What is an intentional action? Do moral concepts pertain primarily to intentional actions and secondarily to their consequences? How are just war principles applicable to courses of action and plans of action? In this chapter, these and other questions that interrelate moral theory and the theory of action are investigated.

However, this book is not exclusively a theoretical study, and topics in the theory of action are discussed quite incompletely. The purpose is to enlarge the framework of presuppositions introduced in the preceding chapter. Again, to exhibit the relevance of the current chapter for later chapters, theoretical presuppositions are interrelated with topics in just war theory, including specific issues and particular cases.

To counterbalance overemphasis of the just cause principle, I am emphasising the last resort, proportionality and noncombatant immunity principles. For the sake of concreteness, this chapter continues to feature the idea of noncombatant immunity.

I. HUMAN ACTIONS

The military actions of groups such as tank crews, regiments and armies are emergent from, supervenient on or reducible to actions performed collectively by human beings. Preliminary to discussing the subject of military actions in the second part of this chapter, I discuss, in this first part, the subject of human actions.

A. MORAL THEORY AND HUMAN ACTIONS

The cosmopolitan just war theory that I am developing is a deontological theory. Just war principles are deontological principles, as are the comprehensive moral principles. Fundamentally, deontological principles obligate, permit or prohibit the performance of actions. Deontological judgements are primarily moral judgements of human actions.
Human actions are performed by human agents. As agent-centred deontological principles, just war principles morally constrain human agents from performing unjust military actions, but they also morally constrain human agents to perform just military actions. Moreover, comprehensive moral principles such as the nonharm principle are agent-centred. From the agential standpoint of each and every human agent who is contemplating the use of armed force, the nonharm principle is centred on him or her. It is morally obligatory for him or her not to actually harm or seriously risk harming other persons grievously, whether intentionally, knowingly, recklessly or negligently.

Characteristically, armed conflicts are highly destructive. Regularly, when human beings use armed force, they intentionally kill other human beings. To use armed force intentionally is to perform an intentional action, a characteristic consequence of which is destruction. Indeed, military actions can have highly destructive consequences.

How should a deontological theory morally evaluate the consequences of actions? Specifically, how should a just war theory morally evaluate the destructive consequences of the uses of armed force by human beings? Just war principles are applicable primarily to human actions, but it is also important to address questions about how they are applicable secondarily to consequences.

B. ACTIONS, INTENTIONS, CONSEQUENCES
What is an intentional action? I concur broadly with the answer of Alan Gewirth: ‘By an action’s being purposive or intentional I mean that the agent acts for some end or purpose that constitutes his reason for acting’ (1980: 27). (Note that this answer assumes that the term ‘action’ is understood.) What should be meant by the ‘end or purpose’ of an action? According to Gewirth: ‘this purpose may consist in the action itself or in something to be achieved by the action’ (1980: 27).

I propose to augment or revise Gewirth’s answer somewhat. The agential standpoint is a temporally prospective vantage point on future goals (or ends). (Henceforth the term ‘goal’ is used instead of the term ‘end’.) From a particular temporal standpoint, a particular human agent performs a particular action, intending thereby to achieve a particular future goal.

Among the kinds of goals that can be achieved by an action is a ‘consequence’ – that is, an event (or state of affairs) brought about by the action. The agential standpoint is a temporally prospective vantage point on future consequences. For an illustration, let me return to the Libya case (utilised in Chapter 3). From the temporal standpoint of 11 April 2011, the tank crew fires a shell indiscriminately into Misrata, with the goal of achieving, as a consequence, the occurrence of noncombatant deaths. Briefly, firing
the shell is the means, and noncombatant deaths are the goal. To generalise, from a particular temporal standpoint, a particular human agent (or group of human agents) performs a particular action, intending thereby to achieve, as a goal, a particular future consequence.

A consequence is a goal that can be achieved by an action, but there are goals of another kind. As Gewirth asserted: “this purpose may consist in the action itself” (1980: 27). Future actions are also goals. The agential standpoint is a temporally prospective vantage point on future actions. By performing one action, a human being can have as a goal the performance of a second action. One action is performed as a means for performing another action as a goal. Actions are interlinked by a relation of means to goal. (In other words, they are interlinked by a means-end relation.) For example, the tank crew fires a shell indiscriminately into Misrata, with the goal of killing noncombatants. By performing the action of firing a shell, the tank crew has, as the goal, the performance of the action of killing noncombatants. Briefly, firing the shell is the means, and killing noncombatants is the goal. To generalise again, from a particular temporal standpoint, a particular human agent (or group of human agents) performs a particular action as a means of achieving, as a goal, his or her performance of a particular future action.

C. INTRINSIC RESULTS

Which is the goal of firing the shell: the consequence (noncombatant deaths) or the action (killing noncombatants)? In short, my answer is that the goal is both the action and the consequence. Necessarily, if the action is performed, then the consequence happens. The consequence is internally related to the action – the action cannot be performed without the consequence happening. That is, the consequence is an ‘intrinsic result’ of the action (von Wright 1963: 39–40). The tank crew cannot kill the noncombatants without bringing about their deaths. Accordingly, in firing the shell, the tank crew cannot have killing them as a goal without having bringing about their deaths as a goal.

How, then, are just war principles applicable? Because they are primarily applicable to the action – the killing of the noncombatants – they are secondarily applicable to the consequence – the deaths of the noncombatants. Specifically, the received noncombatant immunity principle is thus applicable. Primarily, it is morally obligatory not to intentionally kill the noncombatants. The moral obligation not to intentionally kill them entails the moral wrongness of intentionally bringing about, as a consequence, their deaths. This entailment stems from the internal relation between the happening of the consequence and the performance of the action. Necessarily, if it is morally obligatory not to intentionally kill them, then it is morally wrong to intentionally bring about, as a consequence, their deaths. Secondarily, it is morally wrong for
the tank crew to intentionally bring about, as a consequence, the deaths of noncombatants.

Firing the shell is the means, and killing noncombatants is the goal. What is the moral import of the means-goal (or means-end) relation? In interrelating moral theory and the theory of action, it is essential to consider this question. If it is morally obligatory not to intentionally kill noncombatants, then it is morally obligatory not to fire the shell as a means of achieving the goal of killing them. This particular moral judgement may be subsumed under a comprehensive moral principle:

**Means-goal principle.** If it is morally obligatory not to perform action $A$, then it is morally obligatory not to perform action $B$ as a means of achieving the goal of performing action $A$.

To supplement the comprehensive moral principles of nonmaleficence, beneficence, justice and autonomy, I presuppose also this means-goal principle.

D. EXTRANISIC CONSEQUENCES

The tank crew fires a shell indiscriminately into Misrata, thereby intentionally bringing about, as a consequence, the deaths of noncombatants. This consequence of their deaths is internally related to the action of killing them, but how is it related to the action of firing the shell? My answer is that the consequence is externally related to the action – it is possible both to perform the action of firing the shell and to fail to bring about the intended consequence of noncombatant deaths. It is possibly the case that both the tank crew fires the shell and the intended consequence of noncombatant deaths does not occur. That is, the consequence is an ‘extrinsic consequence’ of the action (von Wright 1963: 39–40). (Note that the term ‘consequence of an action’ is used broadly: both extrinsic consequences and intrinsic results are consequences.)

How are just war principles applicable here? Specifically, how is the received noncombatant immunity principle applicable? It is morally obligatory for the tank crew not to intentionally kill noncombatants. It is also morally obligatory for the tank crew not to fire the shell as a means of achieving the goal of killing noncombatants. But this moral obligation not to fire the shell does not in and of itself entail the moral judgement that it is morally wrong to intentionally bring about, as a consequence, the occurrence of noncombatant deaths. There is no entailment, because the relation between the performance of the action and the happening of the consequence is an external relation.

Nevertheless, the moral obligation and the moral wrongness are interrelated inherently but indirectly by the following two entailments. On the one hand,
the moral obligation not to intentionally kill noncombatants entails the moral wrongness of intentionally bringing about, as a consequence, their deaths. On the other hand – applying the means-goal principle – the moral obligation not to intentionally kill them entails the moral obligation not to fire the shell as a means of achieving the goal of killing them. In brief, the moral obligation about killing entails both the moral obligation about firing the shell and the moral wrongness of the consequent deaths. The moral obligation about firing the shell and the moral wrongness of the consequent deaths are interrelated inherently but indirectly by means of the stated entailments.

The just war theory that I am developing is a deontological theory. It is not a consequentialist theory. According to a deontological theory, moral judgements should be made primarily about actions. By contrast, according to a consequentialist theory, moral judgements should be made entirely about consequences. The moral judgement about the moral wrongness of intentionally bringing about, as a consequence, the deaths of noncombatants might be labelled a ‘consequentialist judgement’, simply because it is a moral judgement about a consequence, but such a label would be inappropriate or misleading. It is not a standard or orthodox consequentialist judgement. It does not stem entirely from a moral appraisal or moral weighing of good and bad elements in, or aspects of, the consequence.

A chief aim of subsequent chapters is to formulate generalised just war principles that are clearly deontological. In contrast to Johnson’s view that the just war principles of last resort and proportionality are prudential tests, my view is that they are deontological requirements, or so I argue in later chapters.

E. ATTEMPTING
Our doubts are traitors,
And make us lose the good we oft might win,
By fearing to attempt.

Shakespeare, Measure for Measure (I, iv, 78–9)

This quotation, torn from its original context, resonates with some of this chapter’s themes. In the fog of genocidal armed conflict within a failed state, members of the Security Council might fear to attempt armed humanitarian intervention, thereby losing the good that might be won. On the other hand, in the fog of aerial targeting of a terrorist leader from a hovering drone, doubts about the absence of proximate noncombatants might not be traitors.

The agential standpoint is a temporally prospective vantage point on future contingencies. Frequently, when we apply just war principles prospectively, we have to make moral judgements about the use of armed force under conditions of uncertainty and urgency. With the best of intentions, projected
human actions might be successful or they might be failed attempts. In interrelating moral theory and the theory of action, it is important to introduce a concept of ‘acting intentionally’, but it is also important to introduce a concept of ‘attempting to act’.

The standpoint of the tank crew at the moment when the shell is fired is a temporal standpoint. From this particular temporal standpoint, the tank crew performs the particular action of firing the shell, intending thereby to achieve the particular future goal of killing noncombatants. At the moment of firing, there are no deaths. By contrast, at the moment of killing, necessarily there are deaths. At the moment of firing, this action of firing and the consequence of deaths are externally related. By contrast, at the moment of killing, the action of killing and the consequence of deaths are internally related. At the moment of firing, the agential standpoint of the tank crew is a temporally prospective vantage point on a future contingency: the projected action of killing noncombatants might be successful or it might be a failed attempt.

What, then, should be meant by ‘attempting to act’? Actions are interlinked by a relation of means to goal. The time when the means is used is simultaneous with, or earlier than, the time when the goal might be achieved. (The past cannot be undone.) Typically, in armed conflict, the time of the means is earlier than the time of the goal, if only by a split second. From the temporal standpoint of the performance of an action as a means of achieving a future action as a goal, a human agent is attempting to perform the future action. (Similarly, from the temporal standpoint of the performance of an action as a means for bringing about a future consequence, a human agent is attempting to bring about the future consequence.) By ‘attempting to act’, I mean ‘attempting to perform an action as a goal, by performing an action as a means of achieving that goal’.

The subject of attempting is interrelated with a variety of topics in just war theory, as later chapters attest. Let me mention some examples. First, according to the counterharm principle, it is morally obligatory to attempt, as much as possible, to stop other persons from grievously harming people. Second, the last resort principle mandates that, before resorting to the use of armed force, every reasonable nonmilitary measure must be attempted.

F. ACTING KNOWINGLY

Even when destroying an obvious insurgent headquarters or command center, counterinsurgents must take care to minimize civilian casualties. New, precise munitions with smaller blast effects can limit collateral damage.

*Counterinsurgency (COIN FM 2006: E-6)*
Even a traditionally civilian object such as a house can be a military target if it is occupied and used by military forces.

US Department of Defense (DOD 2003: F-1)

In light of these two quotations, let us imagine realistically a particular case – a US targeted military operation in Pakistan – from the temporal standpoint of a particular day in the year 2012. It is known that a leader of Al Qaeda is presently in a civilian object – a house. Aerial surveillance from a hovering drone detects the presence of a few noncombatants also in the house. To minimise noncombatant casualties, the remote pilot of the drone launches a precision-guided missile at the house, thereby intentionally killing the Al Qaeda leader. But there is also ‘collateral damage’.

The term ‘collateral damage’ is ambiguous. The word ‘damage’ functions as both noun and verb. People damage (the verb) something, and it suffers damage (the noun). Military forces collaterally damage (the verb) noncombatants, and the noncombatants suffer collateral damage (the noun). But the term ‘collateral damage’ is not simply a euphemism for such human damage, for it also encompasses collateral damage to property and the environment. Military forces collaterally damage (the verb) property and the environment, and property and the environment suffers collateral damage (the noun).

In the Pakistan case, does the drone pilot bring about, as a foreseen but unintended consequence, collateral damage (the noun) or does he (or she) knowingly collaterally damage (the verb)? To collaterally damage is, more explicitly, to perform the action of collaterally damaging. In short, my answer is that he both brings about the consequence and performs the action. Let me explain.

The drone pilot performs the action of launching the missile at the house, with the goal of bringing about, as an extrinsic consequence, the death of the Al Qaeda leader. Note that this consequence is also an intrinsic result of a second action that he performs – namely, his intentional action of killing the Al Qaeda leader. Moreover, he performs the action of launching the missile at the house, while foreseeing that noncombatant deaths will be an unintended consequence. This consequence is also extrinsic to the action; for it is possibly the case both that he launches the missile and that noncombatant deaths do not occur.

Is this consequence of noncombatant deaths also an intrinsic result of a third action that he performs – namely, his knowing (but not intentional) action of killing the noncombatants? By launching the missile, does he both intentionally kill the Al Qaeda leader and knowingly kill the noncombatants?

To answer this question, I presuppose Gewirth’s concept of ‘voluntary action’ (but with a qualification): ‘By an action’s being voluntary or free I mean that its performance is under the agent’s control in that he unforcedly
chooses to act as he does, knowing the relevant proximate circumstances of his action’ (1980: 27). The qualification is that the word ‘unforcedly’ should be omitted. When a human agent performs a voluntary action, she knows sufficiently the relevant circumstances; she chooses to perform the action, for she might have chosen otherwise; and the action is under her control, in that it is within her power to refrain from performing the action.

This broad idea of acting ‘voluntarily’ is different from a narrower idea of acting ‘willingly’. During the prelude phase of an armed conflict, potential belligerents could employ coercive measures; not only coercive nonmilitary measures, such as economic sanctions, but also deterrent (or compellent) threats to use armed force. When a human being is coerced to perform an action by means of a threat of serious harm, she does not perform it ‘willingly’, but she does perform it (in a broad sense of the term) ‘voluntarily’. For she might have chosen not to perform it; instead, she might have chosen to attempt to stop or evade the threatened harm. In the face of coercion, we may submit or resist.

Clearly, an intentional action is a voluntary action. When we act to achieve goals, we act voluntarily. When a human agent performs a particular action for the sake of achieving a particular goal, that intentional action is under her control, in that it is within her power to refrain from attempting to achieve that goal.

Acting knowingly is acting voluntarily. At the moment of launching the missile, the drone pilot knows a very relevant circumstance – namely, that noncombatants will die. Indeed, he does not intend to kill them; killing them is not his purpose. Nevertheless, he voluntarily kills them. He chooses to kill them, for he might have chosen not to kill them. His action of killing them is under his control, in that it is within his power to refrain from killing them. By launching the missile, the drone pilot both intentionally kills the Al Qaeda leader and knowingly kills the noncombatants.

I am using the military term ‘collateral damage’, but there is a term more widely used in writings concerning just war theory: ‘side effect’. The occurrence of noncombatant deaths is a ‘side effect’ of the launching of the missile by the drone pilot. But the term ‘side effect’ is misleading, insofar as it suggests that the deaths merely happen to occur, that their occurrence lies outside the drone pilot’s sphere of control. However, because he is able to refrain from launching the missile, it is within his power to refrain from killing the noncombatants, and he knows this. By saying that he performs the action of knowingly killing them, rather than saying merely that he brings about the foreseen but unintended occurrence of their deaths as a side effect, we give expression to his responsibility for their dying. Even if he neither intends nor wants to do this, he kills them.

Is it morally obligatory for the drone pilot not to kill noncombatants knowingly? To kill other persons is to grievously harm them, whether
intentionally or knowingly. Therefore, by means of a subsumption argument with the nonharm principle as a premise, the following conclusion can be derived. It is morally obligatory not to kill noncombatants knowingly.

How should this destructive consequence of the drone pilot’s airstrike – the foreseen but unintended occurrence of noncombatant deaths – be morally evaluated? Primarily, it is morally obligatory not to knowingly kill the noncombatants. This moral obligation entails the moral wrongness of knowingly bringing about, as a consequence, their deaths. This entailment stems from the internal relation between the happening of the consequence and the performance of the action. Necessarily, if it is morally obligatory not to knowingly kill them, then it morally wrong to knowingly bring about, as a consequence, their deaths. Secondarily, it is morally wrong for the drone pilot to knowingly bring about, as ‘collateral damage’, the deaths of noncombatants.

G. RISKING

The subject of the ethics of risk is interrelated with various topics in just war theory. Let me mention some examples. First, when a targeted military operation is attempted, there is often a risk of escalation. Second, in an unstable crisis, one might attempt a preventive first strike, rather than risk invasion. Third, in attempting to negotiate, while the adversary is mobilising militarily, one might risk military disadvantage.

But the subject of the ethics of risk is complex, in that it interrelates ideas of moral theory, the theory of action and the theory of knowledge. In the fog of armed conflict, moral judgements are often (if not always) made under conditions of risk and uncertainty. In attempting uncertainly to achieve a goal, we might risk not achieving it. While attempting uncertainly to counter harm, we might risk acting harmfully. Under conditions of uncertainty, we might foresee that a proposed military action is ‘likely’ to harm noncombatants and so, if we were to attempt to perform it, we would ‘seriously risk’ harming them. The ideas of attempting and risking are intertwined. And, problematically, the concepts of ‘likelihood’ and ‘risk’ admit of scale or degree. Clearly, there can be principled moral disagreement about the likelihood of harms and the seriousness of risks.

Consequently, my discussion of the subject of the ethics of risk is quite incomplete. For the sake of concreteness, the idea of noncombatant immunity is featured. In a study of the doctrine of double-effect (DDE), T. A. Cavanaugh reported that ‘in standard contemporary double-effect cases (for example, tactical bombing that harms non-combatants) one foresees harm as an inevitable consequence’ (2006: 12). By contrast, my view is that a noncombatant immunity principle should also encompass grievous harm foreseen as a likely consequence. The nonharm principle morally prohibits actual grievous harm and grievous harm seriously risked.
Under conditions of uncertainty, a human agent might seriously risk killing noncombatants. In the Pakistan case, the drone pilot foresees with certainty that noncombatants will be killed; and so, by using armed force, he knowingly kills them. In other cases, the foresight of human agents is clouded with uncertainty; they foresee that it is likely that noncombatants will be killed; and so, if they were to use armed force, they would seriously risk killing them.

In preceding sections, I have interrelated the concept of ‘acting intentionally’ with the concept of ‘acting knowingly’. In the following sections, I discuss the interrelated concepts of ‘acting recklessly’ and ‘acting negligently’. In rethinking or revising the traditional noncombatant immunity principle, it is essential to morally prohibit not only military actions that would actually grievously harm noncombatants intentionally, but also military actions that would seriously risk grievously harming them intentionally (even if, by luck or chance, they were not actually grievously harmed).

H. ACTING RECKLESSLY
Let us imagine realistically another particular case – a US targeted military operation in Yemen – from the temporal standpoint of a particular day in the year 2012. It is known that a truly dangerous terrorist leader is presently in a house. Human intelligence warns that it is likely that noncombatants are nearby. Consequently, a drone pilot foresees that, if he were to launch a precision-guided missile at the house, it is likely that noncombatants would die. Nonetheless, while seriously risking killing noncombatants, he launches the missile, with the goal of killing the terrorist leader. Of course, his attempt might fail or no noncombatant deaths might occur. Let us imagine, however, that he kills the terrorist leader and also that some noncombatants die. Is this consequence of noncombatant deaths an intrinsic result of an action that he performs – namely, a reckless action of killing the noncombatants?

Acting recklessly is acting voluntarily. When launching the missile, the drone pilot is conscious of a very relevant circumstance – namely, that it is likely that noncombatants will die. Hence he acts ‘recklessly’, in that ‘he consciously disregards a substantial and unjustifiable risk’ that he will kill them (ALI 1962: Section 2.02(2)). Indeed, he does not intend to kill them; killing them is not his purpose. Nevertheless, he voluntarily risks killing them. He chooses to risk killing them, for he might have chosen not to risk killing them. His action of killing them is under his control, in that it is within his power to refrain from launching the missile. It is within his power to refrain from killing the noncombatants. By launching the missile, the drone pilot both kills the terrorist leader intentionally and kills the noncombatants ‘recklessly’.

The time of launching is earlier than the time of killing. Notice that the
mental state ‘recklessly’ qualifies both the action of launching and the action of killing. The drone pilot launches the missile recklessly, and he kills the noncombatants recklessly. Similarly, in the Pakistan case, the mental state ‘knowingly’ qualifies both the action of missile launching and the action of killing noncombatants. Also, the mental state ‘intentionally’ qualifies both the action of using a means and the action of achieving the goal.

Moral requirements should be temporalised. In a criminal trial, the idea of recklessness is applied retrospectively; the prosecution strives to convince the jury that the defendant committed a criminally reckless act. Analogously, this moral idea of recklessness can be applied retrospectively to morally blame. Combatants can be morally blamed for having killed noncombatants recklessly.

Most importantly, the moral idea of recklessness should be applied prospectively to morally constrain. To recklessly kill (or seriously risk killing) other persons is to grievously harm them. Therefore, by means of a subsumption argument with the nonharm principle as a premise, the following conclusion can be derived. It is morally obligatory not to seriously risk killing noncombatants recklessly. From the temporal standpoint of the action of launching the missile, it is morally obligatory for the drone pilot not to seriously risk killing noncombatants recklessly.

The idea of noncombatant immunity is embodied in international laws regulating the conduct of war (i.e. the ‘laws of war’ or ‘international humanitarian law’). In particular, Protocol I (of 8 June 1977) to the Geneva Conventions (of 12 August 1949) contains a legal requirement of ‘due care’: ‘Take all feasible precautions in the choice of means and methods of attack with a view to avoiding, and in any event to minimizing, incidental loss of civilian life, injury to civilians and damage to civilian objects’ (ICRC 1977a: Article 57(2)). Applied prospectively, this ‘due care’ requirement ought to constrain combatants from grievously harming civilians recklessly.

I. ACTING NEGLIGENTLY

Let us imagine realistically a third particular case – a US targeted military operation in Somalia – from the temporal standpoint of a particular day in the year 2012. It is known that a truly dangerous terrorist leader is presently in a house. Without obtaining intelligence about noncombatants, a drone pilot intentionally kills the terrorist leader by launching a precision-guided missile. Collaterally, noncombatants die. Is this extrinsic consequence of the missile launching an intrinsic result of an action that the drone pilot performs – namely, a negligent action of killing?

Acting negligently is acting voluntarily. When launching the missile, the drone pilot acts ‘negligently’, in that ‘he should be aware of a substantial and unjustifiable risk’ that he might kill noncombatants (ALI 1962: Section
2.02(2)). Indeed, he does not intend to kill them; killing them is not his purpose. Nevertheless, he voluntarily risks killing them. For he chooses not to do what a ‘reasonable person’ would do (ALI 1962: Section 2.02(2)) – namely, obtain intelligence about whether noncombatants are nearby. Thus his action of killing noncombatants is under his control, in that it is within his power to obtain intelligence about noncombatants; if he were to discover that noncombatants are nearby, it would be within his power to refrain from launching the missile. By launching the missile, he both kills the terrorist leader intentionally and kills noncombatants ‘negligently’.

But should combatants be held to such a ‘reasonable person’ standard? Would a ‘reasonable’ drone pilot obtain intelligence about noncombatants? To answer this last question, let me consult the new US counterinsurgency field manual (COIN FM), which (arguably) every US military officer ought to master. (The COIN FM is taught in US military academies.) In Appendix E, ‘Airpower in counterinsurgency’, there is a specific requirement to mitigate the negative effects of air power: ‘Bombing, even with the most precise weapons, can cause unintended civilian casualties’, but ‘counterinsurgents must take care to minimize civilian casualties’, and such ‘adverse effects’ can be mitigated, ‘given timely, accurate intelligence’ (COIN FM 2006: E-5, E-6). The imagined Somalia case is realistic; the drone pilot is negligent.

In Protocol I, there is a related legal requirement: ‘Do everything feasible to verify that the objectives to be attacked are neither civilians nor civilian objects’ (ICRC 1977a: Article 57(2)). Indeed, in a criminal trial by the ICC, this requirement can be applied retrospectively. On the other hand, applied prospectively, the legal requirement should constrain combatants from harming civilians negligently.

Analogously, the moral idea of negligence can be applied retrospectively to morally blame. Most importantly, it should be applied prospectively to morally constrain. To negligently kill (or seriously risk killing) other persons is to grievously harm them. Therefore, by means of another subsumption argument with the nonharm principle as a premise, the following conclusion can be derived. It is morally obligatory not to seriously risk killing noncombatants negligently.

J. KNOWINGLY RISKING AND INTENTIONALLY RISKING

It is morally obligatory not to intentionally, knowingly, recklessly or negligently harm other persons grievously. In interpreting this specification of the nonharm principle, it is essential to recognise that the four mental states...
qualify not only actual harming, but also harming seriously risked. A deontological theory should include concepts of ‘intentionally risking’, ‘knowingly risking’, ‘recklessly risking’ and ‘negligently risking’. For brevity, the word ‘seriously’ is omitted, but these terms should be read as containing that word implicitly – for instance, ‘knowingly (seriously) risking’. Similarly, the word ‘actually’ is omitted in the terms ‘intentionally (actually) harming’, ‘knowingly (actually) harming’ and so forth. Obviously, reckless acts can impose grievous risks of harm, as can negligent acts. But what should be meant by the terms ‘knowingly risking’ and ‘intentionally risking’?

Traditionally, the noncombatant immunity principle is understood as morally permitting combatants to cause some foreseen but unintended harms to noncombatants, but only when those harms satisfy a standard of proportionately – that is (roughly), only when the harms are outweighed by relevant benefits. Thus, as the COIN FM mandates: ‘It is wrong to [intentionally] harm innocents’, but, under some (‘proportional’) circumstances, US combatants ‘may take actions where they knowingly risk, but do not intend, harm to noncombatants’ (COIN FM 2006: 7–23). Significantly, the COIN FM uses the phrase ‘knowingly risk’.

The moral obligation not to intentionally harm civilians is embodied in Protocol I: ‘The civilian population as such, as well as individual civilians, shall not be the object of attack’ (ICRC 1977a: Article 51(2)). Arguably, the moral obligation not to intentionally risk harming civilians is also (implicitly) embodied in Protocol I: ‘Indiscriminate attacks are prohibited’ (ICRC 1977a: Article 51(4)). Paradigmatically, for example, the indiscriminate bombardment of military targets and civilians involves both the intention to destroy military targets and (at least) the intention to risk harming civilians (if not also the intention to actually harm them). In brief, a truly indiscriminate attack, even when not involving the intention to actually harm civilians, involves the intention to risk harming them.

By contrast and paradigmatically, a bombardment that discriminates between military targets and civilians involves the intention to destroy military targets, while knowingly harming, or knowingly risking the harming of, civilians. Whereas the idea of ‘knowingly risking’ is linked with the idea of ‘attacking discriminately’, the idea of ‘intentionally risking’ is linked with the idea of ‘attacking indiscriminately’.

But what is the difference between ‘knowingly risking discriminately’ and ‘consciously risking recklessly’? Let me sketch one way that this question might be answered. Frequently, in armed conflicts, combatants are so remote from their targets that only what is likely can be foreseen. Precision-guided munitions can mitigate, but not always obviate, the harming of noncombatants. Let us suppose that we consciously risk harming noncombatants recklessly when we consciously fail to satisfy the ‘due care’ requirement (in Protocol I).
On the other hand, despite taking ‘all feasible precautions’, we might still foresee that it is likely that noncombatants will be grievously harmed; we might still knowingly risk grievously harming noncombatants. When launching an attack – despite attempting to discriminate with ‘due care’ between combatants and noncombatants – we might still knowingly risk grievously harming noncombatants.

In conclusion, it is morally obligatory not to actually grievously harm noncombatants knowingly, but it is also morally obligatory not to seriously risk grievously harming them knowingly. It is morally obligatory not to actually grievously harm them intentionally, but it is also morally obligatory not to seriously risk harming them intentionally. And it is morally obligatory not to actually grievously harm or seriously risk grievously harming them recklessly or negligently.

In light of these moral prohibitions, how should the received noncombatant immunity principle be revised? This question is addressed in Chapter 7, ‘Last Resort and Noncombatant Immunity’.

K. PLANNED COURSES OF ACTIONS

Finally, let me introduce the key concept of a ‘planned course of actions’. A voluntary action can be performed intentionally, knowingly, recklessly or negligently. An intentional action is performed for the sake of some goal. Typically, an intentional action is part of a ‘planned course of actions’ – that is, a course of actions that is followed for the sake of some goal. The actions in a planned course of actions are causally interlinked and have interlinked goals (e.g. by relations of means to ends). A planned course of actions is mutable: at any juncture, while carrying it out, its plan could be revised and so could its goal. Some plans are well-formulated in advance and others are partly or wholly improvised; some are expressly formulated and others are partly or wholly implicit. Usually, a plan is incomplete, in that it does not specify every action to be performed in realising its goal. Also, a group of interrelated plans is itself a plan, and such a plan could be incomplete, insofar as the component plans are incompletely interrelated. Furthermore, in anticipation of contingencies, there is need to provide for alternative courses of action, each of which might be followed to realise the goal.

A main thesis is that just war principles are applicable primarily to planned courses of military actions.

II. MILITARY ACTIONS

First, military might still matters in twenty-first-century geopolitics. The security challenges facing Europe include conflicts in its neighborhood, such as in Libya; terrorism from failed states further away; and emerging
threats such as the proliferation of weapons of mass destruction and cyberwarfare. What defines these threats is both their diversity and their unpredictability. Investing in homeland security and retrenching will not be enough to counter them.

Anders Fogh Rasmussen, Secretary-General of NATO (2011: 3)

In developing a cosmopolitan just war theory, my aim is to formulate generalised just war principles that are applicable to all forms of armed conflict. As NATO Secretary-General Rasmussen observed, NATO faces a ‘diversity’ of ‘threats’. To ‘counter them’, NATO might engage in diverse sorts of military actions or deterrent threats of military actions. What are military actions? Is the concept of ‘military action’ so vague and general as to be indeterminate? In this second part of the chapter, these questions and related questions are explored.

Indeed, Libya is in Europe’s Mediterranean neighbourhood. However, from a cosmopolitan point of view – to echo the title of the landmark report of the Commission on Global Governance, *Our Global Neighborhood* (CGG 1995) – our neighbourhood is global. Just as individual states have national security strategies, should the Security Council have a global security strategy? What is a cosmopolitan security strategy?

To counter threats of ‘terrorism from failed states’, what should be our global counterterrorism strategy? The threats of ‘the proliferation of weapons of mass destruction and cyberwarfare’ are extraordinarily dire. What should be our global strategy to counter them?

Presumably, in asserting that ‘homeland security’ is not enough, Rasmussen is espousing something akin to NATO’s Cold War policy of ‘forward defence’. Unfortunately, just as one person’s freedom fighter is another person’s terrorist, so one person’s forward defence is another person’s looming offence. Should the Security Council endorse a proactive global security strategy that prioritises targeted military operations?

A strategy is a plan. To address such questions about global security strategies – and also other questions about military plans and actions – the concept of a ‘planned course of military actions’ is introduced. Complex military actions – for instance, military operations – have, as components, planned courses of military actions of individual human beings. The process of performing any military action in a planned course of military actions is a temporal process; correlative, the process of applying just war principles to a planned course of military actions is a temporal process.

**A. WHAT IS A MILITARY ACTION?**

According to traditional state-centric just war theories, the primary agents that apply just war principles are states (or rulers of states), and the primary
targets to which those agents apply the principles are states (or the military actions of states). By contrast, my aim in this book is to formulate generalised just war principles that are applicable by all sorts of responsible agents to all forms of armed conflict. Indeed, interstate wars comprise a paradigm form of armed conflict, but so do revolutionary wars. Correspondingly, rulers of states comprise a sort of responsible agents, but so do leaders of armed revolutions.

Presumably, the term ‘armed conflict’ also encompasses armed humanitarian interventions, civil wars, insurgencies and counterinsurgencies and so forth. Noting the phrase ‘and so forth’, it might be surmised that there are problematic borderline cases. For example, is a military operation by UN peacekeepers against peace agreement ‘spoilers’ a form of armed conflict? What are armed conflicts? Who are responsible agents? Are the concepts of ‘armed conflict’ and ‘responsible agent’ so vague and general as to be indeterminate? The subject of indeterminate concepts is discussed in a later section, ‘Open Texture and Sufficient Resemblance’.

In order to generalise just war principles sufficiently, it is essential to have a sufficiently general concept of ‘military action’. The generalised just war principles of a cosmopolitan just war theory should be applicable to military actions of all types. To begin with, I list some types of military actions that are paradigmatic. Waging a war is a military action. More explicitly, some paradigm types of military actions are the waging of an interstate war, the waging of a revolutionary war and the waging of a civil war. In general, it is presupposed that to wage (or engage in) an armed conflict of any form is to perform a military action.

In accordance with coherentism, a just war theory can be elucidated by interrelating it with a theory of military affairs. In theorising about the waging of wars, different ‘levels’ of military action can be distinguished – namely, a tactical level, an operational (or ‘theatre’) level, a strategic level and a political level (Smith 2007: 13). At the political level, rulers of states, leaders of armed revolutions or other politically responsible agents deliberate about political purposes or goals. Traditionally, at this level, *jus ad bellum* principles are applicable; at the other three levels, *jus in bello* principles are applicable. By contrast, in order to generalise just war principles sufficiently, a main thesis is that the core just war principles should be applicable at all four levels.

At the strategic level, military commanders or other responsible agents plan military campaigns; at the operational level, military operations are planned. During the waging of an interstate war (e.g. the Second World War), there are military campaigns (e.g. the North African Campaign) and military operations (e.g. during the Battle of the Bulge). Carrying out such a military campaign is a paradigm type of military action, as is conducting
such a military operation. Presumably, there are military campaigns and operations in armed conflicts of other forms – for instance, civil wars and armed humanitarian interventions. Consider the cases of Libya and Rwanda. In carrying out a military campaign in 2011 against the Libyan Government, US and NATO air forces conducted military operations. In carrying out a military campaign in 1994 against the Rwandan Government, the RPF conducted military operations.

To generalise again, it is presupposed that to carry out a military campaign or conduct a military operation is to perform a military action, whatever the form of armed conflict. Generalised just war principles should be applicable to all such military actions.

The relevant concept of ‘military action’ is even more general. At the tactical level, during a standard military operation, there are particular combats. Fighting a combat is a military action. In participating in a combat, individual human agents use armed force. Any use of armed force by an individual human agent is a military action. A major in the US Marines, Glen G. Butler, in discussing his experiences in the Iraq War, said: ‘I have not shot one round without good cause’ (Butler 2004). Suppose that he meant by ‘good cause’ a cause that is morally good, although he might have meant something different. In this book, I am endorsing such a moral intuition regarding the need for a just cause. It should be the purpose of the just cause principle to morally constrain his shooting of each round.

Every military action, no matter how large scale or small scale, must satisfy the core principles of just cause, last resort, proportionality and noncombatant immunity.

### B. MILITARY ACTIONS VERSUS POLICE ACTIONS

Considering accordingly that there are reasonable grounds to believe that Muammar Gaddafi is criminally responsible as an indirect co-perpetrator, under article 25(3)(a) of the [Rome] Statute [of the ICC], for the following crimes committed by Security Forces under his control in various localities of the Libyan territory . . . i. murder as a crime against humanity . . . and ii. persecution as a crime against humanity . . . the [ICC] Chamber hereby issues a warrant of arrest for Muammar Mohammed Abu Minyar Gaddafi . . .

Pre-Trial Chamber I of the International Criminal Court

(ICC 2011: 6–7)

On 27 June 2011, the ICC issued this warrant of arrest for Qaddafi (also spelled ‘Gaddafi’). Let us consider this particular case from the temporal standpoint of that day. At present, there is no international police force that is empowered to enforce this arrest warrant by invading the territory of Libya.
and apprehending Qaddafi, using all necessary means, including armed force, if necessary.

Arguably, the Security Council is empowered by the UN Charter to authorise the enforcement of this arrest warrant. Let us imagine (hypothetically, of course) some crucial elements of a pertinent Security Council resolution, the wording of which is mostly borrowed from the aforementioned Resolution 1973 (2011 [emphasis in original]).

*The Security Council,*

*Recalling* its decision to refer the situation in the Libyan Arab Jamahiriya since 15 February 2011 to the Prosecutor of the International Criminal Court,

*Determining* that the situation in the Libyan Arab Jamahiriya continues to constitute a threat to international peace and security,

*Acting under Chapter VII of the Charter of the United Nations,*

*Authorises* Member States, acting nationally or through regional organisations or arrangements, to take all necessary measures to enforce compliance with the warrant of arrest for Muammar Mohammed Abu Minyar Gaddafi issued by the International Criminal Court on 27 June 2011.

From the temporal standpoint of that date, let us imagine prospectively (and hypothetically) a future mission by US Special Operations forces, the goal of which is to arrest Qaddafi and transport him to The Hague for trial by the ICC. Authorised by such a Security Council resolution, this mission is authorised, in particular, to take ‘all necessary measures’, including the use of armed force, if necessary. Informed by human intelligence about Qaddafi’s whereabouts, the human agents involved in this mission invade Tripoli, enter the building where he resides, kill some of his bodyguards and wound him. Quickly, he is transported to a hospital in The Hague, where he will receive medical care and be tried by the ICC.

Is this mission by US Special Operations forces a military action or is it a police action? Note that the word ‘or’ in this sentence can be used either exclusively or inclusively. I reject an ‘exclusive distinction’: it is either a military action or a police action, but not both. Instead, I accept an ‘inclusive distinction’: it is either a military action or a police action or both. Briefly, my answer is that it is both a military action and a police action. It resembles paradigm military actions, but it also resembles paradigm police actions. Indeed, this particular case might be called a ‘borderline case’, but I prefer to call it an ‘overlap case’. For the class of military actions and the class of police actions overlap; this particular case is in this overlap – that is, it is a member of both of the two classes. The distinction between military actions and police actions is thus inclusive.
C. JUST WAR THEORY AND HUMAN SECURITY

In her book *Human Security*, Mary Kaldor rejected just war theory. Instead, she advocated ‘a new ethical approach’ (2007: 154) – one that is ‘cosmopolitan’ (2007: 122). Specifically, it is a human security approach, because ‘security is understood as the defence of individual human beings’ (2007: 122). ‘There is still a role for legitimate military force’, she admitted, ‘but the way it is used is more akin to domestic law enforcement than war-fighting’ (2007: 155). Apparently, she interpreted the distinction between law enforcement and war-fighting as an exclusive distinction.

By contrast, my view is that, even if the role for legitimate military force in a particular case is more akin to law enforcement, it might still be akin to war-fighting, albeit less akin. The class of acts of law enforcement and the class of acts of war-fighting overlap.

With the aim of formulating cosmopolitan just war principles, I am starting with the five criteria of legitimacy proposed in the High-level Panel Report. Note that the term ‘human security’ occurs in the criterion of ‘seriousness of threat’. Indeed, Kaldor’s human security approach is incompatible with traditional just war theory. By contrast, my cosmopolitan approach to just war theory is a sort of human security approach, for it too stresses the defence of individual human beings.

Consider the criterion of ‘proportional means’: ‘Are the scale, duration and intensity of the proposed military action the minimum necessary to meet the threat in question?’ Typically, armed conflicts are highly destructive, and a chief function of a just war theory should be to morally constrain the scale, duration and intensity of uses of armed force. Characteristically, the scale, duration and intensity of a military action that is not also a police action (briefly, a ‘nonoverlap military action’) are greater than the scale, duration and intensity of a military action that is also a police action (briefly, an ‘overlap military action’).

In accordance with the proportional means criterion – and by analogy with the last resort principle – I support in this book roughly the following ‘policing resort principle’. Before attempting to achieve a goal by means of a nonoverlap military action, we are morally required to attempt to achieve the goal by means of an overlap military action, whenever it is reasonable to do so. This principle is discussed more fully in Chapter 7, ‘Last Resort and Noncombatant Immunity’.

But how can there be such overlap cases?

D. OPEN TEXTURE AND SUFFICIENT RESEMBLANCE

Faced with the question whether the rule prohibiting the use of vehicles in the park is applicable to some combination of circumstances in which it appears indeterminate, all that the person called upon to answer can do
is to consider (as does one who makes use of a precedent) whether the present case resembles the plain case ‘sufficiently’ in ‘relevant’ respects.


Hart’s notion of the indeterminateness of rules was influenced by Friedrich Waismann’s notion of the ‘open texture’ of empirical concepts (Hart 1961: 249). The concept of ‘vehicle’ has an open texture. An automobile is a paradigm case of a vehicle, and an apple is clearly not a vehicle. Is a wheelchair a vehicle? Does this rule prohibit the use of wheelchairs in the park?

When a concept has an open texture, it cannot be defined with ‘absolute precision’ (Waismann 1968: 42). Suppose that, according to our current definition of the concept of ‘vehicle’, we cannot determine whether a wheelchair is a vehicle. Then, to answer the question, we need to ‘modify our definition’ (Waismann 1968: 42). We need to consider whether wheelchairs resemble automobiles (or other paradigm cases) sufficiently in relevant respects. If they do (or do not), and if we modify our definition accordingly, it is no longer indeterminate whether wheelchairs are (or are not) vehicles. It is no longer indeterminate whether the rule prohibits them.

What should be meant by ‘resembles sufficiently in relevant respects’? There is no space to examine how Hart would answer this question, and so I only state my own answer. To begin with, let me illustrate the idea of ‘resembling sufficiently in relevant respects’ by means of the Qaddafi case.

On the one hand, suppose that, according to our current definition of the concept of ‘military action’, we cannot determine whether the hypothetical mission by US Special Operations forces to arrest Qaddafi is a military action. Does it resemble sufficiently in relevant respects paradigm cases of military actions? Consider the case of armed humanitarian intervention in Somalia from 1992 to 1994 (Wheeler 2000: 172–207). On 6 June 1993, in response to the killing of UN peacekeepers in Somalia, Security Council Resolution 837 (1993) authorised the taking of ‘all necessary measures against all those responsible’. Subsequently, in the Battle of Mogadishu from 3–4 October 1993, a US Special Forces operation attempted to kill or capture the person believed to be most responsible, General Mohamed Fatah Aidid. Arguably, the hypothetical US mission to arrest Qaddafi resembles sufficiently in relevant respects this US military action against Aidid.

On the other hand, suppose that, according to our current definition of the concept of ‘police action’, we cannot determine whether the hypothetical US mission to arrest Qaddafi is a police action. Does it resemble sufficiently in relevant respects paradigm cases of police actions? Consider the case of the arrest of the former President of Liberia, Charles Taylor, by the United Nations Mission in Liberia (UNMIL). On 3 March 2003, Taylor was indicted
by the Special Court for Sierra Leone – a court approved by the Security Council. On 19 September 2003, Security Council Resolution 1509 (2003) established UNMIL. However, UNMIL’s mandate does not include the phrase ‘all necessary means’. On 29 March 2006, Taylor was ‘apprehended’ in Nigeria, transported from Nigeria to Liberia, formally and peacefully ‘arrested’ by UNMIL and ‘transferred to the custody of the Special Court for Sierra Leone’ (Open Society 2011). Arguably, the hypothetical US mission to arrest Qaddafi resembles sufficiently in relevant respects the police action by UNMIL of arresting Taylor.

Arguably, then, the hypothetical US mission to arrest Qaddafi both resembles sufficiently in relevant respects a paradigm military action and resembles sufficiently in relevant respects a paradigm police action. For brevity, the three actions are henceforth termed, respectively, the ‘Qaddafi action’, the ‘Aidid action’ and the ‘Taylor action’. Arguably, the Qaddafi action is both a military action and a police action – that is, it is an overlap military action. To support this last claim more fully, it might be compared with other paradigm military actions and police actions.

What are some relevant respects for determining whether a military action is also a police action? Paradigmatically, police ‘arrest subjects on evidence and submit them to judicial proceedings’ (Bayley and Perito 2010: 53). Thus, in the Qaddafi action, Qaddafi is arrested on evidence stated in the ICC warrant of arrest and submitted to judicial proceedings of the ICC.

Let me reply to an objection to the idea of overlap cases. Relations of resemblance have the formal property of ‘symmetry’ (Armstrong 1989: 102). (Roughly, a relation R is ‘symmetric’ just in case, if xRy, then yRx.) Since the Qaddafi action resembles the Aidid action, it follows, of necessity (or conceptually or logically), that the Aidid action resembles the Qaddafi action. Therefore, since the Qaddafi action is a police action, so is the Aidid action. Clearly, however, the Aidid action is not a police action. Also, since the Qaddafi action resembles the Taylor action, it follows, of necessity, that the Taylor action resembles the Qaddafi action. Therefore, since the Qaddafi action is a military action, so is the Taylor action. Clearly, however, the Taylor action is not a military action. To avoid these contradictions, the distinction between military actions and police actions has to be an exclusive distinction.

My reply to the objection is as follows. Admittedly, there is a relation of ‘resembling sufficiently in relevant respects’, but it does not have this formal property of ‘symmetry’. Given that we can determine that the Qaddafi action is a military action because it resembles sufficiently in relevant respects the Aidid action, it does not follow, of necessity (or conceptually or logically), that we can determine that the Aidid action is a police action because it resembles sufficiently in relevant respects the Qaddafi action. For the relevant respects sufficient for determining whether the Qaddafi action is a military action are
considerably different than the relevant respects sufficient for determining whether the Aidid action is a police action. Similarly, given that we can determine that the Qaddafi action is a police action because it resembles sufficiently in relevant respects the Taylor action, it does not follow, of necessity, that we can determine that the Taylor action is a military action because it resembles sufficiently in relevant respects the Qaddafi action. For the relevant respects sufficient for determining whether the Qaddafi action is a police action are considerably different than the relevant respects sufficient for determining whether the Taylor action is a military action. The distinction between military actions and police actions is inclusive.

We should not be misled by the word ‘resembles’. The relation of ‘resembling sufficiently in relevant respects’ is not a relation of ‘exact resemblance’. A relation of exact resemblance is reflexive, symmetric and transitive – that is, it is an ‘equivalence relation’ (Armstrong 1989: 41). (Roughly, a relation $R$ is ‘transitive’ just in case, if $xRy$ and $yRz$, then $xRz$; and it is ‘reflexive’ just in case $xRx$. ) The classes of objects between which an equivalence relation holds are mutually exclusive. In Euclidean geometry, an equivalence relation of similarity divides the class of triangles into mutually exclusive subclasses – for instance, the subclass of equilateral triangles and the subclass of isosceles right triangles. By contrast, because the relation of ‘resembling sufficiently in relevant respects’ is neither symmetric nor transitive, the classes of cases between which it holds can overlap.

In conclusion, my presupposition of coherentism extends to the process of defining concepts. Provisionally, a concept might be defined casuistically, by examining paradigm cases. Frequently, concepts thus defined have an open texture. For instance, suppose that, according to our current definitions of the concepts of ‘military action’ and ‘police action’, we cannot determine whether the Qaddafi action is both a military action and a police action. Then we need to consider both whether it resembles sufficiently in relevant respects paradigm cases of military actions and whether it resembles sufficiently in relevant respects paradigm cases of police actions. Consequently, we might need to modify our definitions of those concepts. In general, it is presupposed that definitions can be elucidated, revised or supplemented. Moral deliberation about uses of armed force should involve a process of mutual adjustment of moral judgements about particular cases and specific issues, moral principles and definitions of concepts.

**E. COMPLEX MILITARY ACTIONS**

In order to defend and advance our national interests, the Department of Defense must balance resources and risk among four priority objectives: prevail in today’s wars, prevent and deter conflict, prepare to defeat adversaries and succeed in a wide range of contingencies, and
preserve and enhance the All-Volunteer Force. These objectives reflect a strategic approach that can evolve and adapt in response to a changing security environment.

US Department of Defense (DOD 2010a: 11)

Entitled ‘U.S. defense objectives’, this paragraph from the 2010 Quadrennial Defense Review Report (QDR) summarises – from the temporal standpoint of February 2010, which is the month the QDR was released – the goals of US military strategy. The general concept of ‘interest’ has an open texture, as does the specific concept of ‘national interest’. Evidently, the US ‘strategic approach’ in the QDR is primarily state-centric. By contrast, a cosmopolitan strategic approach should ‘defend and advance’ global interests, but the specific concept of ‘global interest’ also has an open texture. The paragraph is replete with verbs – ‘defend’, ‘advance’, ‘balance’, ‘prevail’, ‘prevent’, ‘deter’, ‘prepare’, ‘defeat’, ‘succeed’ – each of which expresses a concept that has an open texture. A comparable remark holds of such nouns in the paragraph as ‘war’, ‘conflict’, ‘adversary’ and ‘contingency’. In the preceding section, I focus on the concepts of ‘military action’ and ‘police action’, but my main points there are generalisable to a variety of other concepts apposite for just war theorising.

In this section, for the sake of concreteness, let us adopt the temporal standpoint of February 2010. How are just war principles applicable to such goals (or objectives) of military strategy? The paragraph’s initial phrase – ‘in order to’ – signals a relation between means and goal. For instance, prevailing in today’s wars is a means, the goal of which is defending and advancing national interests. In particular, in order to prevail in today’s war in Afghanistan, the US Department of Defense is carrying out a counterinsurgency campaign there. Carrying out the counterinsurgency campaign is the means, the goal of which is prevailing in the Afghan War. In general, a military strategy is a plan, and plans involve actions that are interlinked by relations of means to goals.

Just war principles are deontological principles, and deontological principles obligate, permit or prohibit performances of actions. For example, two of the aforementioned military actions may be described more explicitly as follows. Performing the military action of carrying out the counterinsurgency campaign in Afghanistan is a means of achieving the goal of performing the military action of prevailing in today’s wars. When goals of military strategy are thus understood as performances of military actions, just war principles are applicable. For instance, the proportionality principle requires (roughly) that the benefits of a military action must outweigh the harms. Thus, if the harms of prevailing in today’s wars would outweigh the benefits, it is morally obligatory not to attempt to perform that military action.
In the preceding paragraph, the singular term ‘the military action’ is used. Presumably, however, each of the military actions is ‘complex’. For instance, a military campaign is, according to Quincy Wright, ‘a group of military operations within a limited period of time connected by a strategic plan under the control of a single command’ (1942: 687). Thus a ‘complex’ military action (e.g. a military campaign) has ‘component’ military actions (e.g. military operations). The counterinsurgency campaign in Afghanistan is thus complex; for example, it has as a component the counterinsurgency operation in Marja (a town in Afghanistan’s Helmand Province). The complex military action of prevailing in today’s wars has such component military actions as prevailing in the Afghan War and prevailing in the Iraq War.

To generalise just war principles sufficiently, the general concept of ‘military action’ should involve a concept of ‘complex military action’. Every military action must satisfy the principles of just cause, last resort, proportionality and noncombatant immunity, whatever the complexity.

F. ARE THERE BASIC MILITARY ACTIONS?
Since there are complex military actions – to adapt Leibniz’s famous dictum – must there be ‘simple’ ones? Evidently, there are different levels of complexity – for example, battles are components of military operations and military operations are components of military campaigns – but is there a foundational level? Military actions of groups of human beings are emergent from, or supervenient on, military actions performed collectively by individual human beings. During various counterinsurgency operations in Afghanistan, individual US soldiers fired weapons, searched dwellings, policed checkpoints and so forth. Complex military actions have, as components, military actions of individual human beings.

First, I summarise a foundationalist answer to this question of whether there are ‘simple’ military actions. Consider a particular (but hypothetical) case, from a particular temporal standpoint in the year 2010. In order to fire an assault rifle at a particular suspected Taliban fighter, a particular US soldier squeezes the trigger. Such a particular ‘bodily movement’ as squeezing a trigger is a ‘basic action’. Roughly, a human being performs a basic action when she intentionally moves her body in a certain way (Moya 1990: 14–17). In short, the foundationalist answer is that there are simple military actions – namely, such basic military actions of bodily movement.

By contrast, my coherentist answer to the question of ‘simples’ is as follows. Indeed, just war principles are applicable to such military actions of bodily movement as squeezing the trigger. In order to kill the suspect, the soldier squeezes the trigger. Suppose that, by applying just war principles, we determine that it is morally obligatory not to kill the suspect. Then, by applying the means-goal principle, we determine that it is morally obligatory
not to squeeze the trigger. The main point is that, instead of morally evaluating a single action, we are morally evaluating a ‘course of actions’. Instead of morally evaluating the action of squeezing the trigger by itself, we are morally evaluating a course of actions consisting of (at least) squeezing the trigger and killing the suspect.

As indicated by the parenthetical phrase ‘at least’, the morally relevant course of actions in this particular case is considerably more complex: it includes patrolling a neighbourhood, spotting a suspect, deliberating about whether to kill him, deciding to kill him, planning how to kill him, aiming the weapon, squeezing the trigger, firing the weapon and killing him. In addition to ‘outward’ actions of patrolling, spotting, aiming, squeezing, firing and killing, this course of actions includes ‘inward’ actions (or ‘mental acts’) of deliberating, deciding and planning. (But these concepts of ‘outward’ and ‘inward’ have open textures.)

G. PLANNED COURSES OF MILITARY ACTIONS

I call such a course of actions a ‘planned course of military actions’. Complex military actions by groups of human beings have as components planned courses of military actions of individual human beings.

Truly, there are such ‘mental actions’, for the soldier voluntarily deliberates, decides and plans. For instance, to plan is to act voluntarily. When a human agent plans to follow a course of actions, she knows sufficiently the relevant circumstances; she chooses to plan to follow the course of actions, for she might have chosen not to plan to follow it; and her planning is under her control, in that it is within her power to refrain from planning to follow it.

How are just war principles applicable to such acts of planning? The agential standpoint is a temporal standpoint. In particular, the agential standpoint of this soldier during the time of his planning of the killing of the suspect is a temporal standpoint. Suppose that, by applying just war principles, he determines that it is morally obligatory not to kill the suspect. Then, by applying the means-goal principle, he should determine that it is morally obligatory not to plan a course of military actions as a means of achieving the goal of killing the suspect. In brief, it is morally obligatory not to plan to kill the suspect.

At every level of complexity, military actions involve planning. Just war principles should be applicable to military plans, whatever the level of complexity, up to and including the US military strategy in the QDR. They should be applicable to the planning of uses of armed force at the tactical, operational, strategic and political levels. To morally constrain responsible agents from performing unjust military actions with sufficient effectiveness, it is essential to morally constrain them during the times of planning.

Broadly, for each armed conflict, there are prelude, resort, conduct, halting
and aftermath phases. The hypothetical case of the killing of a suspected Taliban fighter by a US soldier occurs during the conduct phase of the Afghan War. I want to emphasise that the idea of military planning is pertinent also to prelude, resort, halting and aftermath phases. Just war principles are applicable not only to military planning during resort and conduct phases, but also to military planning during prelude, halting and aftermath phases.

In light of the concept of ‘mental action’, let me sketch a different foundationalist answer to the question of ‘simples’. In accordance with a ‘volitional theory of action’, the basic actions are ‘volitions’ – for instance, the basic action of ‘willing’ to squeeze a trigger (Moya 1990: 19–22). My coherentist response is as follows. Typically, instead of a single mental action of ‘willing’, there is a course of mental actions of (at least) deliberating, deciding, planning and (perhaps) willing. Instead of morally evaluating the soldier’s mental action of willing to squeeze the trigger by itself, we should morally evaluate a course of the soldier’s mental actions – namely, deliberating about whether to kill the suspect, deciding to kill him, planning how to kill him and (perhaps) willing to kill him.

In conclusion, rather than a foundationalist conception of basic actions of bodily movement (or willing), I am presupposing a coherentist conception of planned courses of actions. Each planned course of military actions is itself a complex military action. Conversely, each military action involves some planning, even if rudimentary. For instance, rather than a ‘basic action’ of ‘firing a rifle’, there is a planned course of actions, including loading a rifle, shouldering it, aiming it and squeezing the trigger. Accordingly, a main thesis is that the concept of ‘military action’ should be understood in terms of the concept of ‘planned course of military actions’.

Comparably, the concept of ‘nonmilitary measure’ should be understood in terms of the concept of ‘planned course of nonmilitary actions’.

Henceforth, the terms ‘military action’ and ‘planned course of military actions’ are used interchangeably, as are the terms ‘nonmilitary measure’ and ‘planned course of nonmilitary actions’. The former terms abbreviate the latter terms.

In a deontological just war theory, the primary unit of moral evaluation is a planned course of actions.

H. REFRAINING

Frequently, when we plan, we envisage alternative courses of actions, we deliberate about which of them to follow, we decide to follow one particular course of actions and we plan how to follow it. In the hypothetical case, rather than the stated course of actions, the soldier might have followed an alternative course of actions – namely, patrolling the neighbourhood, spotting the suspect, deliberating about whether to kill him, deciding not
to kill him, planning not to kill him, refraining from aiming the weapon, refraining from squeezing the trigger, refraining from firing the weapon and refraining from killing him.

Truly, such refrainings are voluntary actions, albeit ‘negative actions’ (or ‘negative acts’) (Vermazen 1985). When a human agent refrains from performing an action, she knows sufficiently the relevant circumstances; she chooses to refrain from performing it, for she might have chosen otherwise; and her refraining from performing it is under her control, in that it is within her power to perform it. Thus, when the soldier performs the ‘negative action’ of refraining from firing the weapon, he knows sufficiently the relevant circumstances; he chooses to perform the negative action, for he might have chosen otherwise; and his performing the negative action is under his control, in that it is within his power to fire the weapon.

Often, moral requirements of my just war theory are expressed by means of the word ‘not’. Canonically, just war principles are expressed as conditional prohibitions. Suppose, for example, that a particular agent understands that it is morally obligatory not to intentionally kill noncombatants. Then it is morally obligatory for him (or her) to intentionally refrain from intentionally killing them. Suppose, also, that he understands that it is morally obligatory not to knowingly kill noncombatants. Then it is also morally obligatory for him to intentionally refrain from knowingly killing them. To generalise, when it is morally obligatory for a particular agent not to perform a military action — and a reasonable agent should know this — then it is morally obligatory for that agent to intentionally refrain from performing it.

I. TEMPORAL PHASES OF MILITARY ACTIONS

The concept of a ‘planned course of military actions’ is a temporal concept. Typically, a planned course of military actions has temporal phases, and each of the temporal phases is itself a planned course of military actions. Correlatively, the process of applying just war principles at any temporal phase of a planned course of military actions is a temporal process. In Chapter 2 (‘Just War Theory’), a concept of ‘temporal phase’ is introduced. In this section, that concept is generalised.

The concept of ‘temporal phase of a planned course of military actions’ has an open texture. How, in a particular case, can military actions be grouped together into phases? A coherentist answer to this question should involve a process of mutual adjustment of a definition of the concept of ‘temporal phase’, informed judgements about the particular case, relevant normative and empirical theories and so forth.

Answers to the question can be controversial. Consider, for example, the following three military actions: the 1991 Gulf War, the intermediate period of airstrikes in Iraq to enforce no-fly zones and the 2003 invasion of
Iraq. From a temporal standpoint shortly before the 2003 invasion, Thomas Nichols argued that ‘Iraq does not accept the no-fly zones . . . the Iraqis have fired on coalition aircraft over 700 times since 1998 alone . . . [and therefore] the United States and its allies are already at war with the Iraqis’ (2003: 28). Accordingly, it might be argued that the Iraq War began in 1991 and ended in 2003, and that the military actions of the Iraq War should be grouped into three chief temporal phases: ‘defending Kuwait’, ‘enforcing no-fly zones’ and ‘invading Iraq’.

A just cause principle should be applicable to all forms of armed conflict, however they are categorised or named. Suppose that there was a single war between (primarily) the United States and Iraq that began in 1991 and ended in 2003. Roughly, according to a just cause principle, it is morally obligatory not to perform a military action, if there is not a just cause. Suppose that, from the temporal standpoint of the year 1991, there is a just cause for defending Kuwait. Nevertheless, from the temporal standpoint of the year 2003, it is morally obligatory not to invade Iraq, if there is not a just cause. Granted that there was a just cause for defending Kuwait, it does not follow (conceptually or logically) that there was a just cause for invading Iraq, however these armed conflicts are categorised or named.

To generalise, a main thesis is that the core just war principles of just cause, last resort, proportionality and noncombatant immunity should be applicable at every phase of any planned course of military actions.

J. TEMPORAL STANDPOINTS AND CONTINGENCY PLANS

From the temporal standpoint of the present, the future is open. When a human agent performs a voluntary action, she chooses to perform it, and she might have chosen otherwise. When we plan a course of military actions, we choose to plan it, and we might have chosen to plan an alternative course of military actions.

The agential standpoint is a temporally prospective vantage point on future contingencies. The open future is an uncertain future, so there is need for contingency planning. In the fog of armed conflict, we have to plan contingently. Contingency plans are standardly expressed by conditionals: ‘if deterrence fails, launch an attack’; ‘if the enemy attacks, counterattack’; ‘if civilians are present, abort the mission’; and so forth. The concept of ‘contingency planning’ is interrelated with the concept of ‘attempting to act’. An attempt to achieve a goal by means of a planned course of military actions might fail, so there is need to plan contingently to achieve the goal by means of an alternative course of military actions.

I am emphasising the idea of last resort, in order to counterbalance overemphasis of the idea of just cause. The process of applying a last resort principle is a temporal process. Roughly, such a principle morally requires
that, before using armed force to achieve a goal, every reasonable nonmilitary measure must be attempted. More explicitly, the following is morally required. Before attempting to achieve a goal by means of a course of military actions, it is morally obligatory to attempt to achieve it by means of a course of nonmilitary actions, whenever it is reasonable to do so. Suppose that it is reasonable to attempt to achieve the goal by means of a course of peaceful actions – for instance, a process of negotiation. The future is uncertain, such an attempt might fail, so there is need to plan contingently to achieve the goal by means of an alternative reasonable course of nonmilitary actions, perhaps one that is coercive – for example, a process of imposing targeted economic sanctions. The future is uncertain, every reasonable attempt to achieve the goal by means of a course of nonmilitary actions might fail, so there is need to plan contingently to achieve it by means of a course of military actions. The concept of ‘contingency planning’ is integral to the idea of last resort.

Truly, there is a fog of uncertainty shrouding the future, but there is also a fog of inevitability shrouding the past. The past is settled. From the temporal standpoint of the present, each past military action has happened and cannot be undone. Hence, from the temporal standpoint of the present, it might appear that what happened had to happen; it might appear that the armed conflicts that occurred had to occur; it might appear that, when one military action occurs later than another, the later one had to occur because the earlier one occurred. But these appearances are illusions – illusions of the inevitability of history.

Instead, human beings make history. From the temporal standpoint of the present, there are past temporal standpoints. When we imaginatively adopt a past temporal standpoint, the future – prospectively, from that past temporal standpoint – is open. From a particular temporal standpoint in the past, there are present military actions, past military actions and future military actions. From that past temporal standpoint, when responsible agents plan a course of military actions, they choose to plan it, but they might have chosen to plan an alternative course of military actions. Human beings make war, but they might not have made war.

For an illustration, regard again the case of genocide in Rwanda. From the temporal standpoint of the present, some relevant events are as follows. Between 1990 and 1993, armed conflict occurred between the Rwandan Government and the Tutsi rebel group (RPF); in August 1993, a peace agreement was signed; on 5 October 1993, Security Council Resolution 872 (1993) authorised UNAMIR; subsequently, UNAMIR was deployed; and, from April to mid-July 1994, the genocide happened. In the fog of inevitability shrouding the past, it might appear that the genocide had to happen, but this appearance is an illusion.

Recall that, on 6 June 1993, in the aforementioned case of armed
humanitarian intervention in Somalia, the Security Council authorised the taking of all necessary measures. Four months later, the Security Council failed to authorise the taking of all necessary measures: UNAMIR was not provided with a Chapter VII mandate authorising the use of armed force, if necessary.

When we imaginatively adopt the temporal standpoint of the months from October 1993 to April 1994, the future (prospectively, from that past temporal standpoint) is open. From that past temporal standpoint, agents responsible for UNAMIR only plan courses of nonmilitary actions in Rwanda. However, the Security Council might have decided otherwise; UNAMIR might have been provided with a Chapter VII mandate; UNAMIR might have been an armed UN peacekeeping mission. Consequently, from the temporal standpoint of the months from October 1993 to April 1994, instead of only planning courses of nonmilitary actions, the Force Commander of UNAMIR, Lieutenant-General Romeo Dallaire, might have also planned courses of military actions contingently, as epitomised by the following conditional: ‘use armed force to protect civilians, if necessary’. The genocide in Rwanda might never have happened.

NOTES

2. For a discussion of the role of a concept of plan in a theory of intention, see Bratman (1987).