among civilians and, in general, minimizing the probability of repeat attacks in the future.

This thesis will consider the issue of casualties among civilians, euphemistically defined as “collateral damage”, under the principle of proportionality. Sound arguments will be provided to demonstrate that, in fact, the use of drones along with other modern weaponry has not really brought about reducing of that damage, not to state quite the opposite. When trying to answer the question which of these two opposite interpretations truly reflects just war doctrine, one should unequivocally opt for the first one, for the Caroline formula about the necessity to exert self-defense through the use of force in the case of imminent threat. Not because the “flexibility” interpretation does not hold water when providing as an argument reduction of civilian casualties, but because it extends the possibility of military strike to, practically, limitless time span, which *per se* may render any idea of self-defense nil and void. More than that, this approach may lead to obliteration of “suspected terrorists” without any justification of taking such extreme measures, since as a rule, most of them at the moment of the strike do not represent an immediate threat, and may not have been involved in immediate terrorist activities.

It is worth mentioning another fragment from the article by Daniel R. Brunstetter, who emphasized that: “[i]n fighting terrorism the threshold of last resort may arrive prior to the point of imminence. This means that the use of anticipatory force may be justified even if the threat of an attack is not right about to happen, but is justified simply because terrorists are terrorists, and pose a threat by their very existence.”¹⁴³

True, it is extremely difficult to guess, let alone analyze where and when the next terrorist attack will occur. The tragic events in the United States, France, Germany and elsewhere

¹⁴² Ibid., p. 16-17. When referring to the Caroline formula the UN Secretary General refers to: R.Y. Jennings, “The *Caroline* and *McLeod* cases”, *American Journal of International Law*, Vol. 32, no. 1 (January 1938).

¹⁴³ Brunstetter, Daniel R., *op. cit.*, p. 8.

testify to the fact that the law enforcement structures and intelligence services have many unresolved problems and have to do a lot in order to effectively face the challenges posed by terrorists acting in groups or individually. Furthermore, there are growing opinions that the core problem lies in the incapability of state structures to adopt relevant strategies. Finally, there are increasing trends among Western society that even the scale of Occidental values should be revised to toughen the fight against terrorism. While all these questions are beyond the scope of this thesis, here it should be underlined that the huge difficulties that the Western countries face at present are understandable. But these difficulties should be tackled by adopting new strategies, by reinforcing and changing the concept of anti-terrorist operations, and the like, and not interpreting the just war doctrine principles, including that of imminence, arbitrarily. Not only this contravenes the very spirit and letter of IHL and human rights law, but also there is little evidence that such approach has proven and will prove to be effective.

The conclusion is that interpreting the principle of imminence as flexible and without any time limit is groundless. There is no justification of open-ended use of weapons, including that of combat drones, since it undermines the very principle of self-defense. Therefore, the continuous and systematic negligence, not to say manipulation, by the American administration of the principle of imminence is not consistent either with the Charter of the United Nations or contemporary IHL.

Principle of last resort

Traditionally, the principle of last resort is attributed to *jus ad bellum*. Nevertheless, this thesis argues that this principle is two-fold. Its first aspect relates to the obligation of a State to undertake every possible measure to reach a settlement with the adversary through all available political/diplomatic means before having recourse to force. And only when all these means are exhausted a given State may consider as a **last resort** engaging in a military operation to resolve the conflict. As such, this is one of the key principles of *jus ad bellum*. The second aspect of the principle pertains rather to *jus in bello*. If we accept that the American administration is in an all-out war on terror, then any strike against terrorist groups or individuals should respect the principle of last resort. In other words, before launching the strike, a sound analysis should be made whether there are no other ways to neutralize the enemy, for instance, by capturing rather than killing.

In the already cited publication the American scholar Harry van der Linden unequivocally states that: “[T]he Obama administration’s drone killings violate the last resort principle.”¹⁴⁴ He goes on saying that “[a] remarkable feature of the Obama administration’s counterterrorism strategy is that no prisoners are taken, and thus the problem so central to the Bush administration of how to treat captured suspected terrorists is largely avoided.”¹⁴⁵

Indeed, in Chapter Two a number of examples with regard to American drone strikes in Pakistan, Yemen, Afghanistan, Iraq, etc., have clearly demonstrated that in many instances terrorist suspects were targeted and killed without a prior conviction by the perpetrators that these were necessary actions triggered by the lack of conditions to capture them. A classic example of ignoring the principle of last resort is the killing of Osama bin Laden. On 2 May 2011, CIA carried out an operation code-named ‘Operation Neptune Spear’, which resulted in invasion into the house of the ‘terrorist number one’ in Abbotabad, Pakistan, and killing him along with four other persons, all of them unarmed. This assassination was approved by the bulk of American population, the European Union, NATO, a number of Western governments.¹⁴⁶

Nevertheless, some asked whether would not be better to capture Osama bin Laden, who at the moment of the special operation was unarmed and did not pose any immediate threat to the security of the United States or any other country in the world.

Indeed, as the UN Special Rapporteur on Counter Terrorism and Human Rights, Ben Emerson, has underlined in his statement at a press conference: “[T]he standards set out in Covenant on Civil and Political Rights, and particularly the provisions of Article 6 which protects the right to life, permit the use of lethal force only where it is strictly necessary as a matter of immediate self-defence. Under this analysis States wishing to take action against suspected terrorists located outside a recognized situation of international armed conflict

¹⁴⁴ van der Linden, Harry, *op. cit.*, p. 175.

¹⁴⁵ *Ibid.*, p.175.

¹⁴⁶ See, for instance, ‘Joint Statement by the President of the European Council, Herman van Rompuy and the President of the European Commission, Jose Manuel Barroso on the death of Osama Bin Laden’, 2 May 2011, where these two top EU leaders stated that: [H]is death makes the world a safer place and shows that such crimes do not remain unpunished’ at http://eeas.europa.eu/archives/delegations/namibia/documents/news/20110502_en.pdf

Unfortunately, the events in Europe over the past few years have demonstrated quite the opposite trend: the world and Europe have become much less secure places. As to the punishment, it is simply unconceivable that the European leaders speak the language of Lynch law.

*must first try to effect an arrest, and may use lethal force only if the person they are seeking resists arrest and it proves strictly necessary to use firearms”.*¹⁴⁷

In the particular case of Osama bin Laden’s assassination, he and his family members were ‘located outside a recognized situation of international armed conflict’, and, to all evidence, either bin Laden or the other persons killed were unarmed and did not resist. Thus, the killing of bin Laden was a blatant breach of Article 6 of the International Covenant on Civil and Political Rights and also of the just war doctrine’s principle of last resort.¹⁴⁸

The UN Special Rapporteur Ben Emerson made his statement in the context of numerous drone strikes, which have followed the logic of Osama bin Laden’s assassination. Thus, in many instances drone strikes contravened the principle of last resort. What raises concern is not only this breach of the just war doctrine, but also the consequences it may have. The American scholar Daniel R. Brunstetter pointing to ‘the risks of eliding the notion of last resort and allowing drone strikes to be the default tactics’ underlined the following: “[w]hile the use of drones enhances the US capacity to act on the just cause of fighting Al Qaeda more proportionately and discriminately, bypassing the criterion of last resort may lead to the propensity to do the opposite. The ramification is a greater chance of collateral damage”.¹⁴⁹

One cannot but agree with this statement. Using drones as ‘default tactics’ drastically increases the temptation of killing rather than capturing, all the more so as the former is much easier with modern technologies than the latter. However, with each drone strike the probability of collateral damage becomes more tangible.

Brunstetter has indicated another negative consequence of drone strikes. He emphasized that: “[W]hile all life is sacred, it takes only one civilian death to fuel negative perceptions of the U.S. in some parts of the world and all but guarantee a steady flow of terrorist recruits. Minimizing the chances of such a scenario unfolding is why the notion of last resort is so important when contemplating drone strikes.”¹⁵⁰

¹⁴⁷ ‘Statement by Ben Emmerson, UN Special Rapporteur on Counter-Terrorism and Human Rights concerning the launch of an inquiry into the civilian impact, and human rights implications of the use of drones and other forms of targeted killings for the purpose of counter-terrorism and counter-insurgency’, London, 24 January 2012, p. 3 at <http://www.ohchr.org/Documents/Issues/Terrorism/SRCTBenEmmersonQC.24January12.pdf>

¹⁴⁸ The United States Government justifies this and other similar killings by the Congress’s Joint Resolution entitled “Authorization on the Use of Military Force” (AUMF), adopted on 14 September 2001, see p. 5. Nevertheless, it is well known and duly acknowledged that international law prevails over domestic law provisions.

¹⁴⁹ Brunstetter, Daniel R. *op. cit.*, p. 10

¹⁵⁰ *Ibid.*, p. 10.

The analysis of drone strikes based on the facts provided in this thesis unequivocally demonstrates that the American administration continues to heavily rely on drone strikes without taking into consideration that other means rather than the use of lethal force could be exerted before having recourse to last resort.

The conclusion is that systematically ignoring the just war doctrine's principle of last resort the American administration is not consistent either with the Charter of the United Nations or contemporary IHL.

Principle of reasonable chance of success

This principle of the just war doctrine requires that prior to engaging in war the initiator should have sound arguments that the imminent military operation not only will have all chances to end up with success, but also that the success will be of a long- rather than short-term nature. In other words, the use of military force as a last resort should resolve the deeply rooted causes of the conflict, thus, bringing about just solutions and lasting peace and development.

In practice, however, the American administration has obtained quite opposite results. Suffice to mention the 1 May 2003 Address by President Bush to the American nation on Iraq. He stated that: *"[I]n the battle of Iraq, the United States and our allies have prevailed. And now our coalition is engaged in securing and reconstructing that country."*¹⁵¹ President Bush went on to say that: *"[T]he transition from dictatorship to democracy will take time, but it is worth every effort. Our coalition will stay until our work is done. Then we will leave, and we will leave behind a free Iraq."*¹⁵² More than a decade has elapsed after this statement, and the truth is that the situation in Iraq from the point of view of human suffering, to say the least, is much worse than it was under the dictatorship of Saddam Hussein. Today's Iraq is far from being a free democratic country, as the American administration had supposed. A considerable part of Iraq's territory today is occupied by the Islamic State, and summary executions, suicide bombings, hatred between Shi'a and Sunni religious groups have become a daily banality.

Of course, it is easy to criticize, especially, knowing the developments that followed Bush's statement. However, his words sound as an irony and prove how far was the American

¹⁵¹ Bush, George W. 'Address to the Nation on Iraq From the U.S.S. *Abraham Lincoln*' US Government Publishing Office at <https://www.gpo.gov/fdsys/pkg/WCPD-2003-05-05/pdf/WCPD-2003-05-05-Pg516-2.pdf>

¹⁵² *Ibid.*

leadership from having a clear judgment on the prospects of chances to success when launching the Operation Iraqi Freedom in 2003. The same goes for the operation in Afghanistan.

Under Obama administration the situation has not improved to say the least. The American scholar Harry van der Linden points to another ironical circumstance, when he underlines the following: *“[I]t is certainly ironic that in the same year Obama reached out to the Islamic world and received the Nobel Peace Prize, he also greatly stepped up the drone strikes in the FATA (Federally Administered Tribal Areas in northwestern Pakistan bordering Afghanistan – GA). The brief hope for a more multilateral and cooperative American foreign policy was betrayed in secret by a continuation of the usual militarized foreign policy, clouding the prospect of finding enduring solutions for terrorism. Thus the principle of reasonable chance of success was violated, because military force in accordance with this principle must lead to long-term threat reduction.”*¹⁵³

The failure of the two consecutive American administrations to respect the just war doctrine’s principle of reasonable chance of success is so obvious that there is no need to elaborate any more on this subject.

Jus in bello

Principle of proportionality

This fundamental principle of just war doctrine is also a requirement under Human Rights Law. It sets up limits to the use of force, providing that the kind and degree of force used must not only be necessary, but also strictly proportionate to the seriousness of the offence and the legitimate objective to be achieved.¹⁵⁴ The Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, in his 2014 report to the UN Human Rights Council has drawn UN Member States and world community attention to the principle of proportionality as a fundamental human rights provision.¹⁵⁵ In particular, the Special Rapporteur refers to Principle 9 of Basic Principles on the Use of Force and Firearms by Law Enforcement Officials adopted by the Eighty United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990,

¹⁵³ van der Linden, Harry, *op. cit.*, p. 175-176.

¹⁵⁴ See Gaggioli, Gloria “Lethal Force and Drones: The Human Rights Question” in “Legitimacy and Drones: Investigating the Legality, Morality and Efficacy of UCAVs”, edited by Steven J. Barela, University of Geneva, Switzerland, Routledge, Taylor & Francis Group, London and New York, 2016, p.150.

¹⁵⁵ See Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, Human Rights Council, Twenty-fifth session, General Assembly, A/HRC/26/36, 1 April 2014.

commenting that: “[P]rinciple 9 is a strong affirmation of the principle of proportionality: All uses of firearms against people should be treated as lethal or potentially lethal..... [t]he intentional lethal use of force.... in any event may only be used when strictly unavoidable to protect life.”¹⁵⁶ Furthermore, the Special Rapporteur extrapolates Principle 9 from merely pertaining to the sphere of law enforcement to a broader context, stressing that: “[A] common sense understanding of the scope of application of Principle 9 suggests that all weapons that are designed and are likely to be lethal should be covered, including heavy weapons such as bombs and (drone) missiles, the use of which constitutes an intentional lethal use of force.”¹⁵⁷

Thus, according to the above-mentioned Basic Principles and the UN Special Rapporteur, the proportionality in case of the use of drones strictly speaking means that they may be used ‘in any event’ when strictly unavoidable to protect life. If we agree with this statement, and it is difficult to argue with a UN document adopted by Member States or the Special Rapporteur, we have to acknowledge that the drone strikes by the American administrations, whose numerous examples in wide geographic areas were cited in Chapter Two, constitute a blatant breach of international laws and human rights. The argument here is that those strikes had not been undertaken to ‘protect life’. On the contrary, they were meant to destroy lives and not only of suspected terrorists but also innocent civilians. The only counterargument provided by the American administration and certain scholars, and largely shared by U.S. citizens, is that by attacking suspected terrorists drones protect lives in America. This kind of argumentation is just a link in the chain of justifications, presenting any use of force, including by drones and even far from battlefield as legitimate self-defense, as a measure to protect the American people from potential threats. This thesis has already focused on some aspects of the subject and its interpretation is that such a broaden amorphous approach to the notions of self-defense, imminence, proportionality, discrimination and the like undermines the very tenets of IHL and human rights law, deprives mankind of any tangible criteria of measuring states’ behavior, creating a dangerous precedent of warfare, which may lead to escalation and uncontrolled engagement in never ending military adventures.

The American scholar Rosa Brooks has already pointed to this dangerous trend, underlining that; “[I]n fact, drone strikes – or, more accurately, the post-9/11 legal theories underlying such strikes – constitute a serious, sustained, and visible assault on the generally accepted

¹⁵⁶ *Ibid.*, p. 12.

¹⁵⁷ *Ibid.*, p. 12.

*meaning of certain core legal concepts, including “self-defense”, “armed attack”, “imminence”, “necessity”, “proportionality”, “combatant”, “civilian”, “armed conflict” and “hostilities”.*¹⁵⁸

The problem of proportionality has another, narrower, but no less important aspect. Even if one agrees with the American interpretation of drone strikes, it is difficult to accept their disastrous consequences for civilian lives. Again referring to Chapter Two it is possible to speak of disproportionate use of force, in particular, by combat drones. Perhaps, it would be appropriate to cite additional examples to sharpen our understanding of inadmissibility of breach of the principle of proportionality.

Ben Emmerson, the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering terrorism, refers to the data provided by the United Nations Assistance Mission in Afghanistan (UNAMA), according to which during 2013 there had been a three-fold increase in the number of civilian casualties in the conflict from the use of armed drones as compared with the previous year. Another example from Yemen also raises the Special Rapporteur’s concern, insofar as the information shows a drastic increase in drone strikes during the closing months of 2013 with a sharp escalation in the number of reported civilian casualties.¹⁵⁹

According to the American scholar Ethan A. Wright: “[U]nder the most generous estimates (maximum militant deaths and minimum civilian deaths), the portion of civilian casualties is just under 11%. Under the most pessimistic estimates (minimum militant deaths and maximum civilian deaths), the portion of civilian casualties rises to 40%. Conventional wisdom is that some civilian casualties may be justified in war, but up to a point. A few such casualties may be accidental, but too many constitutes reckless behavior. Such negligent destruction of innocent life is reprehensible, and killing civilians calls into question just how proportional a military response is.”¹⁶⁰

Finally, the American scholars Micah Zenko and Amelia Mae Wolf denounce the widespread propaganda by high-ranking officials about the accuracy of drone strikes and their advantage

¹⁵⁸ Brooks, Rosa, *op. cit.*, p. 83.

¹⁵⁹ See Statement by Ben Emmerson, Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism at the 25th Session of the Human Rights Council, 11 March 2014, p. 4. at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15453&LangID=E> (7 October 2015)

¹⁶⁰ Wright, Ethan A., *op. cit.*, p. 9-10.

in producing much less casualties among civilians than ordinary aircraft would do. In an article published in *Foreign Policy* they underline the following: “[T]he Obama administration’s assumption that drones cause less collateral damage than piloted aircraft is simply untrue. According to the best publicly available evidence, drone strikes in non-battlefield settings – Pakistan, Yemen and Somalia – result in 35 times more civilian fatalities than airstrikes by manned weapons systems in conventional battlefields, such as Iraq, Syria and Afghanistan. There are sound arguments that can be made in favor of U.S. drone strikes, but their supposed precision should not be one of them.”¹⁶¹

The conclusion is that the American administration has systematically breached the principle of proportionality in its two equally important aspects. The first aspect relates to violating international human rights law, insofar as drones have been used without the context of protecting life as a strictly unavoidable measure. The second aspect relates to disproportionate casualties amongst civilian population, which *per se* may have no justification.

Principle of discrimination

The principle of discrimination or distinction is enshrined in Article 48 of the 1977 Additional Protocol I and in Article 4(1) of the Additional Protocol II to the Geneva Conventions. In particular, article 48 states: *[T]he parties to the conflict shall at all times distinguish between the civilian population and combatants*.¹⁶² Furthermore, in Resolution 2444 (XXIII), adopted in 1968, the UN General Assembly affirmed Resolution XXVIII of the 20th International Conference of the Red Cross and the basic humanitarian principle applicable in all armed conflicts laid down therein that “*distinction must be made at all times between persons taking part in the hostilities and members of the civilian population to the effect that the latter be spared as much as possible*”.¹⁶³ Also, in a declaration devoted to the 50th anniversary of Geneva Conventions in 1999 the European Union stated that it deplored the persistence of violations of IHL, adding that present-day conflicts often did not make the

¹⁶¹ Zenko, Micah and Mae Wolf, Amelia “Drones Kill More Civilians Than Pilots Do”, *Foreign Policy*, April 25, 2016 at <http://foreignpolicy.com/2016/04/25/drones-kill-more-civilians-than-pilots-do/> (accessed 13 July 2016)

¹⁶² See International Committee of Red Cross, Customary IHL, Practice Relating to Rule 1. The Principle of Distinction between Civilians and Combatants at https://ihl-databases.icrc.org/customary-ihl/eng/docs/v2_cha_chapter1_rule1

¹⁶³ *Ibid.*

important distinction between combatants and civilians and that children and other vulnerable groups were targets of the conflicts.¹⁶⁴

Almost two decades after the EU declaration it should be said with deep regret that the situation has not improved and that ‘children and other vulnerable groups’ still remain ‘targets of the conflicts.’ More than that, with the introduction of new technologies, in particular, drones the death toll among civilians has even increased contrary to the statements and arguments of the officials from America or other States exerting drones as a means of warfare. Yet, the previous section on proportionality has already demonstrated the disproportionate use of drones in fighting suspected terrorists. Together with the facts provided in Chapter Two one can underline that observing the principle of distinction has been problematic and in many instances has led to destruction of innocent lives.

In that context one should point to the opinion of the American scholars Rory O. Millson and David A. Herman, who came to the following conclusion on the American administration (dis)respect of the principle of distinction: “*A US drone strike complies with international law if it (a) is carried out with the consent of the territorial State or in the valid exercise of the right of self-defence; (b) takes place in an armed conflict; and (c) complies with the rules of IHL, including the principle of distinction. The public information suggests that the first two criteria largely have been satisfied and we are without information to determine if the US has satisfied the third criterion in each particular case.*”¹⁶⁵ For the purposes of this section one should focus on point (c), raised by the distinguished scholars. True, the United States and the other ‘drone-users’ are reluctant to disclose information on their military operations, on the number of casualties and other details. However, official information, especially in our times of modern information technologies, is not the only source of information, and different other official sources (like the UN) or NGOs and human rights watchdogs (like the Bureau of Investigative Journalism, Amnesty International, Human Rights Watch) have provided with sound data based on testimonies, analytical materials and first-hand reports about the frequent non-distinction between civilians and combatants during drone strikes. Should, for instance, the president of the ICRC, Peter Maurer, have relied only on official State sources of information, he would not have stated that: “[A]dvocates of the

¹⁶⁴ *Ibid.*

¹⁶⁵ Millson, Rory O. and Herman, David A. “Killing by Drones: Legality under International Law”, the Foundation for Law, Justice and Society in Association with the Centre for Socio-Legal Studies and Wolfson College, University of Oxford, 2015, p. 5 at <http://www.fljs.org/sites/www.fljs.org/files/publications/Killing%20by%20Drones-Legality%20under%20International%20Law.pdf>

use of drones argue that they have made attacks more precise and that this has resulted in fewer casualties and less destruction. But it has been also asserted that drone attacks have erroneously killed or injured civilians on too many occasions.”¹⁶⁶

Many scholars, first of all Americans, have also underlined the violation of the principle of discrimination during the use of drones.¹⁶⁷

Nevertheless, for the sake of truth it should be added that modern warfare has rendered it much more difficult distinguishing between the civil populations and combatants. In many instances the members of armed groups lead a dual life. Very often they wear plain clothes and have a peaceful occupation. But during the military operations they become combatants. Referring to the complexity of this problem, the Polish scholar Patrycja Grzebyk pointed out that: “[i]n NIAC (non-international armed conflict – G.A.), the distinction between those engaged in hostilities and civilians is one of the most controversial issues in IHL. ... States were unwilling to establish the status of combatants for members of non-state armed groups, as this would effectively give them the right to legally take part in hostilities. However, at the same time, the states complained that limitation of legal targets only to persons taking direct part in hostilities and only for the time of engagement is untenable. States noted that in asymmetrical conflicts, the opponent pretends to be civilian while in fact engaging in combat (“farmers by day and fighters at night”). Thus it is not reasonable to uphold the restriction that only allows them to target the persons who are actively engaged in hostile act”.¹⁶⁸

Indeed, the emergence of armed groups has posed unprecedented challenges in the context of IHL. As Ethan Wright has underlined: “[T]he changing nature of war has required reflection on the principles behind the distinctions of Just War Theory. As such, contemporary definitions tend to focus more on whether or not a target is a military threat, as opposed whether or not he or she is a soldier in uniform, which was the traditional distinction.”¹⁶⁹

¹⁶⁶ ‘The use of armed drones must comply with laws’ interview with the president of the ICRC, Peter Maurer, ICRC, 14 May 2013 at <https://www.icrc.org/eng/resources/documents/interview/2013/05-10-drone-weapons-ihl.htm> (access 15 July 2015)

¹⁶⁷ See, for instance, van der Linden, Harry, *op. cit.*, where the author stresses that: [T]he United States has frequently executed several missile strikes in short succession on the same target in the FATA with the result that responders to the first strike, such as rescue workers and family members were killed. This policy violates the principle of discrimination on noncombatant immunity because it reflects lack of due care in seeking to minimize civilian casualties; worse even, it suggests the intentional killing of civilians, a war crime”, p. 177.

¹⁶⁸ Grzebyk, Patrycja “Who can be killed?: Legal Targets in Non-International Armed Conflicts”, in “Legitimacy and Drones: Investigating the Legality, Morality and Efficacy of UCAVs”, edited by Steven J. Barela, University of Geneva, Switzerland, Routledge, Taylor & Francis Group, London and New York, 2016, p. 92.

¹⁶⁹ Wright, Ethan, *op. cit.*, p. 5.

IHL contains provisions for both international and non-international armed conflicts, the latter being the subject of this analysis. In his report on targeted killings the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, has referred to the relevant provision of IHL, stressing that: “[I]n non-international armed conflict, there is no such thing as a ‘combatant’. Instead – as in international armed conflict – States are permitted to directly attack only civilians who ‘directly participate in hostilities’ (DPH). Because there is no commonly accepted definition of DPH, it has been left open to States’ own interpretation – which States have preferred not to make public – to determine what constitutes DPH.”¹⁷⁰ Thus, IHL lacks a precise definition of “direct participation in hostilities”, which gives room to the States using drones to justify obliteration of suspected terrorists even if they do not pose any imminent threat. What is even worse is that this lack of definition undermines the principle of discrimination itself, insofar as broad definition blurs the dividing lines between civilians and combatants.

Paradoxically, the same stands true for the drone operators, who are like terrorists “farmers by day and fighters at night”. Indeed, these people also lead a dual life. Outside the drone operating rooms they are ordinary civilians, but when operating drones in thousands of miles from the site of the strike they become “actively involved in hostilities”. Continuing this logic one can see that the drone operators, in principle, can become subject to targeted killings, should the adversary have enough military power and technology to reach out to them. If we hypothetically admit this situation, then the American administration would not be able to protest against such operations on its soil, since the opposite side could provide with exactly the same justification as the U.S. does. It would be appropriate referring once again to Philip Alston’s “Study on Targeted Killings”, where the following argumentation is provided: “[U]nder IHL, civilians, including intelligence agents, are not prohibited from participating in hostilities. Rather, the consequence of participation is two-fold. First, because they are ‘directly participating in hostilities’ by conducting targeted killings, intelligence personnel may themselves be targeted and killed. Second, intelligence personnel do not have immunity from prosecution under domestic law for their conduct. They are thus unlike State armed forces which would generally be immune from prosecution for the same conduct (assuming they complied with IHL requirements). Thus, CIA personnel could be prosecuted for murder

¹⁷⁰ Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, Addendum, Study on Targeted Killings, UN Human Rights Council, A/HCR/14/24/Add., 6, 28 May 2010, Paragraph 58, p. 19.

under the domestic law of any country in which they conduct targeted drone killings, and could also be prosecuted for violations of applicable US law.”¹⁷¹

Notwithstanding this argumentation one can hardly imagine that CIA personnel will ever be brought to court of trial for their targeted killings or, rather, assassinations. As the American scholars Michael W. Lewis and Emily Crawford have indicated: “[A]long with inconvenience of potential geographical limitations for drone operators, a successful indictment would also likely cause considerable reputational damage to the drone operators themselves and more significantly to the U.S. drone program as a whole.”¹⁷²

Not only the American administration has no – and hardly will have in the future – any intention to prosecute CIA drone operators, but it also covers the outcome of drone strikes, as well as the principles of its approaches with a thick veil of secrecy. Thus, there is no public information, as mentioned above, on the American interpretation of “direct participation in hostilities”. Judging from a number of strategic documents and the character of drone operations, the interpretation should be rather a broad one, giving room to deliberate actions with a high probability that in the case of the principle of discrimination, as was the case with the other principles of just war doctrine, the American administration has largely ignored IHL and international human rights law.

4.2. Drone Proliferation: Pros and Cons

After a fragile cease-fire since May 1994, marred with almost daily intensive exchange of fire and other kinds of violation, on 1 April 2016, Azerbaijan unleashed a large-scale military operation on the territory of Nagorno Karabagh, which seemed to bode the beginning of yet another war with Armenia. Although the Armenian side was able to deter this largely unexpected escalation, and the military operations stopped four days later, this “four-day war”, as dubbed by some journalists, proved to be full of surprises. One of these surprises was that in order to increase the effectiveness of its military strike Azerbaijan resorted to the use of armed drones purchased from Israel. In particular, the spokesperson of the Ministry of Defense of Armenia stated shortly after the drone strike that Azerbaijan had used Israeli made Harop combat drone to destroy a bus with Armenian volunteers, resulting in 7

¹⁷¹ *Ibid.*, Paragraph 71, p.22.

¹⁷² Lewis, Michael W. and Crawford, Emily “Drones and Distinction: How IHL Encouraged the Rise of Drones”, *Georgetown Journal of International Law*, 2013, Vol. 44, p. 1159. at www.law.georgetown.edu/academics/law-journals/gjil/recent/upload/zsx00313001127.PDF

casualties.¹⁷³ The article published in “The Times of Israel” has also pointed out that the same type of Harop armed drones have been spotted in use in Syria and Ukraine.

Beyond any doubt, the above-mentioned events testify to the proliferation of combat drones and to the diversification of their geographic scope and involvement in different types of conflicts. Thus, while until recently only three countries have resorted to combat drones, namely, the United States, the United Kingdom and Israel, there are tendencies that this weapon will be used by more governments and, even, non-government actors in the near future. As Laurie Calhoun has noted: “[A]mong the burgeoning non-US drone warriors, heads of state will follow their role model in insisting that such killing is permitted by the self-defense clause of the Charter of the United Nations.”¹⁷⁴

Before touching upon the issue of armed drones’ proliferation it would be appropriate to consider the trends of drone production in America. These trends speak of the fact that drones will remain the weapon of choice beyond the Obama Administration. As Harry van der Linden has underlined: “[A] recent report for Congress, for example, projects that the Department of Defense will spend around \$13 billion on the Reaper, the current combat drone of choice in targeted killing, between 2011 and 2020. Now the problem with new military technologies is that they tend to spread to other countries, and this is certainly happening with combat drones. Thus we may fairly soon live in a world in which a significant number of countries (e.g., China, Russia, India, and Iran) will use combat drones in war zones as well as nonwar zones and engage in the targeted killing of their “terrorists”, their militants seeking secession, etc.”¹⁷⁵

In a broader context, one should take into consideration not only the trend of intensifying drone programmes in terms of their increasing production, but also their geographic dimension that can reach unprecedented scale. As Patrick Provost-Smith has emphasized: “[t]he United States is hardly alone in its ability to wield the machinery of information technologies and a global computing infrastructure to its own ends. But is alone for the foreseeable future in its demonstrated ability to coordinate all of that into a systematic program of targeted killing across a geographical domain considerably larger than the

¹⁷³ See The Times of Israel ‘Azerbaijan said using Israeli drones against Armenians’, by Sue Surkes, 7 April 2016 at <http://www.timesofisrael.com/azerbaijan-said-using-israeli-drones-against-armenians/>

¹⁷⁴ Calhoun, Laurie, *op. cit.*, p.p. 133-134.

¹⁷⁵ Van der Linden, Harry, *op. cit.*, p.p. 181-182.

*United States itself, with the theoretical possibility of reaching into any place at any time to kill any person deemed a security risk”.*¹⁷⁶

Most probably, the distinguished philosopher and publicist is right when stating that no State in the foreseeable future might compete with America in tactically and technically sophisticated perfection of targeted killings. Nevertheless, there is a clear trend, in parallel, of drone proliferation. It should be added that this concerns drones in general, both armed and unarmed, bearing in mind, however, that the path from transforming an unarmed drone into an armed one does not pose any great problem that would not be technically overcome. As the American scholars, who have made in-depth analysis covering drone proliferation issue, Sarah Kreps and Micah Zenko have stressed: “[S]o far, the United States has had a relative monopoly over the use of such (armed – G.A.) drones, but it cannot counting on maintaining that for much longer. Other states are quickly catching up. And although these new weapons will not transform the international system as fundamentally as did the proliferation of nuclear weapons and ballistic missiles, they could still be used in ways that are highly destabilizing and deadly.”¹⁷⁷

Indeed, the same authors provide with facts and figures that cannot but support their statement on the inevitability of drone proliferation. Thus, while in 2004 only 41 states had drones, by 2011 that number had reached 76. Nowadays among those countries that may potentially use armed drones one can cite China, Iran, India, Pakistan, Russia, Taiwan, Turkey. Australia, Japan and Singapore□ They have developed unarmed surveillance drones that could be used for military purposes – some of them in highly volatile regions.¹⁷⁸ And this thesis has also referred to the example of Azerbaijan that has used drone in the “four-day” war in April 2016, becoming the fourth country after the United States, the United Kingdom and Israel to have utilize that weapon in combat. This also means that in reality much more countries may have taken drone in their arsenal than is commonly acknowledged.

True, drone proliferation has constraints that Micah Zenko and Sarah Kreps elaborated in another analytical paper devoted to drone proliferation.¹⁷⁹ They pointed to three factors that

¹⁷⁶ Provost-Smith, Patrick, *op. cit.*, p.85.

¹⁷⁷ Kreps, Sarah and Zenko, Micah “The Next Drone Wars: Preparing for Proliferation”, *Foreign Affairs*, March/April 2014, Volume 93, No.2, p. 68 at <https://www.foreignaffairs.com/articles/2014-02-12/next-drone-wars>□

¹⁷⁸ *Ibid.*, p. p. 72, 73.

¹⁷⁹ See Zenko, Micah and Kreps, Sarah “Limiting Armed Drone Proliferation”, *Council on Foreign Relations*, Center for Preventive Action, Council Special Report No. 69, June 2014.

may significantly hurdle proliferation. First, technological ability to effectively use the drones. This includes intelligence from human, signal and imagery sources; sophisticated communications; access to satellite bandwidth, and systems engineering, all of this being beyond the reach of most of the States, including Russia, France and Italy. Second, operating drones needs diplomatic support from those countries that should provide with a safe air environment and overflight rights. The third and final factor is domestic politics. While the U.S. public opinion has overwhelmingly been in favor of drone strikes without caring too much about their consequences on the human rights issues, the situation is radically different with a number of countries that might develop high technologies but are obliged not to do so in view of domestic political pressures. The authors refer to Germany as such country, stating that the German public and the bulk of politicians are *a priori* against the use of drones for military purposes bearing in mind that drones' lethal capability might undermine Germany's defense only security norms.¹⁸⁰

Whereas this analysis is absolutely correct, one should consider the “dark side of the moon”. The temptation of the use of drones is too great to prevent this weapon's proliferation. Indeed, drones do not necessitate involvement of military personnel, they have a number of advantages vis-à-vis the usual aircraft insofar as they can hover long hours above the target and carefully chose the moment of the strike, they are less expensive, etc. Another argument is that no one can stop development of new technologies. History abounds with such examples. As the Swiss academic Alexis Keller pointed out: *“[T]he novelty of a weapon is frequently a significant reason for its rejection: whether effective or not, it always threatens to overturn traditional notions about the methods of warfare and, essentially, its true nature. This explains why so-called technical weapons are generally invented in times of rapid technological advances. Artillery is not an exception to this rule. Just like drones today, it emerged at a time when there were technological upheavals and technological innovations. From being confined within ramparts and forts in its early stages, it moved to the battle field in 1510. It made a mark because of its speed, its lightness and its efficacy. Several technical innovations (manufacture of gunpowder, drilling and calibration of guns, rationalization of calibers) improved the precision of shooting, reduced slack periods and increased the death rate. In Ravenna, the French cavalry was decimated in 1512 by the cross-fire of enemy guns. Their rejection and condemnation by contemporary chroniclers reflect the other side of the*

¹⁸⁰ *Ibid.*, p.p. 14-15.

successful efforts made by Italians to adopt these new weapons and familiarize themselves with them.”¹⁸¹

Indeed, “the true nature of warfare” is that it always tends to perfection in terms of more destruction and killing with less expenses and less exposure of the military personnel of the side which uses the new technologies. Just as it was not possible to prohibit the use of canons and, in more general terms, artillery, it is not possible to prohibit the use of armed drones and, consequently, their proliferation. Stating the contrary would be going against the logic of historical developments.

Having said that, one should try to find a solution in terms of regulating the use of drones and their proliferation. Finally, mankind, or more specifically, the international community was able to find ways to significantly limit the proliferation of the weapons of mass destruction. While one can hardly compare the two categories of weapons, i.e., the WMD and the drones, it is still necessary to agree on a set of rules and regulations concerning the use of drones.

The next section will consider this issue from different viewpoints: from complete prohibition to a compromise solution that may bring about order in so far confused notions, understandings and practice of drone warfare.

4.3. Possible Options for International Regulation of the Use of Drones

On 27 February 2014, the European Parliament adopted resolution 2567 on the use of armed drones, where it expressed grave concern over the use of armed drones outside the international legal framework, and appealed, *inter alia*, to ban extrajudicial targeted killings and include armed drones in relevant European and international disarmament and arms control regimes.¹⁸² This resolution reflects not only the European Parliament’s opinion, but also that of the overwhelming majority of other intergovernmental and international structures, analysts and practitioners on the necessity to either incorporate issues of the use and proliferation of armed drones in the already existing international arms control regimes or establish a new drone-specific framework of regulations.

¹⁸¹ Keller, Alexis “Old Ideas in New Skins: The Sixteenth Century Debate on Artillery” in “Legitimacy and Drones: Investigating the Legality, Morality and Efficacy of UCAVs”, edited by Steven J. Barela, University of Geneva, Switzerland, Routledge, Taylor & Francis Group, London and New York, 2016, p. 182.

¹⁸² European Parliament resolution of 27 February 2014 on the use of armed drones (2014/2567/RSP) at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2014-0172+0+DOC+XML+V0//EN>

Against the backdrop of this common attitude, there are, nevertheless, diverging opinions that one can characterize as reflecting extreme positions. One of the representatives of such extreme position is Harry van der Linden, who has already been referred in this thesis on a number of occasions. He is of the opinion that: “[d]rone warfare poses moral problems and risks of such nature and magnitude that we should support an international ban on weaponized drones and, certainly, that we should seek an international treaty against drone systems that operate without the remote-control link; namely, autonomous, lethal UAVs (and killer robots in general).”¹⁸³ The author elaborates on his categorical attitude by providing three major reasons of armed drones’ ban. According to him killing by remote control makes it too easy to resort to war; it is not at all clear that calling for stricter international law enforcement will be successful; and, finally, killing by drones is an affront to humanity, a form of killing that we should ban on this ground alone.¹⁸⁴ Elaborating on this last factor, the American academic comes to a stunning conclusion: “[t]he most morally disturbing feature is that in watching the militant to be killed, one is gradually watching a person to be killed. In other words, during the time of watching, the target turns from a threat into a human being, and then the kill becomes the kill of this human being..... to watch a soldier asleep for some time and experience his humanity rather than his hostile status, and then pull the trigger, is deeply wrong”.¹⁸⁵

Not only a few academics but also a number of lawyers have taken the clear-cut position for the ban of armed drones. In 2009, former senior law lord, Lord Bingham declared in an interview: “[F]rom time to time in the history of international law various weapons have been thought to be so cruel as to be beyond the pale of human tolerance. I think cluster bombs and landmines are the most recent examples. It may be ... that unmanned drones that fall on a house full of civilians is a weapon the international community should decide should not be used”.¹⁸⁶

One cannot but agree with this point of view. Indeed, this single feature that distinguishes drones among all other types of weapons, makes it inconsistent with not only morality but

¹⁸³ van der Linden, Harry, *op. cit.*, p.169.

¹⁸⁴ *Ibid.*, p.188.

¹⁸⁵ *Ibid.*, p. 189

¹⁸⁶ Quotation from Farer, Tom and Frédéric Bernard “Can UCAVs be Reconciled with Liberal Governance?: The Substantive Law of a Drone Court” in “Legitimacy and Drones: Investigating the Legality, Morality and Efficacy of UCAVs”, edited by Steven J. Barela, University of Geneva, Switzerland, Routledge, Taylor & Francis Group, London and New York, 2016, p.506. The authors quoted from Wardrop, Murrey “Unmanned drones could be banned, says senior judge”, The Telegraph, July 6, 2009.

also with IHL and international human rights law. However, realistically speaking, one should bear in mind that the above-mentioned advantages of armed drones as compared to other weapons make it practically impossible to raise the issue of their ban. This will be a non-starter, a voice of crying in the wilderness.

On the other extremity of views concerning the use of drones there is a no less interesting and thought-provoking assertion that the existing IHL has been overtaken by the development of new war technology, while new legislation which would cover issues in the context of these modern weapons has not yet been created. Thus, according to those who insist on this viewpoint we witness at present a rather strange situation of a kind of absence of adequate legislation, hence the drone-users, first of all the United States, are compelled to create their own rules and regulations. The American scholar Rosa Brooks has noted the following: *[a]lthough few states have offered explicit support for U.S. interpretations of international law relating to drone strikes, equally few have stated expressly that they regard such strikes as unlawful. Most states have taken a middle path, either expressing somewhat muted concern about U.S. interpretations of the law or refraining altogether from commenting on their lawfulness. It goes without saying that the international legal system is anachronistic from a human rights perspective, and arguably quite inadequate from a rule-of-law perspective. Nevertheless, it is – for now, at least – all we have. U.S. drone strikes thus present not an issue of law-breaking, but of law’s brokenness”.*¹⁸⁷ The author’s conclusion is that: *“[i]t is not wholly wrong to take the view that traditional interpretations of the international law on the use of force have become inadequate”.*¹⁸⁸

It is not this thesis’ intention to enter into deep analysis of this point of view. This would take us far beyond of the subject under consideration. The purpose of quoting Rosa Brooks’ opinion is to show how complicated is the issue of the use of drones and how many different approaches it may raise. Indeed, the views of Harry van der Linden are diametrically opposite. While the former advocates for the complete ban of armed drones, the latter, virtually, justifies that use referring to the anachronism of IHL and international human rights and rule of law legislation.

Paradoxically, both sides have sound arguments, and it is very difficult, if not impossible, to deny their respective positions. What can be said is that, as argued above, banning drones is a non-starter, but, on the other hand, justifying targeted killings by the lack of adequate

¹⁸⁷ Brooks, Rosa, *op. cit.*, p. 98.

¹⁸⁸ *Ibid.*, p. 99

legislation is able to open the Pandora box bringing about heavy consequences. As is often the case, this thesis suggests that we have to consider the middle way, i.e., the possibilities of improving drones' control by strengthening the existing regulations or creating new ones within the contemporary system of international law.

The problem of drone proliferation, for instance, could be regulated within the framework of the 1987 Missile Technology Control Regime (MTCR), as Micah Zenko and Sarah Kreps have suggested in their analytical paper already referred to in this thesis.¹⁸⁹ The authors have pointed to the weaknesses of MTCR, stressing that it is a non-binding international association, which the 34 signatory states interpret and implement at their discretion. Another weakness is that a number of drone producing or aspiring countries, such as Iran, Israel, China, India and Pakistan, are not its members. Nevertheless, this thesis argues that these and other shortcomings could be treated in due manner in the case of a determination among the signatory and non-signatory states alike to make this mechanism work under strict regulations and effectively. The membership could be broadened, the norms redrafted in a more consistent way excluding, to the extent possible, different interpretations, etc. What is important to note here is that it is not the absence of the necessary international legal framework, but the lack of determination of the states to improve the existing framework that creates real problems. Of course, for separately taken states it may be easier to act within vague rules and in conditions of relative impunity. The interests of the international community, however, require taking stronger and stricter measures, and faced with the growing threats and challenges caused by the use of drones the strengthening of the international legislation seems to be a matter of not that remote future.

* * *

Meanwhile, appropriate action could be taken at the level of domestic legislation as well. A thought-provoking proposal has been elaborated by Amos N. Guiora and Jeffrey S. Brand concerning the establishment of a Drone Court within the American jurisdiction with the major aim to counterbalance the decisions of executive power and decide upon whether a given drone strike that the relevant structures intend to initiate should be supported or not by the judiciary branch. As the authors underline: *"[W]e believe that post 9/11 foreign policy and national security decision-making has reflected the ills of a unitary executive: the reality of the past 13 years is that neither Congress nor the courts have forcefully interjected*

¹⁸⁹ See Zenko, Micah and Kreps, Sarah, *op. cit.*, p. 17.

themselves while consecutive administrations have conducted complicated, complex, and controversial operational counterterrorism throughout the world.”¹⁹⁰

Indeed, if established that court could play an undeniable and necessary role in making sure that the administration’s decision-making is transparent and well-argued and that the drone strike is based on the principles of necessity, distinction and proportionality, the holy of holies of just war doctrine. It is beyond this thesis’ scope to focus on that proposal in a detailed manner. However, it should be added that Guiora and Brand have gone rather far in their analysis by proposing the structure of the court, the modalities of the election of the judges, their independence and, at the same time, interrelation with executive power in order to obtain maximum information and be able to take legally binding decisions that would, ideally, exclude the American administration’s one-sided and opaque decisions on the use of drones, thus minimizing their breach of IHL and human rights law. One of the major tasks of the American Drone Court would be interpreting terms and definitions, such as *legitimate target, necessity, imminence*, as well as to urge executive power to convince the Court that national security will be harmed if the individual is *not* killed which in turn suggest that the executive must demonstrate that the target cannot be captured.¹⁹¹

One can foresee a huge resistance by executive power to the idea of establishing a Drone Court. However, the hope is there that the American legislators, politicians, military and all those involved will be able to seriously consider and adopt the concept and translate it into real life. This alone would be able to resolve a number of fundamental problems in the context of the use of drones, since the United States has the most powerful drone arsenal, experience and determination to resort to drones as a weapon of choice, at least, in the foreseeable future.

¹⁹⁰ Guiora, Amos N. and Brand Jeffrey S. “Establishment of a Drone Court: A Necessary Restraint on Executive Power” in “Legitimacy and Drones: Investigating the Legality, Morality and Efficacy of UCAVs”, edited by Steven J. Barela, University of Geneva, Switzerland, Routledge, Taylor & Francis Group, London and New York, 2016, p.454.

¹⁹¹ *Ibid.*, p. 480.

5. Conclusion

The way the American administration has been using armed drones since the inception of its all-out war against terrorism constitutes a blatant breach of the existing international legislation. But whatever regrettable are the loss of innocent civilian lives and the disillusionment by large populations in democracy and the rule of law, there is a hidden danger: systematic and long-lasting challenge to the internationally acknowledged principles and rules may undermine and has already started to undermine the whole structure and implementation of the Charter of the United Nations, IHL and human rights law.

One should refer time and again to the brilliant article by Tom Farer and Frédéric Bernard, where they rightly pointed out: *“[W]hatever else it may be, terrorism is violence that transgresses moral limits. Since a governmental response emphasizing the summary application of lethal force risks transgressing moral limits, it correspondingly threatens to blur the distinction between legitimate and illegitimate violence.”*¹⁹²

This thesis attempted to demonstrate by providing with abundant facts, their analysis, as well as references to well-known experts in the field of the subject of consideration that the American government’s “response emphasizing the summary application of lethal force” in fact transgressed moral limits and blurred “the distinction between legitimate and illegitimate violence”. Indeed, disproportionate response of the Bush-Blair tandem to the collapse of the Tween Towers, tens of thousands of casualties following the invasions, first, in Afghanistan, then in Iraq, let alone drone strikes in Pakistan, Yemen and in a number of other countries marred with loss of civilian lives, the disillusionment of many peoples in proclaimed goals of American-style imposed democracy have really equalized the Bush/Blair tandem, as well as the Obama administration to the terrorist groups, first of all from moral standpoint.

To breach the vicious circle Tom Farer and Frédéric Bernard suggest that: *“[T]he potential for blurring distinction between authorized and private violence should incentivize governments to bind themselves publicly and in practice to employ lethal means strictly within the normative constraints which apply universally: the human rights and humanitarian law conventions, the principles of customary international law underlying those conventions and the United Nations Charter. All are relevant because respect for international laws*

¹⁹² Farer, Tom and Bernard Frédéric, *op. cit.*, p. 501.

extends both to a state's relationship with other states (the UN Charter) and to a state's relationship with not only its own nationals but with humanity as a whole, the bearer in our time of indissoluble rights."¹⁹³

Notwithstanding this persuasive argument, this thesis has come to the conclusion that the existing IHL and human rights law are not sufficient enough to prevent drone strikes from becoming killings, but that either the existing legislation should be improved with strict and clear provisions, or within the framework of the existing international laws new instruments could be elaborated and adopted, a kind of International Convention on Limitations on the Use of Drones and Drone Proliferation.

On the other hand, however, this thesis demonstrated opposite opinions, as well, stating that the current international law does not reflect the advances of new technology and that in the absence of new legislations states are compelled to elaborate their own principles and rules of engagement. Here it would be appropriate to refer to the Swiss academic Steven J. Barela who suggested that: "[T]he current applicable law, our moral understandings of lethal force and war, along with judgments of their effectiveness as a policy tool, **cannot be currently presented as definitive** (highlighting is mine – G.A.) since unmanned combat air vehicles have so drastically changed the practical and political calculations for exercising force across borders; both views are required."¹⁹⁴

Most probably, both views are required in order to achieve a breakthrough in international drone regulation: the view of remaining within the framework of current IHL and human rights law and the view suggesting that drones have so drastically changed the "practical and political calculations" that delaying adoption of qualitatively new international instruments in terms of drone regulations may lead to grave consequences. Truth may be in the middle, and in-depth analysis by academics, deliberations amongst practitioners, comparison of conclusions reached may pave the way to adoption of adequate international provisions and norms regulating the use of drones.

¹⁹³ *Ibid.*, p. 501.

¹⁹⁴ Barela, Steven J. "Conclusion: Defending Legitimacy" in "Legitimacy and Drones: Investigating the Legality, Morality and Efficacy of UCAVs", edited by Steven J. Barela, University of Geneva, Switzerland, Routledge, Taylor & Francis Group, London and New York, 2016, p. 529.

List of Abbreviations

AQAP	Al Qaeda in Arabian Peninsula
AUMF	Authorization on the Use of Military Force
CIA	Central Intelligence Agency
CT	Counterterrorism Capabilities
DPH	Direct participation in hostilities
ECHR	European Convention on Human Rights
EU	European Union
FATA	Federally Administered Tribal Territories in Pakistan
FBI	Federal Bureau of Investigations
HRC	Human Rights Council
IAC	International Armed Conflict
ICCPR	International Covenant on Civil and Political Rights
ICRC	International Committee of Red Cross
ICTY	International Criminal Tribunal for the Former Yugoslavia
IHL	International Humanitarian Law
IS	Islamic State
ISAF	International Security Assistance Force
ISIL	Islamic State in Iraq and Levant
MTCR	Missile Technology Control Regime
MON	Memorandum of Notification
NIAC	Non-International Armed Conflict
NSS	National Security Strategy
OLC	Office of Legal Counsel
UAV	Unmanned Aerial Vehicle
UCAV	Unmanned Combat Aerial Vehicle
UEFA	Union of European Football Associations
UNAMA	United Nations Assistance Mission in Afghanistan
WMD	Weapons of Mass Destruction

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Annex 1 : Abstract (English)

The thesis is devoted to the controversial and topical issue of targeted killings under the two consecutive American administrations of George W. Bush and Barack Obama. The first launched a global war on terrorism and the latter developed his predecessor's doctrine through diversification of war technologies and broadening the geographic scope of the use of modern weapons, first of all, Unmanned Combat Aerial Vehicles (UCAV), largely known as drones. While the use of modern weapons, including drones, should be considered as a logical undertaking in the context of the unprecedented progress of modern technologies, it raises, at the same time, a number of fundamental problems from the viewpoint of international humanitarian law (IHL) and human rights law insofar as in practice the use of drones has brought about massive losses of civilian lives and human suffering,

The thesis considers the problematic of targeted killings from different angles through a comprehensive analysis of legal, military and political aspects of the strategy adopted by the American administration over the past decade. It starts with the legal analysis making an attempt to spread light over a number of aspects of the use of drones from the perspective of their admissibility under the existing international commitments. Chapter Two contains a comparative analysis between the administrations of George W. Bush and Barack Obama in the context of antiterrorist operations. Based on abundant facts of the use of drones it clearly demonstrates the similarity of strategic approaches between the two administrations, pointing out, however, that under President Obama the use of drones, i.e., targeted killings, has drastically increased. The central part of the thesis, Chapter Three is devoted to the major controversies triggered by the strategy and practice of targeted killings. A rather detailed analysis of the compatibility of the use of drones with the UN Charter, IHL, human rights law, and the principle of just war doctrine both in the context of *jus ad bellum* and *jus in bello* demonstrates the complexity of the problem. The thesis argues that uncontrolled drone proliferation may bring about blatant breaches of IHL and human rights law and suggests that new approaches at theoretical, political and diplomatic level should become subject to in-depth deliberations in order to find a balance between the use of new technologies and the international legal framework.

The thesis concludes with suggestions on the possible ways of overcoming the problematic issues linked to targeted killings and the use of combat drones.

Annex 2 : Abstract (deutsch)

“Die Obama Regierung und gezielte Tötungen: eine legal und politisch umstrittene Kriegsführung”

Diese Masterarbeit behandelt das kontroverse und aktuelle Thema von gezielten Tötungen während den aufeinander folgenden US-Regierungen von George W. Bush und Barack Obama. Ersterer begann einen globalen Kampf gegen den Terrorismus und letzterer entwickelte die Doktrin seines Vorgängers durch Diversifizierung von Kriegstechnologien und der Ausdehnung der geographischen Reichweite für die Benutzung moderner Kampfaffen weiter.

Während die Benutzung moderner Waffen, einschließlich Drohnen, als logische Folgerung im Kontext des beispiellosen Fortschrittes von modernen Technologien gesehen werden sollte, wirft sie gleichzeitig eine Anzahl von grundsätzlichen Problemen auf: In der Praxis haben bewaffnete Drohnen, entgegen internationaler Menschenrechtsnormen, zu massiven Verlusten in der Zivilbevölkerung geführt und menschliches Leid gebracht.

Die Arbeit beschäftigt sich mit der Problematik von gezielten Tötungen in einer umfassenden Analyse von legalen, militärischen und politischen Aspekten der diesbezüglich adoptierten Strategie der US-Regierung im letzten Jahrzehnt. Sie beginnt mit einer juristischen Analyse, die bestimmte Aspekte der Benutzung von bewaffneten Drohnen aus der Perspektive der Zulässigkeit von bestehenden internationalen Verpflichtungen erörtert. Darüber hinaus wird eine vergleichende Analyse zwischen den Regierungen von George W. Bush und von Barack Obama im Kontext von Anti-Terror Operationen durchgeführt. Basierend auf vorhandenen Tatsachen über die Benutzung von bewaffneten Drohnen werden die Gemeinsamkeiten der strategischen Herangehensweisen zwischen den beiden Regierungen aufgezeigt, mit der Folgerung, dass die Benutzung von Drohnen und gezielten Tötungen unter dem Präsidenten Obama drastisch gestiegen sind. Die zentralen Teile der Arbeit widmen sich den grundsätzlichen Kontroversen über die Strategie und der Umsetzung von gezielten Tötungen. Eine detaillierte Analyse über die Vereinbarkeit von bewaffneten Drohnen mit der Charta der Vereinten Nationen, humanitärem Völkerrecht, Menschenrechtsnormen und den Prinzipien des *gerechten Krieges* im Kontext von *jus ad bellum* und *jus in bello* demonstriert die Vielschichtigkeit des Problems.

Die Arbeit argumentiert, dass die unkontrollierte Verbreitung von Drohnen, zu eklatanten Verletzungen des humanitären Völkerrechts und von Menschenrechten führen kann und schlägt vor, dass neue Herangehensweisen auf theoretischer, politischer und diplomatischer Ebene sehr gründlich erörtert werden müssen, um eine Balance zwischen neuen Technologien und dem internationalen Rechtsrahmen zu finden.

Abschließend macht die Masterarbeit Vorschläge über mögliche Wege, um die problematischen Aspekte von bewaffneten Drohnen und gezielten Tötungen zu überwinden.

Annex 3 : Curriculum Vitae

Summary

- Established experience in program development, management, monitoring and delivery of results with expertise in Child Protection (Justice for Children, Alternative Care, Violence against Children, Birth Registration, Child Marriage etc.), International Human Rights Law, Human Rights advocacy, EU relations
- Experience in legislative and policy analysis, facilitating government policy development and implementation; recruitment and coordination of project partners, budgeting, donor reporting, conducting field visits
- Strong consensus-building and negotiating skills, establishing results-oriented partnerships with the Government and Civil Society, as well as International Organizations, including the European Union
- Excellent writing and editing skills; team-spirited; quick-learner, efficiently absorbing new knowledge; ability to analyze complex information and present it in an accessible way for broad consumption
- Very strong interpersonal skills with an excellent capability of working in a multi-cultural environment (lived in more than six countries, including in Eastern Europe, the Caucasus, in Central Asia, in the Balkans and in West Africa) with strong multilingual competencies (fluent in English, French, German and Armenian with a solid working knowledge of Russian)

Education

March 2008 - December 2012: Law, Magister, University of Vienna

October 2007 - February 2010: Political Science, Bachelor's degree, University of Vienna

BA-Thesis: "Self-determination or Territorial Integrity? Reconciliation through the international community's diplomatic efforts"

since 2011: Political Science, Master's degree, University of Vienna

Work Experience

Child Protection Officer, UNICEF Tunisia (ongoing stretch assignment planned from October 2016 - February 2017)

Child Protection Officer (Systems), UNICEF West and Central Africa Regional Office in Dakar, Senegal (stretch assignment July-October 2016)

Child Protection Officer, UNICEF in Armenia (since February 2014)

Trainee, Permanent Representation of Austria to the EU (September 2013 - December 2013)

Trainee, Council of the European Union, Directorate-General C - Foreign Affairs, Enlargement and Civil Protection, Unit 2C - Civil Protection and Humanitarian Aid (February 2013 - June 2013)

Intern, Action against Terrorism Unit, Organisation for Security and Co-operation in Europe - Secretariat (October 2010 - March 2011)

Acting Chairman of the Academic Forum for Foreign Affairs of Austria (United Nations Youth and Student Association) in Linz, Upper Austria (2006-2010)

Voluntary Work and Other Achievements

Volunteer, International Broadcast Centre, UEFA European Football Championship 2008, Vienna

Vienna International Model United Nations 2008, Chairman, Human Rights Council and part of the conference's organizing team

Personal development training & conferences attended

- Applying Human Rights Based Approaches in Justice Sector Reform conducted by International Human Rights Network, Maynooth, Ireland, 22-26 June, 2015;
- Prioritizing Access to Justice for all children in Europe and beyond (UNICEF, EU Fundamental Rights Agency), Brussels, 3 June 2015;
- UN Country Team Workshop on Human Rights Based Approaches, Yerevan, Armenia, 15 July, 2014.

Languages:

	<u>Speak</u>	<u>Read</u>	<u>Write</u>	<u>Understand</u>
Armenian	native	native	native	native
German	native	native	native	native
English	excellent	excellent	excellent	excellent
French	excellent	excellent	excellent	excellent
Russian	good	excellent	fair	excellent