The Ethics of Armed Conflict
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CHAPTER 1
INTRODUCTION

We the peoples of the United Nations determined . . . to ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest . . .

Charter of the United Nations

This thoughtful passage from the Preamble of the UN Charter evokes ideas essential to a cosmopolitan ethics of armed conflict. What are the moral principles that should be accepted, in order to ensure that armed force is used only in the common interest? So as to protect civilians, what moral methods governing the use of armed force should be instituted? Should the term ‘armed force’ encompass all forms of armed conflict? What is the common interest worldwide? Should such questions be answered by means of a just war theory? These questions are somewhat vague, but they serve to indicate the sorts of questions that I am striving to answer in this book.

I. PREVIEW

Following some introductory remarks in the first and second parts of this chapter, the third part cites four epochal events that have been pivotal for just war theory – namely, the framing of the UN Charter and the founding of the United Nations, the Cold War practice of military deterrence, the post-Cold War recognition of the responsibility to protect and the advent of the current global war on terror. The fourth part contains some concluding remarks. Finally, in the last part, what might prove to be a fifth epochal event is tentatively discerned in a cluster of recent military operations – for example, the US targeted military operation that killed Osama bin Laden and the limited military intervention by the US and NATO during 2011 in Libya.

A. GENERALISING AND TEMPORALISING JUST WAR PRINCIPLES

In response to contemporary forms of armed conflict, including genocidal civil wars and global terrorism, some advocates or practitioners of just war
theory (briefly, ‘just war theorists’) are presently engaged in projects of rethinking, revising or supplementing just war principles. My book is thus revisionary.

Some cases of armed conflict are hybrids of stock forms of armed conflict – for instance, an armed humanitarian intervention amidst a civil war, the parties to which commit acts of terrorism. Consequently, there is need for sufficiently general just war principles, so that diverse kinds of uses of armed force by diverse sorts of responsible agents can be interrelated coherently. For example, there is need for a sufficiently general noncombatant immunity principle – one that would be applicable both by agents responsible for a counterinsurgency operation and agents responsible for the insurgency.

Accordingly, a main thesis of this book is that received just war principles of just cause, last resort, proportionality and noncombatant immunity should be generalised, so that they are applicable by all sorts of responsible agents to all forms of armed conflict. Of course, they should be applicable to large-scale military operations – for instance, the 2003 invasion of Iraq. But they should also be applicable to small-scale military actions – for example, the use of air power to enforce no-fly zones and the use of naval power to intercept clandestine shipments of nuclear weapons. However large scale or small scale, armed force must not be used unjustly.

In the next chapter, a second main thesis is introduced. In addition to being generalised, received just war principles should be, in a sense that needs to be explained, ‘temporalised’.

A third main thesis is that just war principles should be elucidated by means of real-world cases of armed conflict – for instance, current US airstrikes against insurgents and terrorists. (This thesis is supported in Chapter 3, ‘Moral Theory’.) In contrast to invented schematic cases, which can be misleadingly simple, real-world cases are typically complex. I want to avoid making simplistic moral judgements about such real-world cases. Frequently (but not always), when I sketch a real-world use of armed force as an illustration, my purpose is neither to approve nor disapprove. There is no space to settle relevant disputes about international law, military strategy, alternative nonmilitary measures and so forth. Instead, my purpose is to illustrate how just war principles might be applied.

B. THE CORE JUST WAR PRINCIPLES

A fourth main thesis is that the just cause, last resort, proportionality and noncombatant immunity principles are the ‘core just war principles’. Roughly, each core just war principle is a necessary moral criterion for determining whether a proposed military action would be just.

Traditionally, moral principles governing the resort to war (e.g. the just cause principle) are distinguished from moral principles governing the conduct
of war (e.g. the noncombatant immunity principle). Customarily, the former are called ‘jus ad bellum principles’ and the latter ‘jus in bello principles’, but instead I term them ‘resort principles’ and ‘conduct principles’. A fifth main thesis is that the core just war principles are both resort principles and conduct principles.

Furthermore, there is the question of whether a just war theory should include ‘jus post bellum principles’ (or ‘aftermath principles’) – that is, principles governing peacebuilding, stability operations and so forth (Orend 2002). And there is the question of whether a just war theory should include ‘jus ante bellum principles’ (or ‘prelude principles’) – that is, principles governing conventional and nuclear deterrence, arms races and arms limitation treaties, military alliances and power balancing and so forth (van der Linden 2009). In theorising about just war principles, I investigate the interrelated subjects of the prelude to armed conflict, the resort to armed conflict, the conduct of armed conflict, the halting of armed conflict and the aftermath of armed conflict.

The set of core just war principles does not contain a principle of legitimate (or right, proper or competent) authority. It does not contain a principle of right (or proper or dominant) intention (or purpose). It does not contain a principle of reasonable hope (or chance, likelihood or prospect) of success. It does not contain a principle of minimum force (or necessity). And it does not contain a principle of goal (or end or aim) of peace. (Different just war theorists name these principles differently.) Nevertheless, ideas of legitimate authority, right intention, reasonable hope of success, minimum force and the goal of peace are still morally significant (but not as core just war principles).

C. THE BOOK’S CHAPTERS

Having previewed the parts of this introductory chapter, I will now preview the other chapters of the book.

The next chapter – ‘Just War Theory’ – appraises just war theory panoptically.


The idea of just cause is studied especially in the chapter ‘Just Cause’, but also in the chapter ‘Last Resort’. The former chapter also explains why there should not be core just war principles of right intention and goal of peace.

The idea of last resort is studied especially in the chapters ‘Last Resort’ and ‘Last Resort and Noncombatant Immunity’, but also in the chapter ‘Just War Theory’.

The idea of proportionality is studied in the chapter ‘Proportionality and Authority’. That chapter also explains why there should not be core just
war principles of reasonable hope of success, minimum force and legitimate authority.

And the idea of noncombatant immunity is studied in various sections of the chapters ‘Moral Theory’, ‘Theory of Action’, ‘Last Resort and Noncombatant Immunity’, ‘Proportionality and Authority’ and ‘All Things Considered’.

The final chapter – ‘All Things Considered’ – investigates how the core just war principles should be applied conjointly.

II. PARTICULAR JUST WAR THEORIES

Just war theory is a moral theory, and just war principles are moral principles. Ideally, just war principles ought to morally constrain responsible agents from using armed force unjustly. Hence the name ‘just war theory’ is misleading, and the theory might be renamed ‘unjust war theory’. Correlatively, just war principles also ought to morally constrain responsible agents to use armed force justly – for example, to stop genocide. As the title of Michael Walzer’s magnum opus *Just and Unjust Wars* (1977) suggests, just war theory might be renamed ‘just and unjust war theory’; alternatively, to emphasise the task of constraining injustice, it might be renamed ‘unjust and just war theory’. For brevity, although I prefer the longer name ‘unjust and just war theory’, I retain the traditional name – ‘just war theory’.

A. CONTROVERSY

Nuclear weapons explode the theory of just war.


As this quotation epitomises, just war theory is controversial, as is moral philosophy generally. Similar to controversies among moral philosophers concerning fundamental moral principles, there are controversies among just war theorists about just war principles. What is the just cause principle? Is stopping genocide a just cause for armed humanitarian intervention? What is the last resort principle? Must diplomacy always be attempted before resorting to armed force? Different just war theorists answer such questions differently.

In the preceding paragraph, the term ‘just war theory’ is used to denote a field of inquiry, but the term has another meaning. Analogous to the distinction between the subject of world history and a particular world history (e.g. that of Arnold Toynbee), there is a distinction between the subject of just war theory and a particular just war theory (e.g. that of Michael Walzer). Primarily, a particular just war theory is a particular theory about the nature, justification and application of just war principles. In general, any theory about
moral principles is a theory about the nature (normative ethics), justification (metaethics) and application (applied ethics) of those principles.¹

Presently, there is no single just war theory that is unanimously accepted. Instead, there are controversies among just war theorists about the nature, justification and application of just war principles.²

For the sake of illustration, let me mention such a controversy. Characteristically, military actions have highly destructive consequences. Hence it might be contended that a just war theory should be a consequentialist theory. For instance, R. B. Brandt defended a rule-utilitarian theory of the rules of war (1972).

By contrast, a main thesis of my book is that a just war theory should be a deontological theory. Briefly, the deontologist makes moral judgements primarily about actions, whereas the consequentialist makes moral judgements entirely about consequences (of actions). As the word ‘primarily’ indicates, the deontologist does not entirely disregard consequences. Although primarily concerned with moral (or deontological) constraints on uses of armed force, a just war theory should also be concerned with destructive consequences.

In the history of moral philosophy, the most influential form of consequentialism is termed ‘utilitarianism’. For example, Jeremy Bentham advocated a greatest happiness principle – namely, ‘that principle which states the greatest happiness of all those whose interest is in question, as being the right and proper, and only right and proper and universally desirable, end of human action’ (1907: 1).

Historically, the most influential deontological theory was propounded by Immanuel Kant. The moral theory that I am presupposing in this book is substantially influenced by his ethical writings, but I have no space to examine his views thoroughly.

There are controversies among deontologists about the stringency (or strictness) of morality. According to Kant, moral duties hold absolutely, whatever the consequences. By contrast, according to the deontological theory of W. D. Ross, moral duties are prima facie duties, which do not hold absolutely. (Roughly, a prima facie moral requirement may be overridden by a more stringent prima facie moral requirement.) Also substantially influenced by Ross, I am presupposing a moral theory that is thus non-absolutist.³

In armed conflict, there is moral conflict. Because prima facie moral obligations about uses of armed force can conflict, we can be ensnared in moral dilemmas.⁴ There are controversies among just war theorists about how moral dilemmas of armed conflict should be resolved.⁵ My way of resolving them is influenced substantially by the later moral theory of R. M. Hare (1981). More exactly, I am influenced by him insofar as he is a Kantian (1981: 4) and Rossian (1981: 38), but not insofar as he is a utilitarian.
To complete this list of personal influences, my particular just war theory is substantially influenced by the particular just war theories of James Childress (1982) and Michael Walzer (1977).

Why are there controversies among just war theorists? Disputes about the justice or injustice of particular armed conflicts can be fostered by political bias or partisan ideology; and disputes about just war principles can be confounded by philosophical dogmatism or incoherent reasoning. Nevertheless, it is essential to realise that the phenomenon of moral disagreement is intrinsic to the dialectical process of rethinking, revising or supplementing just war theory. Throughout this book, I explore the question of why well-intentioned, knowledgeable just war theorists can profoundly disagree about principles and cases – briefly, it is the question of ‘principled moral disagreement’. Relatedly, there is the question of whether, when there is principled moral disagreement about time-urgent crises, there ought to be principled moral compromise.

B. A PARTICULAR COSMOPOLITAN JUST WAR THEORY

In surveying the history of the ethics of war from classical antiquity to the present, various overlapping just war theories can be discerned, which together constitute, or appear to constitute, what is often termed the ‘just war tradition’. But there is not, nor should there be, a strictly orthodox answer to the question: what must a just war theorist accept from the history of theorising about the ethics of war and peace? I think of myself as a member of the just war tradition, because I am engaged in the project of revising received just war principles of just cause, last resort, proportionality and noncombatant immunity. However, my purpose in this book is not to study the history of just war theories. Instead, while considering some alternative just war theories, my purpose is to develop a particular just war theory.

More specifically, as the book’s subtitle announces, the particular just war theory that I am developing is one that is cosmopolitan. By contrast, many just war theories are, or tend largely to be, state-centric. Roughly, a state-centric just war theory understands just war principles as primarily applicable to wars between states. More explicitly, according to a state-centric just war theory, the primary agents that apply just war principles are states (or rulers of states), and the primary targets to which those agents apply just war principles are states (or the military actions of states). Regard, for example, how a last resort principle has been formulated as a state-centric principle: ‘when conflicts of interest occur between two states, the use of force may be justified only as the last resort, that is, only when all nonmilitary means of conflict resolution have been tried’ (Coppieters et al. 2002: 101). For state-centric just war theories, the Second World War is a paradigm case. Did France have a just cause for waging a defensive war against Nazi
Germany? Did the US nuclear bombing of the Japanese cities of Hiroshima and Nagasaki violate the noncombatant immunity principle?

A main thesis is that, in contemporary theorising about just war principles, there ought to be a paradigm shift from a state-centric approach to a cosmopolitan approach. Just war principles are moral principles. But the idea of cosmopolitanism should not be simply a moral idea. It should also be a political idea. Indeed, it should involve a conception of moral universalism, but it should also involve political conceptions of global governance and global citizenship (Dower 2009: 62). In my cosmopolitan approach to just war theory, I consider these interrelated topics of moral universalism, global governance and global citizenship.

In developing a particular cosmopolitan just war theory, I feature a real-world global political institution – the Security Council (SC). Why should the Security Council have the primary responsibility for security? Why should a cosmopolitan just war theory be SC-centric? These questions are explored especially in the chapters ‘Just War Theory’, ‘Proportionality and Authority’ and ‘All Things Considered’.

Antedating Enlightenment ideals of democracy and influenced by political thought in the Middle Ages, the just war tradition was originally monarchical, in that it empowered rulers of polities as legitimate authorities for war-making. However, a cosmopolitan just war theory ought to include both top-down and bottom-up standpoints. In addition to the top-down question of why the Security Council should have the primary responsibility for security, there is a bottom-up question: should the primary locus of moral authority be, fundamentally, each and every human being? In a cosmopolitan just war theory, should the concept of responsible agent encompass (potentially) all human beings? In developing a particular just war theory, I maintain that the received monarchical idea of legitimate authority ought to be revised in two interrelated cosmopolitan ways: it ought to be globalised, but it also ought to be democratised. Even if a cosmopolitan just war theory should be SC-centric, it also should be (global) citizen-centric. (Like an ellipse, the theory can have two centres.)

Accordingly, instead of the impersonal term ‘responsible agents’, I often prefer to use personal pronouns. Ideally, we human beings ought to be morally constrained by just war principles.

There are ‘many varieties of cosmopolitanism’ (Dower 2007: 81), but I have no space here to study the subject of cosmopolitanism thoroughly. Presupposing general ideals of global governance and global citizenship, I want to explore issues that are specific to cosmopolitan just war theory as a field of inquiry. There can be alternative particular cosmopolitan just war theories. Different cosmopolitan just war theories might accept different cosmopolitan just war principles.
However, my purpose in this book is to develop my own particular cosmopolitan just war theory. My view is that the core just war principles that I formulate here are compatible with some (even if not all) of the varieties of cosmopolitanism.

In developing her own particular cosmopolitan just war theory in *Cosmopolitan War*, Cécile Fabre reported that: ‘to my knowledge, there is no systematic, book-length cosmopolitan theory of the just war’ (2012: 2). To my own knowledge, her book is the first, and mine is the second. (Her book was published after I completed the penultimate draft of my book.) Let me summarise some differences. My theory is centred primarily on the Security Council, whereas hers is not. My theory emphasises the last resort principle, whereas hers does not (Fabre 2012: 5–6). My book contains chapters on moral theory and the theory of action, whereas hers does not. I utilise a Rossian conception of prima facie moral obligations, whereas she does not. My book contains chapters on just war principles, whereas hers does not. On the other hand, her book contains instructive chapters on different forms of armed conflict – namely, ‘Collective self-defence’, ‘Subsistence wars’, ‘Civil wars’, ‘Humanitarian intervention’, ‘Commodified wars’ and ‘Asymmetrical wars’ – whereas mine does not. It is in the midst of those chapters that she develops her own particular cosmopolitan just war theory.

My book does not presuppose the reading of Fabre’s book or any other book about just war theory. To ensure that my book is accessible to a wide range of readers, I have refrained from clogging the main text with knotty disputations of Fabre’s particular views or the particular views of other just war theorists. Sometimes, however, to encourage readers to make their own comparisons, I cite relevant writings in brief notes. My argumentation about just war theory is often demanding, but it is largely self-contained. My purpose is to state and support a particular cosmopolitan just war theory as cogently and completely as possible in the space available.

**III. FOUR EPOCHAL EVENTS**

**A. THE UNITED NATIONS**

With the close of the Second World War, there was an epochal event, one that has been pivotal for just war theory – namely, the framing of the UN Charter and the founding of the United Nations. Although incompletely and imperfectly implemented and tragically eclipsed by the subsequent Cold War, the UN Charter expresses resplendent moral ideals that, from the moral standpoint of a cosmopolitan just war theory, still ought to be realised. Famously, the Preamble of the UN Charter begins: ‘We the peoples of the United Nations determined to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind’. A
fundamental purpose of cosmopolitan just war principles ought to be to save the peoples of the world from the scourges of all forms of armed conflict, both by morally constraining responsible agents from using armed force unjustly and by morally constraining responsible agents to use armed force justly. In developing a cosmopolitan just war theory, I feature moral ideals expressed in the UN Charter.

But who are the responsible agents? State-centric just war theories empower rulers of states as the morally right authorities for war-making. However, by signing the UN Charter, the 193 Member States of the United Nations have committed themselves to comply with it. In particular, according to Article 24, the 193 Member States of the United Nations ‘confer on the Security Council primary responsibility for the maintenance of international peace and security’.

As a US citizen, I want to append a legal argument about the US Constitution, one that is admittedly controversial. The UN Charter is an international treaty, signed by the United States on 26 June 1945 and ratified by the US Senate on 28 July 1945. According to Article VI of the US Constitution, ‘all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land’. Therefore, Chapter VII of the UN Charter – which authorises the Security Council to make decisions for UN Member States about the use of armed force – is ‘the supreme Law’ of the United States.

Should there be a paradigm shift in just war theory from a state-centric approach to an approach centred primarily on the Security Council? To repeat, a main thesis is that just war principles should be elucidated by means of real-world cases of armed conflict. Abstracting from the particularities of such cases and levitating timelessly amongst purely moral concepts, I am inclined to endorse the moral ideal of a democratic world government. However, I am writing this book during the early years of the second decade of the twenty-first century. For brevity, let me refer to these years by means of the term ‘at present’. In light of moral ideals expressed in the UN Charter, a related main thesis is that, at present, the Security Council should have the primary responsibility for security.

For such an SC-centric approach to just war theory, there is a worrisome problem. Those states that are the members of the Security Council – notably, the five permanent members with their veto power, Britain, China, France, Russia and the United States – are too often motivated basically by national interests. For a state-centric approach to just war theory, there is a comparable problem. Individual states are too often motivated basically by national interests. In the just war tradition, a standard response to the latter problem can be summarised as follows. Just war theory is a moral theory. Ideally, state-centric just war principles ought to morally constrain states from using
armed force unjustly. My response to the former problem can be summarised comparably. Just war theory is a moral theory. Ideally, cosmopolitan just war principles ought to morally constrain the Security Council from authorising unjust uses of armed force. Both the Security Council and individual states ought to be motivated basically by a cosmopolitan ideal of the equality of interests of every human being everywhere in the world.

But suppose that, in a particular case of armed conflict, the Security Council fails to act or acts wrongly. A cosmopolitan just war theory can acknowledge that the Security Council has the primary responsibility for security, without accepting a legitimate authority principle as a core just war principle. Accordingly, another main thesis is that there may be alternative agents that have secondary responsibility for security – for instance, regional organisations, ad hoc coalitions of states or the United States alone. (The subject of such alternatives is discussed especially in the chapters ‘Proportionality and Authority’ and ‘All Things Considered’.) To be SC-centric, a cosmopolitan just war theory does not have to endorse SC-autocracy.

B. AFTER THE COLD WAR

Another epochal event that has been pivotal for just war theory was the ending of the Cold War. After the Cold War, the threat of a third worldwide interstate war greatly diminished. Sadly, instead of the emergence of global peace, numerous armed conflicts within states occurred during the first post-Cold War decade, many of which involved massive violations of human rights – for instance, the protracted civil war in Bosnia and the precipitous genocide in Rwanda. Notably, on 3 December 1992, a limited military operation of armed humanitarian intervention in Somalia, Operation Restore Hope, was authorised by Security Council Resolution 794 (1992).9 By contrast, the Security Council refrained from authorising the armed humanitarian intervention during 1999 by NATO in Kosovo.

In response to this decade of internal armed conflicts and quarrels about armed humanitarian interventions – and presumably influenced by the just war tradition – the seminal 2001 Report of the International Commission on Intervention and State Sovereignty (ICISS), entitled The Responsibility to Protect, promulgated some ‘criteria for military intervention for human protection purposes’ (ICISS 2001a: 32). Subsequently, at the close of the 2005 UN World Summit, the General Assembly strongly endorsed the responsibility to protect (GA Res 2005: 30). Are just war principles applicable or generalisable to armed humanitarian interventions in internal armed conflicts?10 Must armed humanitarian interventions be authorised by the Security Council? How should a just war theory interpret the ICISS criteria for military intervention? In the second part of the next chapter – ‘The
Responsibility to Protect’ – I explore how these and related questions should be answered. Indeed, a cosmopolitan just war theory should incorporate a conception of the responsibility to protect (R2P).

C. TERRORISM AND COUNTERTERRORISM
When just war principles are applied to particular cases, there is, as A. J. Coates warned, a signal danger: ‘A one-sided and exaggerated emphasis on just cause’ (1997: 146). A third epochal event was the advent of the current global war on terror, which has induced an emphasis on just cause that is truly one-sided and exaggerated.11

Since the end of the Cold War, these overlapping eras of armed humanitarian interventions and military counterterrorism operations have underpinned a hawkish stereotype of just war theory – namely, that the chief function of just war theory is, as the word ‘just’ suggests, to morally justify uses of armed force.12

But a just cause is not enough. It is important to recognise that, despite the word ‘just’ in the term ‘just cause’, it is not sufficient to satisfy only the just cause principle. Traditionally, the just cause principle must be satisfied, but so must other just war principles – in particular, principles of last resort, proportionality and noncombatant immunity. To counterbalance overemphasis of the just cause principle, I am emphasising the last resort, proportionality and noncombatant immunity principles. These other just war principles are termed ‘ancillary just war principles’. How should a just cause principle be counterbalanced by ancillary just war principles? In the third part of the next chapter – ‘Ancillary Just War Principles’ – this demanding question is introduced.

D. DURING THE COLD WAR
Looking backwards to the Cold War, there was then a dovish stereotype of just war theory – namely, that the chief function of just war theory is, despite the word ‘just’, to morally constrain uses of armed force. For example, the influential US Catholic Bishops’ Pastoral Letter on War and Peace declared that ‘just-war teaching has evolved, however, as an effort to prevent war’ (Bishops 1983: para. 83). Let me add that just war teaching has also evolved as an effort to prevent unjust uses of armed force in the conduct of military operations.

With the purpose of fortifying such moral constraint, a just war theory should include a crucial epistemic requirement. When we deliberate about whether to use armed force, we have to make the moral presumption that we must not. To override this moral presumption, we have the burden of proving that just war principles really are satisfied (Childress 1982: 64–73). We have the burden of proving that there really is a just cause for the use of armed
force; we have the burden of proving that the use of armed force really is a last resort; and so forth. In the words of the Pastoral Letter, ‘a decision [to go to war], especially today, requires extraordinarily strong reasons for overriding the presumption in favor of peace and against war’ (Bishops 1983: para. 83 [emphasis in original]). In the cosmopolitan just war theory that I am developing, these epistemic conceptions of moral presumption and burden of proof are crucial.

Relatedly, a just war theory ought to include a crucial ‘publicity requirement’: to satisfy the stated burden of proof fully, rulers of states, leaders of armed revolutions and other responsible agents must promulgate their full proofs publicly. This publicity requirement is crucial to effective global citizenship.

The Cold War was cold, since there was neither a nuclear nor conventional war between the Soviet Union and NATO; nonetheless, it was a dangerous belligerent conflict, since there were spiralling arms races, limited wars (e.g. the Korean War) and fusillades of deterrent military threats. Hence the Cold War was itself an epochal event that was pivotal for just war theory, in that it demonstrated that the chief function of just war theory is not only to morally constrain actual uses of armed force, but also to morally constrain deterrent threats to use armed force. Memorably, just war theorists concentrated on policies of nuclear deterrence.13

However, a comprehensive just war theory should also be concerned with policies of conventional deterrence – that is, deterrent threats to use conventional weapons.14 The subjects of nuclear deterrence and conventional deterrence are not anachronistic, as a study of the 2010 US Nuclear Posture Review Report evidences (DOD 2010b).

A cosmopolitan just war theory should incorporate both a conception of the responsibility to protect and a conception of military deterrence. In interrelating the two conceptions, a key question that I address is whether it is morally permissible (or even morally obligatory) to attempt to prevent internal armed conflicts by means of deterrent military threats.

IV. GENERALISING JUST WAR PRINCIPLES

In light of these epochal events – the framing of the UN Charter and the founding of the United Nations, the Cold War practise of military deterrence, the post-Cold War recognition of the responsibility to protect and the advent of the current global war on terror – is a largely new ethics of armed conflict required or would an appropriately revised just war theory be sufficient?

As signalled by the term ‘armed conflict’ in the title of this book, my answer to this question is that received just war principles of just cause, last resort, proportionality and noncombatant immunity should be generalised,
so that they are applicable to all forms of armed conflict. Accordingly, they would be applicable not only to interstate wars, but also to civil wars, armed humanitarian interventions, armed revolutions, counterinsurgency operations, counterterrorism operations, military operations by UN peacekeeping missions and so forth.

Alternatively, rather than generalising just war principles, so that they are applicable to armed humanitarian interventions, specific ‘just intervention’ principles might be formulated – for example, the ‘jus ad interventionem’ principles formulated by George Lucas (2003: 85). Specific principles might also be formulated for other forms of armed conflict – for instance, just revolution principles. That such principles would be quite similar to received just war principles serves to indicate, I submit, that they should be understood as specifications of suitably generalised just war principles.

For the sake of concreteness, this book features a real-world global political institution – the Security Council. Nonetheless, Security Council authorisation – or authorisation by any other putative authority – should not be a necessary moral criterion for deciding whether a proposed military action would be just. The set of core just war principles should not contain a legitimate authority principle. Accordingly, those just war theorists who prefer a state-centric approach (e.g. Rawls 1999), or a cosmopolitan approach that is not SC-centric (e.g. Fabre 2012), or a feminist approach (e.g. Sjoberg 2006) or some other approach could still find these generalised just war principles acceptable.

More exactly, then, my answer to the stated question is that those received just war principles should be generalised, not only so that they are applicable to all forms of armed conflict, but also so that they are applicable by all sorts of responsible agents. In addition to the Security Council, they should be applicable by regional organisations (e.g. NATO), individual states, terrorist networks, revolutionary groups and so forth.

To evidence that just war principles should be thus generalised, the subject of armed revolution is featured. (Also featured is the subject of ‘phases of escalation’; during the conduct of a military operation, generalised just war principles should morally constrain escalation.)

These generalised just war principles are in and of themselves moral principles. By contrast, Allen Buchanan’s ‘institutionalist’ approach to just war theory presupposes the following metaethical thesis: ‘Whether a norm is valid can depend upon institutional context’ (2006: 5). While agreeing that institutions matter, let me summarise how my approach differs. Each generalised just war principle is formulated as a moral principle, independently of real-world political institutions. However, when it is applied to a particular case, whether it is satisfied (in that particular case) can depend upon the particular institutional context.
For example, a generalised last resort principle may be formulated (provisionally) as follows. It is morally obligatory not to perform a military action, if every reasonable nonmilitary measure has not been attempted. This principle is applicable to all forms of armed conflict by all sorts of responsible agents. It is formulated as a moral principle, independently of any real-world political institution. However, when it is applied to a particular case, whether it is reasonable to attempt a particular nonmilitary measure in that particular case can depend upon the particular institutional context. Consider, for instance, the case of armed conflict in Darfur between rebel groups, the Janjaweed and the Sudanese Government. In Resolution 1828 (2008), the Security Council called upon ‘the Government of Sudan and rebel groups to engage fully and constructively in the peace process’. Subsequently (2009), peace negotiations were held, ‘under the auspices of the Joint African Union-United Nations Chief Mediator tasked with resolving the conflict in Darfur’, Djibril Yipêne Bassolé. Whether it was reasonable then to attempt those particular negotiations could have depended upon that particular institutional context.

The theory of such generalised principles might be named ‘unjust and just armed-conflict theory’. In an earlier writing, I proposed the name ‘just armed-conflict theory’ (2007b: 76). However, in acknowledgment of the source of generalisation, I prefer now to retain the traditional name – ‘just war theory’.

V. TARGETED MILITARY OPERATIONS

In order to prevent terrorist attacks on the United States and to save American lives, the United States Government conducts targeted strikes against specific al-Qaida terrorists, sometimes using remotely piloted aircraft, often referred to publicly as drones.

John O. Brennan, then-Assistant to the President for Homeland Security and Counterterrorism (2012)

Roughly, a targeted military operation has a narrowly focused goal, and the means of achieving the goal is a course of fittingly small-scale military actions – that is, military actions that are narrowly limited in fire-power, length of time, geographical extent and so forth. How are cosmopolitan just war principles applicable to targeted military operations? In various chapters of this book, I investigate how this contemporary question should be answered.

Archetypically, the military operation by US Special Operations forces that killed Osama bin Laden in Pakistan on 2 May 2011 was a targeted military operation. Paradigmatically, there are airstrikes by unmanned aerial vehicles...
(UAVs) (or ‘drones’) that are targeted military operations – for example, the US drone strike in Pakistan on 22 August 2011 that killed Atiyah Abd al-Rahman, ‘Al Qaeda’s second-ranking figure’ (Mazzetti 2011). Notably, there are such targeted counterterrorism operations, but there are also targeted military operations of other sorts – for instance, targeted armed humanitarian interventions. The armed humanitarian intervention by NATO in Kosovo during 1999 was relatively large scale (Wheeler 2000: 258–84). During one day of the NATO air campaign, ‘NATO planes attacked electrical transformers throughout Serbia’ (Becker 1999). By contrast, the relatively small-scale armed humanitarian intervention by the US and NATO in Libya during 2011 was a targeted military operation. Significantly, precise airstrikes against Libyan Government forces provided ‘close air support’ (CAS) for Libyan rebel forces (Fahim and Kirkpatrick 2011).

As signalled by the word ‘relatively’, targeted military operations can be more or less limited in fire-power, length of time, geographical extent and so forth. The concept of ‘small scale’ admits of degree, as does the concept of ‘large scale’. In the Kosovo intervention, NATO aircraft used precision-guided munitions; and, according to a NATO statement about the inadvertent bombing of the Chinese Embassy in Belgrade, ‘extraordinary care is taken to avoid damage to other than legitimate military and military-related targets’ (NATO 1999). Instead of a sharp distinction between military operations that are targeted and ones that are not, there is a gamut of limited military operations. Presumably, there is a threshold below which military operations are sufficiently limited to be deemed ‘targeted’ and above which they are not.

How, then, should the concept of ‘targeted military operation’ be defined? How, in general, should concepts relevant to a just war theory be defined? The subject of definition is discussed in the chapters ‘Moral Theory’ and ‘Theory of Action’.

At present, a cosmopolitan just war theory should be SC-centric. ‘We have a clear UN mandate’, a NATO ‘Statement on Libya’ asserted, and we are ‘carrying out precision strikes against legitimate military targets’ (NATO 2011). Indeed, on 17 March 2011, the Libya intervention was authorised by Security Council Resolution 1973 (2011). By contrast, the Security Council refrained from authorising the Kosovo intervention. How should just war principles be applied to targeted military operations that are authorised by the Security Council? When addressing this question in later chapters, I refer to this paradigmatic Libya case.

Let me provide another illustration. Customarily, within the framework of the UN Charter, the Security Council authorises the establishment of UN peacekeeping missions. Under some circumstances, a UN peacekeeping mission is given a ‘Chapter VII mandate’ that permits the use of armed force. (The term ‘Chapter VII’ refers to Chapter VII of the UN Charter.) Elsewhere,
I called such a mission an ‘armed UN peacekeeping mission’ (Lango 2009b: 116). Presumably, an armed UN peacekeeping mission may conduct targeted military operations – for instance, to establish and protect safe havens. As Nigel Dower remarked, a military force authorised by the Security Council might be (approximately) a cosmopolitan military force, if it is ‘wholly devoted to cosmopolitan goals’ (2009: 69).

To summarise, a central question is: how are cosmopolitan just war principles applicable to contemporary targeted military operations? What might prove to be a fifth epochal event pivotal for just war theory is the cluster of recent military operations that includes the US targeted military operation that killed Osama bin Laden and the armed humanitarian intervention by the US and NATO in Libya.

NOTES

1. A classic introduction to moral philosophy is Frankena (1973).
3. For a fuller statement of my indebtedness to Ross’ conception of prima facie duties, see Lango (2001).
4. A classic article about moral dilemmas is Lemmon (1962). Various specific kinds of moral dilemmas in modern warfare are examined in Gross (2009).
5. A landmark article about such dilemmas is Nagel (1979).
8. For different cosmopolitan approaches to just war theory, see Atack (2005), Caney (2005), Fabre (2012) and Moellendorf (2002). See also the remarks about cosmopolitan approaches to the ethics of war and peace in Dower (2007; 2009).
12. An example of such hawkishness is O’Driscoll (2008).
15. A book that studies how just war principles are pertinent to revolutions is Dobos (2012).


17. For some reportage about contemporary examples, see Sanger (2012).

18. A study of counterterrorism and counterinsurgency that endorses targeted military operations is Kilcullen (2009).

19. Some cases of US ‘discrete military operations’ are found in Zenko (2010).

20. A broad discussion of UN peacekeeping missions is found in Goldstein (2011).