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DISCRIMINATION IN MODERN ASYMMETRIC CONFLICT: A CHRISTIAN MORAL ANALYSIS

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CONTENTS

Contents	2
Short Abstract	3
Long Abstract	5
Introduction	15
Ch. 1 The changing character of war: modern asymmetric conflict (MAC)	19
Ch. 2 The improvised explosive device (IED) network – a MAC exemplar	42
Ch. 3 Paul Ramsey and charity as a basis for discrimination in MAC	70
Ch. 4 US Conference of Catholic Bishops and discrimination	116
Ch. 5 James Turner Johnson: the erosion of noncombatant immunity in asymmetric war	159
Ch. 6 A Christian just-war response to discrimination in MAC	187
Conclusion	297
Abbreviations	310
Glossary	311
Bibliography	313

SHORT ABSTRACT

The task of discrimination in war is a non-static phenomenon. It changes with the character of war, which itself changes with developments in cultures, international relations, how states organise for war, innovations in doctrines, technologies and tactics etc. Fundamental changes to war's character necessitate some moral revision, and modern asymmetric conflict (MAC) is the latest fundamental change. MAC is characterised by forces from developed countries fighting unconventional, often non-state adversaries that flout moral and legal norms, and deliberately exploit immoral, unlawful and repugnant tactics.

My analysis of the relevant ethics of Paul Ramsey, the US Conference of Catholic Bishops and James Turner Johnson – which, respectively, treats the form of war most similar to MAC, addresses an earlier fundamental change in the character of war, and comprises an important assessment of MAC – as well as touching on other Christian and secular contributions, discerns that there is insufficient Christian moral guidance to address the questions raised about discrimination in MAC. Thinking out of Christian just-war tradition, I focus on the Improvised Explosive Device (IED) network to expose novel ethical issues concerning discrimination in MAC. I argue that by not revealing their combatant status, those enabling the prosecution of IED attacks, and by extension broader combat functions, should lose or at least jeopardise any absolute non-combatant immunity.

I then proceed to explain how conventional forces can discriminate morally, while their irregular and less scrupulous adversaries do not. This includes enhancing the rule of double effect by exploiting predictive analytics; overcoming the enemy's erosion of non-combatant immunity and the inviolability of national borders; empowering soldiers to act discriminately through a simple, moral foundation; equalising the legal accountability of the opposing forces, rather than unfairly pursuing soldiers only from developed countries; and, finally, establishing a level of military

supererogation that reflects this new form of conflict, where minimising civilian casualties is a key measure of success.

LONG ABSTRACT

Issue

The nature of war is immutable. According to Clausewitz, the use of force for political ends has unchanging elements including danger, exertion, uncertainty and chance. However, the character of war – how war is fought and the strategies, policies, techniques and procedures used, as well as the equipment and the way it is deployed – changes because of developments in cultures, international relations, how states and forces organise themselves for war, innovations in doctrines, technologies, tactics and so on. The character of war is further shaped by such as population growth, national wealth, industrialisation and political as well as religious will. The latest change in the character of war, epitomised by recent conflicts in the Middle East and Afghanistan, and still evolving in its form, is modern asymmetric conflict (MAC). While there have been previous asymmetries in war, MAC is characterised by a conventional force or coalition from developed countries, with regular combatants, fighting against an unconventional and militarily much weaker adversary that is no less committed; belligerents have disparate military capabilities, combat power, strategies and morals.

To gain advantage, irregular asymmetric forces shape the battlespace to include distinct activities that are immoral, illegitimate or illegal, and often abhorrent. They deliberately exploit unconventional tactics, act with barbarism, slaughter innocents and show no compunction, eschewing commonly agreed and recognisable ethical codes of conduct, rules of engagement and conventions. In not identifying themselves as combatants, even for limited duration in accordance with international humanitarian law (IHL), these irregular asymmetric forces deliberately prevent conventional forces from distinguishing between combatant and non-combatant. Current laws of war on discrimination are, understandably, not fit for purpose in this new character of war; Christian moral guidance that assists the task of discrimination in MAC is also lacking. This thesis aims to establish the shortfalls in Christian-based discourse on

discrimination in MAC and, through analysis and reflecting Christian just-war tradition (CJWT), provide suitable moral solutions.

Method

The method of developing suitable Christian moral solutions to the problem of discrimination in MAC is as follows:

(1) I seek to establish that MAC is a fundamental change in the character of war by reviewing previous changes in weaponry, technology, communications, doctrine, tactics, techniques and procedures that were driven by population growth, industrialisation, prosperity and political will across states.

(2) I describe the exceptional problems of distinguishing combatant from non-combatant in MAC, using the Improvised Explosive Device (IED) and the networks necessary to prosecute this form of asymmetric attack, which can be extrapolated to include most combat and warlike functions of irregular asymmetric forces.

(3) I research available Christian resources and determine their suitability and sufficiency for satisfying the moral challenges of discrimination in MAC, identifying strengths and deficiencies. I select three principal resources: first, the Protestant Paul Ramsey's work on irregular war and insurgency since, across the spectrum of conflict, it has the most similar features with MAC; second, the US Conference of Catholic Bishops (USCCB) and their two pastoral letters of 1983 and 1993, which reflect the previous fundamental change in the character of war – namely that comprising the development of nuclear weapons – which for the bishops and Ramsey made irregular war more likely; and third, James Turner Johnson, a contemporary and highly respected Christian ethicist,

who has written about the erosion of non-combatant immunity in contemporary asymmetric conflict. I refer to other Christian and philosophical contributions as appropriate.

(4) I determine the shortfalls in Christian moral resources necessary to support moral discernment of discrimination in MAC, expose and analyse the principal areas of concern, and then explore potential moral solutions consistent with CJWT.

Results

Analysis of prominent wars since the beginning of the nineteenth century identified that the nature of war remains constant but its character changes. Major transformations in warfighting such as mass conscription, total war, the use of chemical weapons, *Blitzkrieg*, nuclear proliferation and insurgency changed the character of war fundamentally and equally fundamentally raised moral questions that tested CJWT. While the future character of war is very difficult to predict, it is provident to identify the most plausible operating environments, in order to conceptualise and plan effectively, resource accordingly, and remain morally dutiful – that is, to optimise the conceptual, physical and moral components of fighting power. Within MAC, transformation is incomplete and asymmetric innovations continue, as witnessed by some actions of the Islamic State of Iraq and the Levant (ISIL), eg secretly moving civilians to areas likely to be attacked by coalition forces. The next war, no matter how it begins, is very likely to develop into MAC and achieving success ethically, whatever its measure, requires a moral review of discrimination.

The IED is an exemplary expression of an irregular force's asymmetric attitude, audacity and fighting effectiveness. Its revolutionary impact on the asymmetric battlespace is due to: its utility, sheer scale and tempo of employment, causing greater casualties in proportion to

traditional military ordnance means; the user's ability to innovate and regenerate capability and capacity, despite the substantial attrition of those involved, and huge efforts to reduce the availability of and access to IED precursor materials and components; greater use and exploitation of makeshift and dual-use sites, facilities and materiel, knowingly undermining or neglecting IHL, while conventional forces seek to uphold it; and a negligent attitude to civilian casualties, frequently murderous. It is likely to remain a primary weapon of irregular asymmetric forces for the foreseeable future. Analysing the network of prosecutors of IED attacks enables the establishment of groups of contributors, newly ordered and delineated in proportion to moral intent, consequence and practical involvement. They are attackers, facilitators, trainers and leaders; together they enable the prosecution of IED attacks and, more broadly, represent combat functions and warlike activities of all irregular asymmetric forces.

Western military doctrines such as the manoeuvrist approach (where shattering the enemy's overall cohesion and will to fight is paramount rather than the attrition of its forces, weaponry and equipment), traditional counter-insurgency, and counter-terrorism are inadequate in MAC. Similarly, being non-static, combatant and non-combatant statuses require revision within this new character of conflict; new issues and features are revealed that require moral analysis, including urbanisation, erosion of non-combatant immunity, sovereignty of state borders, interpretability of rules of engagement, inequality of accountability, and military supererogation. On the assumption that speedier attrition of the whole IED network is necessary for the success of a campaign, which may be to bring adversaries to a negotiated settlement, the task of discriminating and minimising collateral damage is more challenging for conventional troops. An escalatory response is morally desirable for the attrition of the IED network, from prevention through deterrence, warning, nullifying, restraining, capturing, and ultimately up to the last resort option of lethal force.

Researching Paul Ramsey's progressive work on revolutionary war reveals his design and development of a robust counter-insurgency ethic, grounded in CJWT, and identifies that counter-insurgency can still be fought justly even when insurgency is not. He discerns that the broader meaning of "combatant" must be anyone involved in the use of force that one seeks to repress by resorting to arms, which for him include those in command positions and those providing close material cooperation to the force that should be repelled or resisted. My analysis and synthesis of his ethics reveal that, notwithstanding many similar features and issues, moral judgements about discrimination in revolutionary war and counter-insurgency conflicts are inadequate for MAC in certain respects.

Reflecting that nuclear conflict was a fundamental change in the character of war, the USCCB altered part if its Catholic just-war view profoundly. Incorporating *jus in bello* into *jus ad bellum*, arguing that discrimination and restraint are impossible once this new character of war is engaged, the bishops demonstrated little or no belief in restraint once war begins. Similarly, viewing the use of overwhelming force as potentially incompatible with the principles of discrimination and proportionality, they showed little faith in its application to defeat an enemy's military capability, shatter their will to continue the fight, and hopefully bring quicker conflict resolution, by discriminate ways (methods) and means (weapons and equipment). Some commentators and humanitarian agencies consider air strikes in recent conflicts, such as those performed by the Saudi-led coalition in Yemen, to be unrestrained and similarly indiscriminate and disproportionate.

James Turner Johnson provides one of the most contemporary Christian moral reflections on the erosion of non-combatant immunity in asymmetric war, expressing that recent moral discourse has largely failed to engage with it. He is pessimistic about non-combatant protection in contemporary warfare. Analyses of Johnson, the USCCB and Ramsey, together with other

suitable Christian and secular moral contributions, remain collectively insufficient in providing moral support and guidance to discrimination in MAC. My synthesis of the features and characteristics of MAC with these three major contributions raises seven key issues, which I examine and address. They are as follows:

1. **Developing the task of discrimination in MAC: the IED exemplar**. The conduct of some actors in MAC, even though they may bear no arms, can no longer be considered inactive with reference to the character of hostilities. Some should lose or at least jeopardise their absolute immunity to direct, deliberate and intentional attack. These irregular asymmetric fighters neither intend to distinguish themselves in their combatant or combatant-support capacities from the surrounding population, nor abide by any shared morals or IHL, nor identify when they are active as opposed to inactive in hostilities. A combatant of the irregular asymmetric force in MAC is one who intends, that is freely, wantonly and wilfully chooses to engage in an attempt at the destruction of regular combatants or that of civilians, either as an attacker or active supporter through facilitation, training or leadership. Morally, they embody combatant status and the threshold for determining that status is that a conventional combatant should reasonably believe it to be the case. In other words, “improvised combatants” and improvised weapons are still combatants and weapons – emplacing, facilitating, training and leading the development, manufacture and deployment of IEDs and all weapons are combative functions, deserving of the status of combatant or military objective. Once irregular combatants enter into conflict, they should permanently retain combatant status until they cease their warlike activities, which they should identify to regular forces in a recognisable and independently verifiable way.

2. **Urbanisation, collateral damage and transforming the rule of double effect**. If MAC must be entered upon, particularly in greater urbanised areas, then a new interpretation of the

rule of double effect must allow for campaign strategies that avoid being seduced into trying to reduce collateral damage to levels that are unachievable. Those complicit (facilitation, training and leadership roles) in their support are liable to potential harm; the blameless are liable to unintended collateral damage, given that a reasonable attempt has been made to allow their separation from an irregular force's intimidating grasp. Collateral damage will probably be higher than anticipated in future MAC, necessitating public discussion and a programme of expectation-management across politicians, ethicists, humanitarians, soldiers, and the general public.

MAC is affected by new technologies; the components of predictive analytics, particularly artificial intelligence, could enable the doctrine of double effect to become more morally robust by providing more objective evidence of the genuine character of intentions. Sufficient, uncorrupted data for decision-making is essential, as is setting the ethical conditions for software and machines to formulate answers. Civilians can endure significant collateral damage if they believe that the intention of the intervening forces is morally good and seeks to benefit them; unlike previous irregular conflicts, however, civilians have shown in the most austere and threatening environments that they retain worldwide access to information about their exploitation by irregular forces. Conventional forces can present their strategic intent to all as never previously possible, hopefully to win the strategic narrative and the civilian population's hearts and minds, by revealing their genuine desire to reduce collateral damage and exposing the irregular force's immoral targeting of the same civilian population.

3. **Responding to the erosion of non-combatant immunity**. Irregular asymmetric forces purposely shape the battlespace to include the most immoral and loathsome deeds, such as intentionally targeting their own innocents, medical services, patients, aid agencies, and secretly moving civilians to areas likely to be attacked by conventional troops. Forces from developed

countries have a moral responsibility to protect these non-combatants but it must not trump the primacy of the military mission; such casualties should be considered incidental. By their intentional actions, including direct and indirect slaughter, creating human shields, either preventing or directing civilian movement that causes harm, intimidation etc, irregular forces, not conventional forces, enlarge the area of collateral damage that is legitimate. Developed countries must confront the abhorrent actions presented by irregular forces, overcome their distressing and demoralising effects by reason, in the search for justice, through prudence and fortitude.

4. **Moderating the sovereignty of state borders**. MAC is a global phenomenon and often transnational in character. Given a justified military object, discriminate attacks against culpable targets, outside national sovereignties technically engaged in conflict, are morally permissible, particularly if it reduces the likelihood of collateral damage. If a legally sovereign state has sufficient effective sovereignty to deal with irregular combatants itself by normal police and judicial procedure, then that state should be pressed to address the problem directly. But if such a state either cannot or will not deal with it, then external intervention is morally justifiable, notwithstanding any legal impermissibility based on the supreme authority of a state that no country interferes in its internal mechanisms, except in self-defence, when invited or when authorised by the UN. Within CJWT, national borders do not afford protection to irregular asymmetric forces, actors or facilities.

5. **Enabling soldiers to act discriminately**. Soldiers that target indiscriminately must face justice. Equally, the thresholds determining combatant status and liability to intentional attack must be more clearly interpretable. Soldiers dispatched to apply military force, in accordance with *jus in bello* norms, must have confidence that, should their discriminatory actions lead to collateral damage, those same actions are morally and legally supportable. Intentional attacks

should be permissible when it is reasonable to believe that irregular asymmetric forces involved in an attack, facilitation, training or leadership are intentionally engaged in the process or participation of destroying conventional combatants, targeting non-combatants or performing warlike activities.

Although recognising their discriminate actions as just and virtuous, for the needs of the common good, soldiers should feel the emotional distress of necessarily taking human life. Adherence to CJWT-based values and standards can provide the guidance that it is reasonable to believe their targets are legitimate, and that any innocent death is genuinely collateral. They should never be exposed to fearing post-conflict intrusion and investigation, based on abstruse or ambiguous rules of engagement, revised interpretations or even worse, corrupt legal entities or misguided government departments. Inflicting such worry, which can cause apprehension when engaging in legitimate military activities and stress-related illnesses later, is shameful.

6. **Balancing the accountability of opposing forces**. Developed countries serve justice on their soldiers for indiscriminate acts of war while the chances of justice being served on their irregular counterparts are much less likely. It is vexatious and distressing that the immoral actions of irregular forces are unlikely to face the scrutiny and intrusion that their conventional counterparts will. This inequality of accountability is exacerbated by the litigious pursuit of conventional soldiers in their own countries, which soldiers translate as a dereliction of the military covenant between the state and themselves. The international community must equalise the accountability of opposing forces, seeking to bring all war criminals to the same justice, with identical commitment and not pursuing unfairly, through ease, financial or political gain, the rightly intended actions of professional soldiers that cause unintended civilian casualties. Developed countries should ensure the highest evidential threshold to protect their soldiers

against unscrupulous solicitors, journalists, pressure groups etc, seeking financial gain or prestige from hounding soldiers for their actions, which they believed to be moral at the time.

7. **Necessary military supererogation**. MAC is generally *people* rather than *enemy* centric – the primacy of military effect is on gaining popular support, minimising non-combatant casualties, winning hearts and minds and the strategic narrative over destroying an enemy's combat power – thereby requiring different ways and means to achieve success. Achieving lower levels of collateral damage, as a way to successful strategic outcomes, requires a form of military supererogation that is understood by soldiers to involve a sacrificial commitment, equal to that imbued in them when fighting a conventional enemy. Soldiers must adapt conceptually, with a new doctrine of "Courageous Restraint-Plus" being instilled, and where they willingly accept greater risk in order to minimise civilian casualties. Respect for others and selfless commitment are core values of the British Army, which can include a virtuous understanding of a greater commitment to save civilian lives. "Courageous Restraint-Plus" must not, however, be misunderstood as a form of captive restraint, by making soldiers feel ransomed to ineffective strategies, or betrayed as sitting targets, or unable to respond to enemy actions, and so becoming disillusioned and fearful. Soldiers must not be subjected to undue, unbalanced or extreme risk; that would be unjust.

INTRODUCTION

The truth is, in this kind of terrorist/insurgent warfare, no one can tell who's a civilian and who's not. So what's the point of framing rules that cannot be comprehensively carried out by anyone? Rules that are unworkable, because half the time no one knows who the goddamned enemy is, and by the time you find out, it might be too late to save your own life.[1]

Marcus Luttrell's quote represents a general feeling of combatants from developed countries, particularly those involved in recent military operations in Iraq, Afghanistan and supporting coalitions against the Islamic State of Iraq and the Levant (ISIL). Trained to fight in conventional conflicts, these combatants are assured by the relative clarity and maturity of the laws of war and rules of engagement. International Committee of the Red Cross Customary international humanitarian law (ICRC Customary IHL) defines combatants and non-combatants in conventional conflicts: 'All members of the armed forces of a party to the conflict are combatants, except medical and religious personnel'[2] and 'Attacks may only be directed against combatants. Attacks must not be directed against civilians.'[3] Combatants have covenants or contracts with their states, wear uniforms, carry identification etc and in war they hold prisoner-of-war status if captured. Imposing and enforcing morally guided laws, conventions and state practices refrains belligerents from meting out excessive violence in their quest for victory, recognising that war is in fact, by nature, a most horrifying, disturbing and distressing human interaction.

Conceding that in unconventional wars, such as insurgencies, the character of some hostilities prevents combatants identifying themselves, then those choosing not to wear uniforms or insignia to identify their combatant status, retain that status provided they carry their arms openly: '(a) during each military engagement, and (b) during such time as he is visible to the

[1] Marcus Luttrell, *Lone Survivor* (London: Sphere, 2014), p. 167. Marcus Luttrell is a former US Special Forces Navy Seal and veteran of the war in Afghanistan.
[2] ICRC Customary IHL, 'Rule 3. Definition of Combatants', accessed 7 May 2019, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule3.
[3] ICRC Customary IHL, 'Rule 1. The Principle of Distinction between Civilians and Combatants', accessed 7 May 2019, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule1.

adversary while he is engaged in a military deployment preceding the launching of an attack in which he is to participate.'[4] Further, Rule 3 of ICRC Customary IHL declares the following:

> While State armed forces may be considered combatants for purposes of the principle of distinction (see Rule 1), practice is not clear as to the situation of members of armed opposition groups. Practice does indicate, however, that persons do not enjoy the protection against attack accorded to civilians when they take a direct part in hostilities…[5]

The ambiguity of status and discrimination between combatant and non-combatant in irregular wars, where armed opposition groups do not adhere to these basic practices, obstructs both discriminatory acts and the desire to minimise collateral damage.

The latest change in the character of war is modern asymmetric conflict (MAC), characterised by a stronger conventional force fighting an adversary that is militarily much weaker but, unconstrained by international protocols and state borders, is no less committed. Recognising that defeat is likely if fighting conventionally, weaker or irregular asymmetric forces deliberately exploit tactics that are unconventional, often repugnant and certainly not inhibited by any morality or laws of war. Further problems arise in MAC, additional to previous irregular wars, where the clarity of status and distinction between combatant and non-combatant is considerably more obfuscating. In such environments, imposing rules of engagement that are impracticable for the character of MAC, not only thwarts successful missions but also increases the potential for collateral damage and endangers, unduly, those conventional forces charged with adhering to such rules – hence Luttrell's stance. Moral thinking about MAC is, consequently, in need of revision and just-war tradition remains the most prominent resource from which to begin.

[4] See ICRC Treaties, States Parties and Commentaries, Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, Article 44, 'Combatants and Prisoners of War', accessed 7 May 2019, https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/ART/470-750054?OpenDocument.
[5] ICRC Customary IHL, Rule 3.

According to ethicist James Turner Johnson, 'the three pillars of the recovery of the just-war idea' are 'Paul Ramsey's two books from the 1960s (Ramsey 1961, 1968), Michael Walzer's *Just and Unjust Wars* a decade later (Walzer 1977), and the U.S. Catholic Bishops' pastoral letter, *The Challenge of Peace* (National Conference of Catholic Bishops 1983)'.[6] If so, then Christian just-war tradition (CJWT) is a very suitable and relevant tool for moral discourse and discernment; it has developed credibly, alongside the changing character of war, since Augustine determined that Christians could wage just wars to restore peace, punish evil and impart justice. Lord Dannatt observes that over his 40 years of military service, covering UK operations from Northern Ireland to Iraq,

> the Just War tradition has underpinned a body of law that has provided a well understood legal handrail to guide decisions about the *right* to fight [*jus ad bellum*], and how to *fight right* [*jus in bello*]. The vast majority of operations that I was involved in during my military service were guided by that handrail.[7]

Within both CJWT and secular just-war theory, discrimination is a principle of *jus in bello* – distinguishing between combatant and non-combatant. It is a non-static phenomenon, transforming alongside the changing character of war, due to developments in cultures, international relations, how nations and forces organise for war, innovations in technologies, tactics, and procedures etc. Consequently, discrimination is subject to moral rethinking and social revision alongside these changes. MAC is such a significant change in the character of war that the morality of fighting discriminately against an irregular asymmetric enemy, which demonstrates scarce ethical values, requires a moral rethink as current discourse is insufficient and resources, tools and guides likewise. This thesis establishes some exceptional ethical issues relating to discrimination, arising from the changing character of MAC. It examines resources within CJWT and analyses their suitability and sufficiency for moral discernment and guidance

[6] James Turner Johnson, 'Enforcing and Strengthening Noncombatant Immunity', in *The Ashgate Research Companion to Military Ethics*, ed. James Turner Johnson and Eric D. Patterson (Abingdon: Routledge, 2016), p. 310.
[7] Richard Dannatt, 'The Law, Morality and Armed Conflict', Royal Fusiliers Memorial Lecture held at the Church of St. Sepulchre-without-Newgate on 10 May 2017. Lord Dannatt kindly allowed me to quote from his speech notes. [Author's emphasis.]

in MAC, concluding that some revision in moral thinking is necessary. Finally, several distinct features relating to discrimination in MAC are analysed, where there is insufficient moral discourse within current CJWT; I make recommendations and provide moral tools to allow conventional forces to fight morally while irregular forces do not.

I attach a list of abbreviations and a glossary of terms – helpful as many military terms have particularly distinct meanings and interpretations that are not necessarily self-evident.

Chapter 1
THE CHANGING CHARACTER OF WAR: MODERN ASYMMETRIC CONFLICT (MAC)

'The nature of war remains constant, but its form [character] reflects the particular era and environment in which it occurs.' [1]

Introduction

Like Michael Sheehan, quoted in italics above, retired US Army Lieutenant Colonel and military author, Ralph Peters considers that '[t]he nature of warfare *never* changes, only its superficial manifestations.'[2] Peters is one of many military strategists, historians, academics and political scientists who acknowledge that the nature of war remains constant while its character changes. The nineteenth-century military theorist, Carl von Clausewitz, was first to articulate, in a holistic approach, both the nature and character of human conflict, arguing that the fundamental nature of war is immutable. In the context of war, therefore, nature and character are never synonyms. This chapter analyses the changing character of war over recent centuries, distinguishing between its nature and character. From historical evidence and analysis, I conclude that the character of war changes discernibly and shows signs of accelerated change. Such transformation merits a review in moral thinking about war simultaneously, as has occurred historically.

Military theorist and strategist, Sir Basil Henry Liddell Hart, stated that 'the practical value of history is to throw the film of the past through the material projector of the present on to the screen of the future.'[3] Using such wisdom, the first of three sections in this chapter begins with a concise description of the nature of war; it is followed in Section 2 by a review of the most apposite conflicts from the nineteenth century onwards, that demonstrate how conceptual,

[1] Michael Sheehan, 'The Changing Character of War', in *The Globalization of World Politics: An Introduction to International Relations*, Sixth Edition, ed. John Baylis, Steve Smith, and Patricia Owens (Oxford: OUP, 2014), p. 220.
[2] Ralph Peters, *New Glory: expanding America's global supremacy* (New York: Sentinel, 2005), p. 30. [Author's emphasis.]
[3] B. H. Liddell Hart, *Thoughts on War*, cited in Paul S. Burton, *Urban Operations, Untrained On Terrain* (Pickle Partners Publishing), 2015, p. 67.

technological and cultural advancements, as well as trends in war, shape and define its character. Such reflection assists in predicting future changes in the character of conflict. I shall also make comment on the influence of CJWT showing that, rightly interpreted on the firm foundations of its historic architects, Augustine, Gratian, Aquinas, Vitoria, Suarez, Grotius and so on, it retains credibility and arguably pre-eminence in moral discernment of when and how to wage war.

With this historical foundation acting as a level of trend analysis, Section 3 examines the contemporary character of conflict and assesses future trends. It explains the difficulties and challenges in forecasting and making plausible predictions. On 11 September 2001, terrorist attacks on the US mainland changed the character of war as the West, led by the US, fought a subsequent "global war on terror". Militarily weaker adversaries, acknowledging certain defeat in any conventional fight, adapted their strategies and tactics fundamentally, leading to a new form of war, which I describe as MAC. I shall explain why it is a major change in the character of war and show that its transformation continues. MAC requires new politico-military responses, which are briefly described, and it also merits a review of the moral application of just war – all its principles, including discrimination.

In his book, *Instruments of War: Weapons and Technologies That Have Changed History*, Spencer C. Tucker 'traces the evolution of 270 key weapon systems and new technologies benefitting the world's militaries.'[4] The overwhelming majority of these weapons and technologies were developed from the beginning of the eighteenth century; weapon developments alone have changed the character of war but much more besides. Military, academic and political science consensus, including Clausewitz, Sheehan, Peters and Strachan[5],

[4] Spencer C. Tucker, *Instruments of War: Weapons and Technologies That Have Changed History* (Santa Barbara, California: ABC-CLIO, LLC, 2015), p. xxiii.
[5] 'If war remains an adversarial business whose dynamics create their own consequences, which themselves can be unpredictable, its nature cannot change.' Hew Strachan, 'The changing Character of War', A Europeaeum lecture delivered at the Graduate Institute of International Relations, Geneva on 9th November 2006, p. 31, accessed 7 May 2019, https://www.scribd.com/document/85125679/The-Changing-Character-of-War.

and military staff colleges throughout developed countries, observe that while the nature of war remains constant, its character changes. Recognising the differences allows developed countries to respond with new doctrines, strategies, and equipment; revised ethical interpretations are equally necessary.

Section 1: The nature of war

Clausewitz argues that the fundamental nature of war – the use of violence or force for political ends – is immutable. For him '[f]our elements form the climate [or nature] of war: danger, exertion, uncertainty, and chance.'[6] Considering these elements briefly:

(1) Fear is a natural human reaction to danger and cannot be eliminated in war, although it can be controlled by human will, and must be for military success.

(2) War is an exhausting endeavour and imposes extreme physical and mental demands on soldiers.

(3) Commanders understand that maximising and integrating the conceptual, physical and moral components of fighting power delivers optimal military effect.[7] Yet even the best leaders – exploiting improvements of the age in doctrine, tactics, equipment, training, communications, surveillance, information processing and intelligence – acknowledge that uncertainty remains a constant issue.

(4) The enemy has an unknown contribution to a conflict that can scupper even the best plans.

[6] Carl von Clausewitz, *On War*, Michael Howard and Peter Paret, eds. & trans. (New Jersey: Princeton University Press, 2008), p. 104.

[7] 'Fighting power defines our ability to fight, and comprises a: conceptual component (the thought process); moral component (the ability to get people to fight); and physical component (the means to fight).' UK. MOD, Development, Concepts and Doctrine Centre, *UK Defence Doctrine*, Joint Doctrine Publication 0-01, (JDP 0-01) (5th Edition), dated November 2014, p. 25, para. 2.2, accessed 7 May 2019, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/389755/20141208-JDP_0_01_Ed_5_UK_Defence_Doctrine.pdf.

There are other external factors, beyond military control, like weather, topography, disease, health issues and so on that can affect outcomes. Fortune may favour the brave but chance and luck are ambivalent.

So, when danger, exhaustion, misunderstanding, disbelief, accidents, set-backs, chance and chaos culminate, then hesitation and dilatoriness occur, as do defective decisions and poor actions. This is the "fog" or "friction" of war – part of its unchanging nature. War is 'an act of force to compel our enemy to do our will.' [8] It is largely about defeating an enemy, real or perceived, gaining land, and achieving political objectives. It involves sacrifice, often of the ultimate kind based on the unlimited liability of the soldier, sailor, airman and marine. War is bloody, unsavoury and distressing. Its activities are terrifying, treacherous and often involve carnage. Despite Hollywood, there is little glory, only pain and death, physical disfigurement, mental injury and emotional turmoil, which is long-term for many and extending beyond those directly involved, including families, friends, social groups and societies generally.

In concluding this first section, the nature of war as described is immutable, with the same emotional feel to it; political will is sought, people die, casualties occur and lives, families, groups and nations are transformed forever. War is timeless, yet it is ever-changing in its character, which I shall now analyse.

Section 2: The character of war

The character of war describes its form, its make-up, or as Peters encapsulates its 'superficial manifestations'. 'The issues of who fights and who does not, of who are war's victims and who its perpetrators… tell us about war's character.'[9] Character is about how war is fought: the strategies planned, the policies derived, the tactics, techniques and procedures executed as well

[8] Clausewitz, p. 75.
[9] Strachan, p. 9.

as the equipment, both hardware and these days software, and the way it is deployed and used. Focusing on land warfare, this section examines how the character of war has changed since the end of the eighteenth century, to establish that some changes necessitate a moral review if war is not to degenerate into all-consuming hellishness.

During the Napoleonic wars (1790–1815) battles were often engaged by opposing columns, with belligerents wearing easily identifiable and distinguishable uniforms. Advantage was sought by flanking manoeuvres through the wise employment of indirect fire (cannon) and cavalry. Napoleon's tactical prowess, using mobility to overcome his inferior combatant numbers, changed the character of war, as did the use of mass conscription – the latter an example of a non-technological transformation that changed war's character. Much more manpower would amass for battles with the scale of war shifting dramatically. 'The transition from the "chivalry" of feudal knights to the armies of Napoleon required centuries',[10] according to retired Colonel Thomas X. Hammes.

Napoleonic style uniforms were still common during the Crimean War (1853–6), although its overriding features were developments in personal hygiene, medicine, entrenchments and logistics: for example, the invention of the Soyer Stove reduced fuel use by 90% compared with open fires. Firepower was further enhanced and the war also witnessed the first military use of intercontinental telegraphy. At sea, submarine mines and armoured warships were used for the first time. Witnessing the Crimean War, American Richard Delafield published a report on the art of war in Europe.[11] Throughout the American Civil War (1861–5), ground tactics changed little but there were some technological advances. The further exploitation of telegraph, enhancing communications, improved command and control, and canned goods expanded

[10] Thomas X. Hammes, *The Sling and the Stone: On War in the Twenty-First Century* (St. Paul: MBI Publishing, 2006), p. 17.
[11] Richard Delafield, *Report on The Art of War in Europe: 1854, 1855 and 1856* (Washington: George W. Bowman, 1860), accessed 7 May 2019, http://archive.org/details/reportonartofwar00unit.

logistic support to fighting troops. Further advancement in rifle development, from smooth to rifle bore, and in ammunition improved range and accuracy.

At the beginning of the following decade the Prussian General and strategist, Helmuth von Moltke (1800–91), enacted his plans during the Franco-Prussian War (1870–1), leading to a unified German empire. His adaptation of mobilisation based on the use of rail and good communications brought success – these were again significant conceptual and technological advancements. Annual revision of his plans meant that prior to the war, as Prussia's army grew and its rail system expanded, processes such as these were becoming important staff functions within military headquarters. This was a significant innovation in the conceptual component of fighting power: organisational restructuring and doctrine.

The Boer War (1898–1901) witnessed further advances with antiseptic surgery enabling more soldiers to survive their wounds. Smokeless ammunition dramatically reduced muzzle flash, thereby the signature of firers and their likelihood of being targeted by an enemy; improvement in the effective range of rifles occurred simultaneously. Altogether, these technologies and the British Empire's very capable and experienced military forces, led quickly to the Boers transitioning to fight a new kind of war, a guerrilla-style campaign. As the nineteenth century ended, warfighting had witnessed some remarkable changes in strategies, tactics, technology (mainly mechanical and communications), logistics, medicine and the range, accuracy and lethality of weapons. The evolution of nation-states, with strong political systems, wealthy economies and reliable social structures enabled the character of warfare to develop. For those Western states that identified as predominantly Christian, CJWT was a suitable model for morally discerning when nations should go to war and what limitations should be placed on how to fight. The transformation in war's character allowed CJWT, not interpreted as a doctrine or set

of unchangeable rules but a tradition built on the wise use of faith, philosophy and history, to evolve with it.[12]

World War One (1914–18) was a watershed of war with trench warfare its new character, dominated by intense firepower exchanges, particularly artillery, and protecting the force, primarily by using deeply excavated trenches. The means to wage attritional war on this scale was only possible by massive industrialisation and national wealth. Firepower and protection enhancements were at the cost of mobility to all forces. Stalemate led to the development of the tank, first to breach obstacles and provide some mobility, and later to afford protected fire support. World War One revealed war's truest horrors: mass casualties, complete devastation of towns, villages, land and livelihoods, and total war.[13] The way that war was considered morally had now to incorporate this new character of total war, where the national commitment of all to the war effort blurred the distinction of many traditionally considered non-combatants.

The first use of chemical weapons on the battlefield also created a moral challenge, not that it prevented both sides from using them. Chemical agents were another technological development designed to gain the initiative over the stalemate of trench warfare, in order to allow some manoeuvre of forces; their use and the aftereffects seemed a ghastly but necessary requirement at the time. Such were the horrors of these weapons that in 1925 a protocol was signed in Geneva prohibiting their use. Thankfully, the horror of their effects and an unwillingness to be the first to deploy them, helped to prevent their use during World War Two, even though their virulence had been further developed; Churchill did not rule out their potential use. However, not until 3

[12] CJWT had remained the dominant discourse on the morality of war since The Thirty Years War, where Dutch Republican jurist, philosopher, theologian and Christian apologist, Hugo Grotius (1583–1645) wrote his *magnum opus, The Rights of War and Peace*, on international law and the laws of war and peace. Witnessing the carnage and destruction of war, the Peace of Westphalia and sovereignty of states, Grotius' hope was to limit the destruction of any future wars.

[13] Total war is characterised by the commitment of the whole population and national resources of one or more belligerents to the war effort. For an expanded definition see Richard Holmes, *The Oxford Companion to Military History* (Oxford: OUP, 2001), pp. 915–16.

September 1993 were chemical weapons proscribed by the United Nations (UN);[14] and not before they had been used in conflicts such as the Iran-Iraq War (1980–88), and again by Saddam Hussein in his treacherous genocide of an alleged 180,000 Kurds in Northern Iraq.[15]

New strategies and doctrines were required to combat the static character of trench warfare. The Germans developed the campaign strategy *Blitzkrieg* or "lightening war", which focused on the elements of surprise, speed, shock action, coordination, and mental as well as physical dislocation. Enemy targets were destroyed quickly, preventing their recovery before German forces would move onto their next engagements. Terrorising civilian populations as it did, *Blitzkrieg* presented a strong psychological element to the conceptual component of fighting power. World War Two also rapidly increased the development of the jet engine as belligerents sought the technical edge, to increase the speed and agility of aircraft and thus combat power.

Following the decisive defeat of Nazi Germany, the Cold War developed between Western liberal democracies and communist countries in the East. Characterised by an arms race and proxy wars between these two adversarial coalitions, nuclear proliferation became the dominant feature. The two ideologically incompatible sides amassed large conventional forces against each other, principally across Europe. Should those fail, then each side had the ability to annihilate one another, many times over, such was the amount and range of nuclear weapons to become available. Whilst mutually assured destruction deterred their first use, their potential for destruction and collateral damage, witnessed at Hiroshima and Nagasaki in 1945, was a practical and moral conundrum.

[14] See 'Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction,' in *UN Treaty Collection*, Geneva, 3 September 1992, ch. XXVI, para. 3, accessed 7 May 2019, https://treaties.un.org/doc/Publication/MTDSG/Volume%20II/Chapter%20XXVI/XXVI-3.en.pdf.
[15] Notwithstanding Iran (1929) and Iraq (1931) being parties to the 'Protocol for the Prohibition of the Use of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare. Geneva, 17 June 1925', the use of chemical weapons by Iraq led to 'Iran's decision to employ chemical weapons in response.' Javed Ali, 'Chemical Weapons and the Iran-Iraq War: A Case Study in Noncompliance', in *Nonproliferation Review*, vol. 8, no. 1, spring 2001, accessed 7 May 2019, https://www.nonproliferation.org/wp-content/uploads/npr/81ali.pdf.

The Cuban Missile Crisis in 1962 is the closest that the world has come to a third world war. A mix of détente, brinkmanship, the individual moral courage of Soviet submarine Captain Vasili Arkhipov, and some wise US staff, averted a clash and the potential escalatory use of the world's most potent weapons of mass destruction. The potential for a nuclear exchange, with colossal amounts of collateral damage, was another defining moment in the changing character of war and a watershed in the resurgence of moral thinking about war. Paul Ramsey's book, *War and the Christian Conscience/How Shall Modern War Be Conducted Justly*, published in 1961, addressed the developing moral debate over nuclear weapons at the time.

For some commentators the potential for nuclear war would mean that the notion of just war would become obsolete; the idea that nuclear war could ever be fought within the principles of *jus in bello* (proportionality and discrimination) seemed preposterous. The Roman Catholic just-war position developed along this line, as directed in the Catechism: 'actions which are forbidden, and which constitute ethically unlawful orders that may not be followed, include the indiscriminate destruction of whole cities or vast areas with their inhabitants.'[16] The Roman Catholic Church recognised, however, the reality of nuclear weapons and proliferation; whilst nuclear exchange was immoral, deterrence by holding nuclear weapons was afforded a moral validity. Nuclear weapons are a quantum leap in destructive capacity yet, as with any weapon or attack mode, a moral framework is necessary to determine the ethics of their holding and use.

Aside from the Cold War, regional conflicts in Korea (1950–53), then Vietnam (1962–75), saw enormous strides in surgery, particularly in the latter. The Vietnam War was complex, bewildering for many young conscripts having to fight an unconventional enemy like the

[16] Vatican, *Catechism of the Catholic Church*, pt. 3, sect. 2, ch. 2, article 5, III Safeguarding Peace, para. 2314, accessed 7 May 2019, http://www.vatican.va/archive/ENG0015/__P81.HTM.

Vietnamese insurgents. Moral appreciation is helped by maturity and those like William Calley, involved in the infamous My Lai massacre, found it too difficult to be discriminate in such circumstances. At government level, trying to determine strategies for victory, needing to change them, defining and measuring success, over many years, with different leaders, were altogether problematic. Writing in the late 1960s, Paul Ramsey considered that the nuclear stalemate had 'made the world safe for insurgent warfare.'[17]

From 1989 onwards, following the collapse of the Soviet Union, Perestroika and the development of democracies within former Warsaw Pact countries, defence spending across most nations reduced as part of a "peace dividend". The US would become the only true superpower, although nations such as China began to grow militarily, in order to match their economic expansion and political ambitions. Countries that had been puppet states of the former superpowers had their aid substantially reduced, if not completely withdrawn; their stability diminished leading to a number of failed states. For some at the time, including newly elected (1993) US President Bill Clinton, 'the new world is more free but less stable. Communism's collapse has called forth old animosities and new dangers.'[18]

The last major conflict involving Western nations during the twentieth century, worthy of a short review, is Gulf War One (1990–1). A UN sanctioned coalition force was tasked with removing the illegal occupation of Kuwait by Iraqi forces. Amongst its features were a vastly superior conventional coalition force over its Iraqi counterpart, the speed of victory in the overall campaign (43 days and only 100 hours for the ground offensive), and the relatively small number of coalition force casualties compared to Iraqis. Such victory was in part the fruits of a

[17] Paul Ramsey, *The Just War: Force and Political Responsibility* (New York: Charles Scribner's Sons, 1968), p. 481 and pp. 507–8.
[18] US. Public Papers of the Presidents of the United States: William J. Clinton, 1993, Book 1, *Inaugural Address, 20 January 1993* (Washington: US Government Printing Office, 1993), p. 2, accessed 7 May 2019, https://www.gpo.gov/fdsys/pkg/PPP-1993-book1/html/PPP-1993-book1-doc-pg1.htm.

"Revolution in Military Affairs", a major change in the prosecution of war, and characterised by the innovative application of new technologies. In combination with changes in military doctrine, operational concepts and organisational structures, it altered the conduct and character of war fundamentally. Lessons learned from the conflict led to other military concepts such as "Effects Based Operations", a process for obtaining strategic outcomes or effects, through a synergistic and cumulative application of the full range of military and non-military capabilities, at all levels of conflict. A product of this superior fighting power, principally resourced by the US, although interoperable with its allies, was for enemies to respond with more irregular, unconventional and diverse combative options.

In summary, reviewing a selection of prominent conflicts since the Napoleonic era reveals that the nature of war is immutable but its character (form or make-up) changes. Innovations, evolutions and improvements in conventional war equipment such as artillery, tanks, aircraft and guided missiles transformed the character of warfare. The ability to project lethal military force quickened, as communications, logistics and technology improved, which was enabled by socio-economic wealth, industrialisation and the political will of nations. Latterly, the carnage caused by industrial wars and the development of chemical, biological and nuclear weapons have further revolutionised the character of war – leading to a resurgence in the moral discourse on war, including discrimination. Notably, this analysis shows acceleration in the rate of changes in the character of conflict. It mimics an identical acceleration in wealth generation, educational advancements and technological developments throughout the developed world.

Some argue that state-on-state conflict has lost its monopoly, being replaced by individual levels of violence and criminality. Since a thoroughgoing transformation in international society is occurring, a new ethical approach may be needed to warfare, one that is grounded on the rights

of individuals and not just war, which is based on the rights of states.[19] In contrast, David Lonsdale concludes that 'there is no reason to think that nuclear strategy in the modern world cannot be constructed in such a way as to satisfy the needs of strategy, whilst at the same time operating within the Catholic Just War tradition.'[20] Although one of the key arguments from the sceptics of just war, in the modern era, has been the non-discriminatory aspects of nuclear weapons, it retains much utility with academics, the military and political scientists across all forms of conflict. What this section concludes is that evolutions, including total war, chemical weapons, insurgency[21] and nuclear proliferation, not only changed the character of war fundamentally, but also raised equally fundamental moral questions; changes test just war and, therefore, the need to review its principles, including discrimination. Let us now turn our attention to the modern character of war, which is still evolving and its likely future.

Section 3: The changing character of modern war

Published in 1998 and co-authored by former US Secretary of Defense, Caspar Weinberger and Hoover Institution scholar, Peter Schweizer, *The Next War* [22] predicted five potential conflicts within the forthcoming ten years. Scenarios were based around: a Korean conflict, including nuclear weapons, which causes China to seek expansion and an invasion of Taiwan (1998); an Iranian initiated Persian Gulf war, expanding to include a nuclear strike on Europe and terrorism within the USA (1999); what would now be called a US liberal intervention into Mexico, to overthrow a drug-ridden autocracy (2003); a resurgent Russian nuclear aggression to reconquer

[19] Mary Kaldor proposes 'that those who are wrestling with the problem of what constitutes the legitimate use of military force should adopt a human security approach rather than try to adapt more traditional Just War thinking. See Mary Kaldor, 'From Just War to Just Peace', in *The Viability of Human Security*, ed. Monica den Boer and Jaap de Wilde (Amsterdam: Amsterdam University Press, 2008), p. 43, accessed 7 May 2019, http://www.jstor.org/stable/pdf/j.ctt46mxmt.4.

[20] David J. Lonsdale, 'Nuclear Strategy and Catholicism: A Reappraisal', in ***Journal of Military Ethics***, Sep 2012, vol. 11, issue 3, p. 207.

[21] Insurgency: Actions of an organized, often ideologically motivated, group or movement that seeks to effect or prevent political change or to overthrow a governing authority within a country or a region, focused on persuading or coercing the population through the use of violence and subversion. See NATO. Standardization Agency, *NATO Glossary of Terms and Definitions*, Allied Administrative Publication Edition 2018, AAP-06(2018), p. 66.

[22] Caspar Weinberger and Peter Schweizer, *The Next War* (Michigan: Regnery Publishing, 1998).

parts of Europe (2006); and finally, an expansion of Japan, with both cyber strikes and a nuclear exchange (2007).

On reflection, some scenarios have been partially realised – a terrorist attack on the US mainland, growth in China's desire for Southeast Asian dominance, war and instability in the Middle East and a resurgent Russia, annexing the Crimea and part of the Ukraine – but none have been completely realised. It is possible that by acknowledging such predictions, precautions have been taken to reduce their potential and other threats holistically. However, it is significant that, as US Secretary for Defense for nearly seven years, Weinberger would have had access to the most comprehensive and sensitive intelligence possible. According to some reviews, however, the authors' primary intent may have been to counsel against large reductions in US military forces. Notwithstanding such a primary political intent – which may have prejudiced objectivity – and the book being unclassified literature, these were strategic level forecasts made by very well-informed individuals.[23] One conclusion is that trying to predict future conflict or its character, in order to prepare for it militarily and morally, is fraught, even for those with access to the best information, technologies, tools, intelligence and political, social and military analysts.

The unforeseen terrorist attacks by Islamic fundamentalists against key US buildings, on 11 September 2001, led to the next watershed in the changing character of war. As causality could not be attributed to a sovereign country or coalition, there was a paradigm shift in terminology, led by US President Bush who declared "a global war on terror". By referencing 'war', a wider

[23] Some scholars, including Samuel Huntington, had been predicting that the next war was likely to be centred on Middle or Far East Islamic fundamentalism. See Samuel P. Huntington, *The Clash of Civilizations and the Remaking of World Order* (New York: Simon & Schuster, 1996). Lawyer and human rights activist, Anthony Dennis, made a bold prediction around the same time: that the US and her allies' next conflict was likely to be with the fundamentalist Muslim world. See Anthony J. Dennis, *The Rise of the Islamic Empire and the Threat to the West* (Bristol: Wyndham Hall Press, 1996), pp. 29 and 141–3. Dennis made his almost identical assessment without Weinberger's access to sensitive intelligence or his political and military experience.

range of moral and legal responses were made available, including military force. Military interventions following the events of 11 September 2001, as witnessed during conflicts in Iraq, Afghanistan, and by ISIL, became characterised by asymmetry: a significant disparity in components of fighting power between opposing actors. Often there is simultaneous application of force across the whole spectrum of conflict – from high intensity to peace support operations. Forces integrate with civil agencies and fight irregular enemies, even if, as in the example of Iraq, the opposing force was initially conventional but less militarily capable.

With history to reflect on and witness to contemporary conflicts, how is the future character of war to be assessed, in order to assist in determining when war is to be morally waged and the moral *ways* and *means* of fighting it?[24] The task of accurately forecasting the future character of conflict, with a reasonable degree of confidence, is immensely challenging as the example from *The Next War* demonstrates. Professor Sir Michael Howard warns: 'No matter how clearly one thinks, it is impossible to anticipate precisely the character of future conflict.'[25] Colin Gray is even more pessimistic about the ability to forecast its future character:

> The future cannot be predicted in any useful detail; uncertainty does rule…This fact does not diminish the strength of my conviction that prediction cannot really be done, even though we need to attempt it. Unfortunately, we just do this rather poorly, largely through no fault of our own.[26]

Yet despite the difficulties, to do nothing and wait is naive. After all, '[i]n a world of startling change, the first duty of the Government remains: the security of our country.' [27] In forecasting

[24] Note that NATO distinguishes between *ways* and *means* to achieve political and military *ends*, objectives or outcomes. A successful military strategy hinges on the balanced application of ends (objectives), ways (broad approaches) and means (resources). NATO. Allied Joint Publication-01 (AJP-01), *Allied Joint Doctrine*, dated February 2017, Edition E, Version 1, p. 3-2, para. 3.7, accessed 7 May 2019, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/602225/doctrine_nato_allied_joint_doctrine_ajp_01.pdf.

[25] Cited in Benjamin Jensen, *Forging the Sword: Doctrinal Change in the U.S. Army* (Stanford: Stanford University Press, 2016), p. viii.

[26] Colin S. Gray, 'The 21st Century Security Environment and the Future of War', in *US Army War College, Parameters Quarterly Journal*, Winter 2008-09, p. 15.

[27] UK. HM Government, 'A Strong Britain in an Age of Uncertainty: The National Security Strategy', TSO (The Stationery Office), 2010, p. 3, accessed 7 May 2019, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/61936/national-security-strategy.pdf.

the future character of conflict, the aim is to be as close as possible to what becomes reality, such that adjustments in strategy are kept to a minimum and governments, industries and militaries can prepare for, react and respond to any threats quickly and decisively. It requires a balance of high-quality intelligence, professional and intellectual understanding, impartiality, analytical rigour, planning, preparation and moral courage. In so doing, the informed development of our moral contribution to warfare can run concurrently, is complementary and invaluable.

From a UK military perspective, future conflict may be congested – our enemies will act, interfere and fight in high population areas, where freedom of manoeuvre will be severely impaired. Future conflict may also mean a cluttered battlefield. Determining whether individuals, events, activities or items pose a threat will be more challenging to discern. Ease of concealment by irregular forces using the cover of an environment cluttered with rubble, rubbish and civilians reduces the effectiveness of the conventional military advantage in surveillance and detection technologies and techniques. All spaces of the future battlefield will be contested: the best examples being attacks and competition across networks, and the increasing use of IEDs, in order to deny conventional force movement and circumvent its strengths. Conflict will be connected, with real and virtual networks, all open to attack, which could lead to significant strategic challenges. Finally, future conflict could mean a constrained battlespace,[28] with evermore regulations to try and adhere to but which restrict military operations. This is achievable given reasonable time, but in conflict, time is often limited and the tactical level combatant must make a call, because he/she is there in the moment. So, the future battlespace is likely to be congested, cluttered, contested, connected and constrained, each to a greater or lesser

[28] Battlespace is the environment, factors and conditions that must be understood to apply combat power, protect a force or complete a mission successfully. Note: It includes the land, maritime, air and space environments; the enemy and friendly forces present therein; facilities; terrestrial and space weather; health hazards; terrain; the electromagnetic spectrum; and the information environment in the joint operations area and other areas of interest. See AAP-06(2018), p. 19.

extent; the task of discriminating between those involved in active hostilities or in direct support of them and abnormal but non-threatening behaviours blurs in such surrounds.

Within MAC, irregular adversaries acknowledge their shortcomings in technology, arms and equipment and, therefore, do not engage in conventional warfighting. With very different mindsets they aim to exploit what they consider are weaknesses in developed countries, using a variety of hybrid fighting techniques. For developed states, such adversarial approaches require cultural recognition and doctrinal shifts from reliance on command and control nodes, platforms such as ships, aircraft and armoured vehicles, and technological advantages that together are traditionally used to defeat an enemy. The shift needs to be towards better human understanding of potential enemy cultures, collective attitudes and the environment. In 2010, General David Petraeus, Commander of the NATO-led International Security Assistance Force (ISAF) in Afghanistan, recognised the need for such transition in stating:

> We have never had the granular understanding of local circumstances in Afghanistan that we achieved over time in Iraq. One of the key elements in our ability to be agile in our activities in Iraq during the surge was a pretty good understanding who the power brokers were in local areas, how the systems were supposed to work, how they really worked.[29]

The conventional military dominance of superior forces is based on their abilities to find, fix, strike and exploit enemy weaknesses. Irregular asymmetric forces, however, provide little or no suitable targets, seek to reshape the battlespace in order to avoid conventional force superiority in technology, firepower and equipment, and exploit the congested to constrained environments. They exploit developed countries' conformity to the sovereignty of borders, international humanitarian law, societal self-restraints and the influence of humanitarian agencies. New domains beyond sea, land and air are available to use and abuse, such as cyberspace and irregular adversaries will improvise much, for example IEDs. They will further exploit offshoots

[29] Julian E. Barnes, 'Petraeus: U.S. Lacks Afghan Tribal Knowledge', in *The Wall Street Journal*, 2 September 2010, accessed 7 May 2019, http://online.wsj.com/article/SB10001424052748704206804575467150330170956.html.

of globalisation, modern technology and social media, as well as the West's difficulties in tolerating casualties and its revulsion towards barbarity.

Developed countries need talented and proactive troops with the tools, training and commitment to overcome adversaries in MAC. These same troops will need sound moral foundations and values if their behaviour, in terms of discrimination, is to be always proper.[30] MAC is evolving and military attrition within a modern manoeuvrist approach – destroying key points, multiple leaders and enemy equipment – may have limited impact due to an adversary's exploitation of "wicked" or unbounded activities. [31] Irregular asymmetric forces' decentralisation of decision-making and less hierarchical command structures enable rapid regeneration of leaders and capability, the former not as experienced but made available at a rate sufficient to maintain the conflict in its "wicked" form. With goals permissive to change, no accountability to state, military or international law, and a different morality and approach, irregular adversaries in MAC have the potential to continue indefinitely, if they are sufficiently radical and motivated.

In "wicked" problems, there is no clearly observable relationship between cause and effect, and certainly little means of forecasting likely outcomes. Conventionally organised militaries prepared and structured for industrialised war, will be unable to control or shape their desired outcomes or determine and assess success. Change is inevitable in Western forces' structures and

[30] The adjective 'proper' reflects a comment made by the UK Chief of the General Staff, General Sir Peter Wall, that commanders are responsible for ensuring that the 'ethical and legal behaviour of their formations and units is proper.' See Peter Wall, 'The Ethical and Legal Challenges of Operational Command', in *Ethics, Law and Military Operations*, ed. David Whetham (Basingstoke: Palgrave Macmillan, 2011), pp. 225–6.

[31] "Wicked" problems, also known as "interactively complex" and "ill-structured" problems, are those that are recognisable but where the levels of effects are unknown and unpredictable by the current design and organisation of militaries from developed countries. They are non-linear, unbounded, evolve, have no end-state, and are unsolvable with current mission analytical techniques. They prevent conventional forces their freedom of manoeuvre and action. For an analysis of "wicked" problems in a military context, see T C Greenwood and T X Hammes, 'War planning for wicked problems', in *Armed Forces Journal*, 1 December 2009, accessed 7 May 2019, http://www.armedforcesjournal.com/war-planning-for-wicked-problems/. A latest lexicon is gray zone conflict with challenges 'defined as *competitive interaction among and within state and non-state actors that fall between the traditional war and peace duality*. They are characterized by ambiguity about the nature of the conflict, opacity of the parties involved, or uncertainty about the relevant policy and legal frameworks.' See US, Special Operations Command, *The Gray Zone*, 9 September 2015, p. 1, accessed 7 May 2019, https://info.publicintelligence.net/USSOCOM-GrayZones.pdf. [Author's emphasis.]

doctrines.[32] More agile capabilities are necessary, freer thinking, decentralisation, and innovative leaders, able to adapt and overcome situations not improved by the latest scientific-led management approaches. Older style compartmentalisation of war actually risks misrepresenting the interactions and interdependencies of different military and civil activities, once forces are engaged. It will certainly hinder necessary agility and the more beneficial collective response of military, government and non-governmental organisations, humanitarians and aid experts.

There will be a commensurate challenge to moral thinking and ethical applications by leaders, military and civilian, as well as combatants and civilian actors, which is beyond traditional approaches to conflict resolution. Deep reflection will be required – how to determine what is morally right in "wicked" situations, and how to make the right ethical choice. Discriminating between combatants and non-combatants in "wicked" or unbounded conditions – where a unifying purpose may be relatively simple but the collection of objectives to meet it are difficult to establish, agree and measure – challenges strategists and soldiers of developed countries. Mental agility is necessary and while training is equally essential, it can never be all-encompassing if, as is predicted, complexity increases and "wicked" situations intensify. Formulating laws for the diversity of activities could never be translated into succinct rules of engagements for soldiers in any meaningful sense. A sturdy moral foundation is necessary, therefore, which enables soldiers to think seriously about their ethical actions when time allows; the same moral foundation must equally empower soldiers to act ethically and discriminate instinctively when time does not.

[32] In his book, *The Utility of Force*, published in 2005, Rupert Smith determined that Western publics, politicians and military leaders remain wedded to the structures and expectations of industrialised war. His further contribution to a book in 2011 states that, 'our forces are *still* [my emphasis] structured and trained to undertake industrial war, whilst in reality they are usually both deployed and employed in missions of war amongst the people.' General Sir Rupert Smith and Dr. Ilana Bet-El, 'Military Capabilities for "War Amongst the People"', in *Adapting America's Security Paradigm and Security*, ed. Roy Godson & Richard Shultz (Washington: National Strategy Information Center, 2011), p. 48. It seems to Smith that Western forces are neither adequately reorganised structurally nor have sufficient doctrinal agility for future conflict and war among the people.

Modern conflicts have demonstrated that self-defence, by denying adversaries land or access across borders, is only one of an increasing number of military responsibilities. Passive defence is not sufficient for security in a globalised world. Morally driven obligations for military action by developed states, often through the UN and NATO, have evolved beyond passive defence to include such as liberal interventionism. A week before his resignation as Prime Minister on 13 July 2016, David Cameron, commenting in the House of Commons following the publication of the Chilcot report into the war in Iraq, stated:

> Finally, we should not conclude that intervention is always wrong. There are unquestionably times when it is right to intervene – as this country did successfully in Sierra Leone and Kosovo. And I am sure that many in this House would agree that there have been times in the recent past when we should have intervened but didn't – like in failing to prevent the genocides in Rwanda and Srebrenica.[33]

More recently, Theresa May stated that '[t]he days of Britain and America intervening in sovereign countries in an attempt to remake the world in our own image are over. But nor can we afford to stand idly by when the threat is real and when it is in our own interests to intervene.' [34]

Liberal interventionism is morally contentious as for some it possibly fails the last resort criterion of *jus ad bellum*. So are other policies not grounded in self-defence, such as the Responsibility to Protect (R2P), even though the UN Charter mandates that its authorisation can only be made by its Security Council. Just as Francisco de Vitoria determined that religious conversion of the heathen was inconsistent with CJWT, so these sorts of activities could be similarly determined unjust. Alternatively, could Grotius' extension of a sovereign's right to punish any very grave transgression of natural law worldwide, be a natural progression to the UN and governments? [35] Developed countries may feel morally obliged to engage in such

[33] David Cameron, 'PM statement on the Iraq Inquiry: 6 July 2016', at *GOV.UK*, accessed 8 May 2019, https://www.gov.uk/government/speeches/pm-statement-on-the-iraq-inquiry-6-july-2016.
[34] Theresa May, 'Prime Minister's speech to the Republican Party conference 2017', published on 26 January 2017, at *GOV.UK*, accessed 8 May 2019, https://www.gov.uk/government/speeches/prime-ministers-speech-to-the-republican-party-conference-2017.
[35] Grotius writes, 'The fact must also be recognized that kings, and those who possess rights equal to those kings, have the right of demanding punishments not only on account of injuries committed against themselves or their

conflicts but, once engaged, be unable to control the approach and manner in which a battle is fought. Morally justifiable or not, essential for successful interventionism is an understanding that the people are likely to be the "centre of gravity"[36] and poor discrimination reduces the likelihood of securing the will and support of the people, which is essential for all forms of irregular war, including MAC. However, the task of discrimination by conventional combatants is likely to become an even tougher challenge as MAC evolves, "wicked" activities develop, and complexity advances.

The UK Ministry of Defence's (MOD's) Strategic Trends Programme, particularly the first edition of the 'Future Operating Environment 2035', does not try to predict the future but 'describes the characteristics of plausible operating environments, resulting from rigorous trend analysis.'[37] Its analysis supports the greater likelihood of asymmetry in future wars, embracing irregular options that require simultaneous counter-insurgency, counter-terrorism, stabilisation responses and conventional fighting capabilities.[38] Encounters in Iraq, Afghanistan, Libya and against ISIL in northern areas of Iraq and Syria, with irregular forces fighting each other on occasions, while simultaneously engaging conventional militaries, support that prediction. However, the threats of other types of war and combinations have not been eliminated but with limited resources, predictions of the most likely forms of conflict are necessary, in order to plan and prepare agile responses; those responses need to be ethically conducted, including being discriminate.

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subjects, but also on account of injuries which do not directly affect them but excessively violate the law of nature or of nations in regard to any persons whatsoever.' Hugo Grotius, *De Jure Belli Ac Pacis Libri Tres*, (*On the Law of War and Peace*), trans. Francis W. Kelsey (Oxford: Clarendon Press, 1925), bk. 2, ch. XX, sect. XL, para. 1, p. 504.

[36] 'Centre of gravity': The primary source of power that provides an actor its strength, freedom of action and/or will to fight. See AAP-06(2018), p. 24.

[37] UK. MOD, Development, Concepts and Doctrine Centre, *The Future Operating Environment 2035*, Strategic Trends Programme, First Edition, November 2014, accessed 8 May 2019, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/484861/20151203-DCDC_FOE_35.pdf.

[38] 'Traditional state-on-state conflict cannot be ruled out over the next 20 years, but state-sponsored terror attacks, use of proxies and cyber attacks are more likely.' Ibid.

In concluding Section 3, the terrorist attacks against the US on 11 September 2001 initiated a US-led "global war on terror"; a change in the character of war ensued. Asymmetries in such things as military capability, morality, human rights, adherence to IHL and accountability of actions are recognisable between the parties involved. Resolving such conflicts within conventional military doctrines and strategies is problematic. Predicting the complexities and challenges of conflicts that began this millennium in the Greater Middle East and North Africa was not possible – neither was seeking outcomes acceptable to all stakeholders. Trying to forecast the future character of conflict with a reasonable degree of accuracy, in order to plan and prepare optimally for it, is immensely challenging and risky, even with the best available information, intelligence, technologies and tools, as well as the support of the most competent political, social and military analysts.

UK military doctrine predicts that future battlespaces are likely to be congested, cluttered, contested, connected and constrained – referred to as the "five-Cs". However, that the amount that each applies to a particular conflict will differ, possibly dramatically. Developed countries envisage the most plausible operating environments, and then prioritise military capabilities and capacities based on modelling the best, worst and most likely outcomes, in order to optimise their responses. Along with the five-Cs, a new character of war is being realised, namely MAC. Recognisable traits include the large-scale use of IEDs, cyber-attacks, internet exploitation, cultural and ethical polarities, "wicked" problems, greater urbanisation, and military and ethical asymmetry. MAC is dynamic – it is not yet fully developed and requires transformations in the structures and doctrines of developed countries. New agile responses are required, to be conducted ethically, including discriminately.

Conclusion

Analysing prominent wars, from the nineteenth century onwards, highlights the maxim that the nature of war remains constant but its form or character changes. Developments in the physical component of fighting power such as weaponry, technology and communications, as well as the conceptual component such as doctrine, tactics and techniques, led to distinct changes in the character of war. Population growth, wealth, industrialisation and political will across states enabled such transformations. Within the moral component of fighting power, morality about war has also witnessed adaptations, including CJWT. At this point, it is sufficient to conclude that major transformations in warfighting such as total war, using chemical weapons, *Blitzkrieg*, nuclear proliferation and insurgency, changed the character of war fundamentally and equally fundamentally raised moral questions that tested just-war theories. Notwithstanding such testing, CJWT remains a preeminent tool for discerning morality in war, including discrimination.

Concluding that the future character of war is very difficult to predict, it remains provident to identify the most plausible operating environments, in order to conceptualise and plan effectively, resource accordingly, and remain morally dutiful. That is to optimise the conceptual, physical and moral components of fighting power. Changes and transformations in the character of war are accelerating as the irregular enemy in MAC diversifies strategically and tactically. The future battlefield is unpredictable and complex, given the above examination; no type of war is obsolescent. Any future form of interventionism using force, no matter the moral appetite or legitimacy, is likely to develop quickly into MAC, as expressed by a former US Defense Secretary in late 2007: ‘We can expect that asymmetric warfare will be the mainstay of the contemporary battlefield for some time.[39]

[39] Gates, Robert M. ‘Landon Lecture (Kansas State University)’, in *U.S. Department of Defense*, 26 November 2007, accessed 8 May 2019, http://archive.defense.gov/Speeches/Speech.aspx?SpeechID=1199.

As will be shown in Chapter 2, MAC requires developed countries to design new doctrines and strategies. Conventional militaries need to be agile – the ability to change position efficiently and effectively – to overcome the industrialised war mentality and prepare the most flexible and optimal responses. Agility is likely to be increasingly sought after, as potential military tasks expand and resources reduce. Such a position must not acquiesce, however, in any diminution in the principle of discrimination. Thinking and acting with agility needs to preserve a moral foundation if it is to hold national and international support. MAC is most likely to be people-centric and in the search for peace and justice, conventional forces must win civilian hearts and minds, if they are to stand any chance of success; their actions must be seen as discriminatory. It is essential, therefore, that the task of discrimination is analysed to determine an appropriate ethic for MAC, the latest change in the character of war.

Chapter 2
THE IMPROVISED EXPLOSIVE DEVICE (IED) NETWORK – A MAC EXEMPLAR

…the IED has now entered the standard repertoire of irregular forces in urban areas across the planet, and there are no signs this threat is shrinking; on the contrary, it seems to be growing.[1]

Introduction

The IED is an enduring threat across the spectrum of irregular war; for many it is considered the irregular combatant's weapon of choice.[2] Its use in the most recent conflicts across the Greater Middle East has been prolific, and predictions are that it will remain so for the foreseeable future. Using IEDs and other asymmetric capabilities, the irregular fighter, insurgent or terrorist is able to compete with conventional forces, even though the latter are stronger in equipment capabilities and capacities, technologies, military grade explosives, weapons and ammunition. Being weaker in these areas, irregular asymmetric forces adapt, using homemade explosives, captured, stolen or recovered military ordnance, which they craft with improvised switches, to kill or maim their militarily stronger rivals, sap their will to fight, and prevent their freedom of movement and manoeuvre. The IED is a formidable weapon in the irregular force's arsenal; its tactical use has strategic effect, shaping the character of MAC and the willingness, or otherwise, of democracies to engage in wars of choice.

Along with features such as non-state actors, cyber-attacks, urbanisation, and chemical attacks on one's own civilians, the IED's utility is a significant contribution to MAC being a fundamental change in the character of war, profoundly witnessed recently in Iraq and Afghanistan. MAC is still undergoing change, requiring strategic, policy and doctrinal reviews in developed countries, as well as adaptations to the components of fighting power. IEDs have been so effective in stalling conventional force operations, notwithstanding being precariously made

[1] David Kilcullen, *Out of the Mountains: The Coming Age of the Urban Guerrilla* (Oxford: OUP, 2013), p. 290.
[2] A J Bosker, 'Congress told IEDs will remain 'weapon of choice' for decades', at *US Army Website*, 26 September 2012, accessed 18 May 2019, https://www.army.mil/article/87833.

and often indiscriminately used, that new doctrines and equipment have been necessary to try and overcome their effect. IEDs have significantly enhanced the ability of irregular forces to inflict significant casualties and achieve disproportionate effects. A moral review of those individuals involved in the IED network – leaders, planners, makers, suppliers, drivers, trainers and those storing, as well as others that lay and initiate them – is therefore required.

This chapter examines the challenges of defeating the IED; conclusions can be extrapolated to the challenges of defeating many irregular asymmetric threats in MAC. First, I define and describe basic IEDs before providing a synopsis of their development. Second, I demonstrate that while improvising weapons is neither a novel nor new trend, IED use has developed and grown so markedly in recent years that it has effectively become a new phenomenon. Innovations and developments such as suicide bombers, remote control firing switches, and explosively formed projectiles that can penetrate armoured vehicles, further demonstrate the arrival of more than a modest or predictable evolution. I also make clear that some activities within the IED network are unethical.

Third, I describe and analyse some practical IED countermeasures to assist a CJWT-based moral analysis on defeating the IED, and more broadly the asymmetric threat in later chapters. Discovering that traditional approaches, including counter-insurgency and counter-terrorism, were insufficient responses to the new IED phenomenon, fresh strategies were explored by developed countries to mitigate the IED's effectiveness. These strategies sought to attack and defeat the holistic IED network, rather than focusing largely on those emplacing and initiating the device. While the intention is not to explore military doctrine or suggest new tactics, in a MAC overwhelmed by IEDs it is necessary to postulate that sufficient degradation of the IED network is necessary to achieve, overall, a successful campaign. The Christian moral challenge is

to achieve military missions and successful campaigns, while maintaining the tenets of love and compassion, and guided by God's immutable virtues, attested to within CJWT.

Section 1: The IED

1.1 IED Definition. NATO defines an IED as:

> A device placed or fabricated in an improvised manner incorporating destructive, lethal, noxious, pyrotechnic or incendiary chemicals and designed to destroy, incapacitate, harass or distract.
>
> Note: It may incorporate military stores but is normally devised from non-military components.[3]

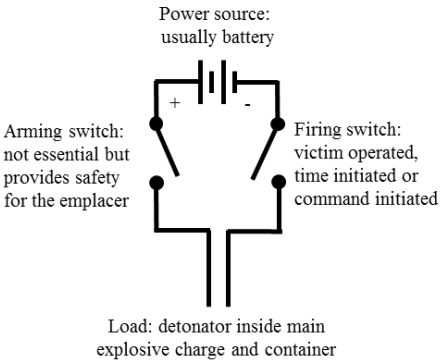


Figure 1: Basic IED construction

A basic IED consists of an initiator (often an illicitly gained military or civilian explosive detonator although some are improvised), some bulk explosive (often a homemade mixture) contained in a vessel, a power supply, connecting wiring and an improvised firing switch (figure 1). While the make-up of a switch is limited to imagination and physics, there are three general types of IEDs: time, command and victim operated. These distinctions are important, since they influence where those involved in IED emplacement are situated within a participation scale. The more a person is active in hostilities, the more they are morally liable to intentional harm – a necessary development in MAC as irregular forces no longer identify themselves as two dichotomous groups, combatant and non-combatant.[4]

The three types of IEDs are described as follows:

[3] AAP-06(2018), p. 64.
[4] Ethicists such as Michael Gross and Tony Coady attempt to discern categories of support to hostile activities in irregular conflict based on a mix of function, magnitude, capability, capacity and intent, and then position them on a scale of participation. They subsequently order each category to be more or less liable to lethal force. Coady defines eight groups on a participation scale. See C A J Coady, *Morality and Political Violence* (Cambridge: CUP, 2008), pp. 112–16.

Victim operated IEDs contain a switch that is activated by the actions of an unsuspecting individual. It is deployed by a person or persons who seek not to be present when the device functions, thereby not offering themselves as a target for capture or attack, when the device functions. Although the emplaced device is a threat, unarmed emplacers – those planting the device – are no threat due to the nature of the switch mechanism, unless they are a suicide bomber where they may initiate the device at a time of their choosing.

Time initiated IEDs contain a switch that will function after a delay, set by a perpetrator. It is employed when the target person or group is known or predicted to be at a location at an expected time, or to destroy property, or both, and allows the emplacer of the IED to escape before the device functions. Again, emplacers do not offer themselves as a target for capture or attack, when the device functions.

Command initiated IEDs use a firing switch that allows instantaneous functioning by an attacker at the moment of their choosing. It requires the attacker's knowledge of the adversary's activities or likely movements, in order to hide the device at a target location, and then have sufficient distance between the firing point and the target, where the explosive charge is situated, to allow the firer to view the area and trigger the bomb at the optimum moment. Greater distance between the firing point and the target also allows the firer to escape more easily after initiating the device. The command link between the firer, at firing position, and the explosive charge, at the target area, is often a conducting wire or a radio transmitter to form a remote or radio controlled IED, or occasionally a long length of thin string, which when pulled allows a mechanical action at the target end to initiate the device. The key difference over the previous two switches, victim operated and time initiated, is that the perpetrator is directly and instantaneously involved in firing the IED.

> Stopping him initiating it, by lethal force if necessary, prevents the device functioning as intended.

There are other variations and combinations of IEDs, customarily named in terms of their container or delivery means, for example, vehicle borne IED (VBIED) or suicide IED, where a person at a time of their or an associate's choosing kills themselves or is killed intentionally as part of the attack, denying their capture.[5] For the purpose of assisting this analysis, discriminating combatant status from a Christian perspective, the three definitions above suffice.

1.2 IED development. IEDs are not new and have been used throughout history. The failed assassination attempt of King James I of England in 1605, by a group of English Catholics led by Robert Catesby, is an example of a time initiated IED; the conspirators attempted to destroy the Houses of Parliament, while the King was present, using barrels of gunpowder as a main charge and a burning time fuse. More sophisticated and first recorded by the German gazette, *Mecklenburgische Anzeiger*, and subsequently in *The Argus*, a pair of time initiated IEDs were deployed during the Thirty Years' War (1618–48).

> In the Spring of 1645 the Swedish fleet lay in the harbor of Wismar. The Master-General of the Ordnance, Karl Gustav Wransel, was to make the passage to Sweden on board the Lion, and Admiral Blame on board the Dragon. Somebody wished to send off two chests – one by each of the two vessels. When the chests were shipped – the one to be sent in the Admiral's shin stood already near the powder magazine – a noise was heard in the chest as from clockwork. It was opened, and a mechanism in the shape of clock-work was found connected with a fire-steel and a flint-stone, and beneath them powder, pitch, sulphur, etc. The shipper of the chests, a certain Hans Krevet of Barth, pretended to have received the chests from three citizens of Lubeck, and was reported to have been won over by a Danish factor at Lubeck. He was executed on the 5th of July.[6]

[5] For a comprehensive list of definitions and descriptions, see NATO. Explosive Ordnance Disposal Centre of Excellence, *Informal Interorganizational Glossary of EOD Terminology*, March 2017, accessed 18 May 2019, https://www.eodcoe.org/files/en/standardization/concept-doctrine-standardization/terminology/new-eod-terminology.pdf.

[6] 'English Miscellany', in *The Argus*, Melbourne, No. 9,277, Wednesday 8 March 1876, p. 10, accessed 18 May 2019, http://trove.nla.gov.au/ndp/del/page/243619?zoomLevel=5.

Assuming from the limited text that Krevet was a Swedish sailor and accepting his being ‘won over’ by the lure of money, force, ransom or persuasion, he would have been supported by enemy accomplices, each having more or less involvement in the delivery of the two devices. Enemy personnel would have planned the event, procured or stolen items necessary, designed the improvised devices, stored, transported and delivered the components, assembled the devices, and ultimately passed the complete devices to Krevet. Each contributor was culpable of some participation in the event, which, as analysed later, displays likeness to participation in the IED network of irregular forces.

From around the latter decades of the twentieth century, IEDs have been used by a plethora of irregular fighters, insurgents, terrorists, criminals and cranks. Some IEDs have been well constructed, technically sophisticated, and inclusive of an element of quality control. They have been deployed with ruthless intent and caused many casualties eg Iraqi insurgent use against coalition forces during the Second Gulf War, and al-Qaida and Taliban use against NATO forces in Afghanistan. Terrorist organisations also fully exploit the simplicity and effectiveness of IEDs – as weapons of terror and fear they enable strategic influence eg Irish Republican terrorists.

Prior to recent wars in Iraq and Afghanistan, the most sophisticated IEDs were probably those used by terrorists in places such as Israel and Northern Ireland. Developed countries that face terrorism commit significant resources to preventing or containing their explosive effects. In defeating internal state terrorism, law enforcement has primacy, with those involved in IEDs being subject to criminal law. Instances where the only way to prevent an IED from causing casualties is by using lethal force against terrorists are infrequent. Law enforcement and intelligence services exploit recovered devices, component seizures and forensic evidence to deliver criminal charges and guide future operations. Although terrorist activity is often effective and vile, the tempo of IED attacks in developed countries has been contained within tolerable

limits by state forces, allowing a situation as close to normality as possible to evolve eg the IRA campaign in Northern Ireland. What changed was the US-led "global war on terror", following terrorist attacks against the US on 11 September 2001. Being massively disadvantaged in military ordnance, quality and quantity, irregular forces engaged in asymmetric responses; a proliferation of IEDs as well as more sinister tactics such as suicide bombings began. It led to a revolution in military thinking in most developed countries on how to counter the IED, leading to the now well-established doctrine of Counter-IED. An equally revolutionary moral response, sufficient to overcome the immoral and indiscriminate use of IEDs is overdue.

1.3 Conclusion. The IED has been exploited by irregular forces lacking sufficient military capability and capacity to achieve their objectives. It has been a worldwide threat for some considerable time but its effectiveness, when used excessively, has determined its status for some as the modern insurgent's tactical weapon of choice. Its employment has prolonged recent conflicts and produced many more casualties proportionally than traditional causes such as bullets, bayonets, grenades, mortars, shell fragmentation and alike. Its impact is profound and debilitating on the moral component of fighting power within conventional forces. The IED's global proliferation makes it a new phenomenon and its defeat is necessary for successful military missions in MAC. Any Christian moral view of counter-IED activity – responding to the often immoral and indiscriminate irregular force's tactics – needs to acknowledge this change.

Section 2: The new IED phenomenon

As the conflicts in Iraq and Afghanistan evolved this century, the surge in IED use was so intense that traditional military responses, successful during the last century – the application of counter-insurgency, counter-terrorism, peace enforcement, stabilisation operations etc – were no longer effective. Coalition forces were unsuccessful in reducing the tempo of IED use, containing enemy activity and, thereby, unable to provide the minimum level of security

necessary to facilitate building governance and socio-economic development. Casualty rates from IEDs grew dramatically for both coalition forces and civilians, and insurgent groups seemed to have an abundance of volunteers and supply of IEDs.

The widespread use of IEDs, in relentless numbers, with negligible consideration for civilian safety, is the most visible change in the new character of MAC. The IED is a force multiplier[7] for irregular forces; by enabling and enhancing other asymmetric effects it increases the probability of irregular fighters achieving their objectives. Its effects must be overcome if conflicts are to be concluded satisfactorily and in a timely manner. With these features, the IED has become a new phenomenon and a primary change characteristic within the changing form of MAC, as distinct as trench warfare, *Blitzkrieg*, insurgency and nuclear proliferation before it. As the latter, for example, led to a change in strategic military doctrine and moral thinking by faith institutions such the USCCB, Christian ethicists such as Paul Ramsey, and secular ethicists such as Michael Walzer, so too the need for a review of moral thinking about MAC.

According to Michael Cardash, a former Deputy Head of the Israeli Police's Bomb Disposal Division, three main, externally activated, modi operandi have become widespread in recent years with respect to IEDs. They are:

- Wireless detonation of an explosive device—using a mechanism such as a cell phone or walkie-talkie,
- Suicide bombers who detonate themselves, or are remotely detonated by the planners, and
- Car bombs—either remotely detonated or detonated by the driver.[8]

[7] A force multiplier is a factor or capability that increases the effectiveness, availability, persistence, or reach of another capability or force. See UK. MOD, Development, Concepts and Doctrine Centre, *Air and Space Doctrine*, Joint Doctrine Publication 0-30 (JDP 0-30), dated July 2013, part 1, p. 1-3, note 4, accessed 18 May 2019, http://www.defencesynergia.co.uk/wp-content/uploads/2015/05/jdp_0_30_uk_air_and_space_doctrine.pdf.

[8] Ari Diamond and Rachel Lieberman, 'Keeping a Step Ahead of the Terrorist: An interview with Michael Cardash,' in *Vidisco*, accessed 18 May 2019,

In MAC, the IED's great prominence has also been due to: its global proliferation and scale of use; the ability to regenerate IED capability easily, people and components; the expansion and exploitation of dual-use facilities and sites; and the scale of casualties, combatants as could be expected but also innocent civilians. Altogether these factors determine much of the character of MAC. They encompass the new IED phenomenon and are analysed below to reinforce that, since a strategic military review has been necessary to counter the IED, a moral analysis is also necessary.

2.1 Global proliferation and scale of use. The vast numbers and tempo of IED use in recent MAC have overwhelmed conventional forces at times and reduced their operational effectiveness. As a comparison, annually, the numbers of terrorist incidents in Northern Ireland, involving IEDs, were in the low hundreds at their peak during the early 1970s. Large numbers were hoaxes: devices deployed to look authentic and achieving the terrorist intent of chaos and disruption, but not directly causing casualties. With the deployment of thousands of security force personnel, up to 30,000 at times, for protracted periods, incidents involving IEDs were reduced significantly towards the end of the campaign. Likewise, large numbers of coalition and NATO forces involved in conflicts across the Balkans witnessed IEDs. Sufficient troops were available, however, with the capability and capacity to combat the effectiveness of IEDs as an adversarial weapon. The relatively small numbers of IEDs allowed greater time for forces, with highly trained IED disposal units, to render them safe and exploit the forensic evidence for intelligence, law enforcement and future operations.

http://www.vidisco.com/security_solutions/security_info_center/security_articles/keeping_a_step_ahead_of_the_terrorist.

What changed in the most recent conflicts, such as Iraq and Afghanistan, was the sheer scale and tempo of IED use. Their proliferation mixed with technical development and audacious use, particularly in the form of suicide bombers, the ability to penetrate armour etc, has been extremely effective. It has prevented or constrained many coalition force operations, necessary to enable sufficient security as part of the triumvirate of security, governance and socio-economic development that lead to successful outcomes. Conflicts have thus been prolonged. Rising annually in Afghanistan, the number of IED events – explosions or IEDs made safe – was over 9000 in 2009; over 15,000 in 2010; and over 16,500 by 2011. ISAF resources could not contain the escalation in IEDs and resultant casualties, notwithstanding the surge of coalition forces, over 30,000 US troops alone in 2010. By 2011, over 130,000 coalition forces were deployed, alongside a growing number of trained Afghan national security forces (ANSF), both military and police. Iraq was even worse. A similar surge by US forces was followed by monthly IED attacks in the order of 3500 during the first half of 2007, creating carnage. Although numbers reduced significantly, by 2010 there remained around 500 IED attacks each month throughout Iraq.

With the cessation of coalition force operations in Iraq in December 2009 and the drawdown in Afghanistan from 2011, the tempo of IED deployment displayed little sign of abatement. Towards the end of 2011, a report by the US Joint Improvised Explosive Device Defeat Organization (JIEDDO) stated that IED attacks were growing worldwide and that their popularity among criminals, narcotics traffickers and terrorists continues to rise, aided by the spread of online bomb-making technology. The report goes on to state that insurgent tactics 'used against U.S. troops in Iraq and Afghanistan have migrated to places such as Somalia. African peacekeepers have also been targeted with sophisticated armour-piercing IEDs.'[9]

[9] Tom Vanden Brook, 'IED attacks increase outside of two wars' in *USA Today News*, 19 Oct 2011, accessed 13 July 2017, http://www.usatoday.com/news/military/story/2011-10-19/ied-use-increasing/50831988/1.

Irregular forces recognise the effectiveness of IEDs, when deployed in vast quantities, as a tactical tool that prolongs conflict, as well as weakening and eroding the will of developed countries to engage and commit long-term to a MAC. In 2013, IEDs killed nearly 23,000 civilians worldwide. In the same year in Iraq, following a downturn in IED casualties, the numbers escalated as a result of the conflict involving ISIL, with nearly 13,000 civilians killed or injured by IEDs, a rise of over 90% on the previous year. In 2014 the figures for all casualties more than doubled. In 2015, while down on 2014, there were still over 16,000 civilian casualties as a result of the on-going conflict.[10] Mass IED use must be expected in MAC. Scale has swamped traditional methods of countering them leading to alternate doctrines, policies, tactics, techniques and procedures, which I describe later.

2.2 Ease of regeneration. During recent conflicts in Iraq and Afghanistan, irregular forces have been able to regenerate IED capability and capacity very effectively, both personnel and equipment. This is notwithstanding the huge resources employed by developed countries to remove IED bomb-makers and, where possible, control accessibility to IED constituent parts eg ammonium nitrate fertiliser, which can be used to make homemade explosives. In MAC, destroying key points, facilities, multiple leaders and the irregular force's equipment has limited impact on their ability to continue fighting, due to their exploitation of "wicked" or unbounded activities, as described in Chapter 1.

Militaries acknowledge that defining victory and measuring success is problematic in MAC and certainly not possible by conventional military methods alone. Irregular forces' decentralisation of decision-making and less hierarchical command structures allows them to regenerate IED

[10] Iraq Body Count, *Iraq 2015: A Catastrophic Normal*, accessed 18 May 2019, https://www.iraqbodycount.org/analysis/numbers/2015/.

capability and capacity – leadership, training, making and deploying the devices. In both Iraq and Afghanistan, the rate of regeneration was at least equal to their erosion by the actions of coalition forces, which were rightly constrained by IHL and associated legislation. With one side adhering to a moral code, IHL and state practice and the other not, there is inequality in freedom of action and, even more concerning, an inequality of accountability between opposing forces.

In the case of Afghanistan for example, insurgents have been able to increase IED generation, despite substantial attrition of personnel and components by coalition forces and ANSF. One account suggests that 42,100 Taliban and other militants were killed between 2001 and 2016, with over 7000 in 2015 alone.[11] The use of very simple but effective IEDs, constructed without the need for specialist knowledge, engineering tools or facilities, enables new volunteers to be trained easily in the network of activities required to produce and deliver them to a target. Internet communication also enables rapid dissemination of IED construction, their optimum deployment and use, and ways of countering conventional force measures for defeating IEDs.

Ammonium nitrate fertiliser is a precursor material to manufacture homemade explosives and is often used in large IEDs. Huge resources, invested to prevent its nefarious distribution from factories in Pakistan to irregular forces in Afghanistan, were quickly usurped by insurgent counteractions. Ammonium nitrate is manufactured as a fertiliser in Pakistan but was made illegal to produce, use, store or sell in Afghanistan in 2010. As access of ammonium nitrate fell, irregular forces counteracted by switching to the use of potassium chlorate, a licit compound in Afghanistan that can also be modified to an improvised explosive. As exemplified by the

[11] Neta C. Crawford, 'Update on the Human Costs of War for Afghanistan and Pakistan, 2001 to mid-2016, in *Watson Institute: Brown University*, 29 July 2016, accessed 18 May 2019, http://watson.brown.edu/costsofwar/files/cow/imce/papers/2015/War%20in%20Afghanistan%20and%20Pakistan%20UPDATE_FINAL.pdf. In 2010 there remained an estimated 25,000–30,000 Taliban fighters associated with the Afghanistan conflict. In January 2011, estimates were 25,000 and had not reduced following the surge in ISAF forces. See, Slobodan Lekic, 'Surge fails to reduce number of Taliban fighters', in *Washington Post*, 6 January 2011, accessed 18 May 2019, http://www.washingtontimes.com/news/2011/jan/6/surge-fails-to-reduce-number-of-taliban-fighters/.

Afghanistan experience, current military doctrine and practice of defeating those involved in an IED network, while upholding IHL, is not effective in preventing IED regeneration; operational effectiveness reduces as does the likelihood of success. If IED regeneration is to be sufficiently inhibited to support successful military outcomes, including the removal of those engaged in IED production, then it must be achieved discriminately. Moreover, as demonstrated by the movement of IED supplies from Pakistan to Afghanistan or Iran to Iraq, the issue of state sovereignty of untrustworthy partners or those not technically involved in the conflict and the inviolability of their borders requires a moral reassessment; when is it morally acceptable to enter a third-party state and target military objectives?

2.3 Dual-use facilities. In MAC, dual-use facilities and dual-use sites are exploited excessively by irregular forces; they are fully cognisant of the Western application of *jus in bello* discrimination and proportionality, which errs on the side of civilian status when targeting is less than clear. A reasonably mature moral code has evolved from CJWT to guide lawful actions against attacks on dual-use sites, those that are necessary or highly desirable for normal civilian livelihood and are equally necessary and exploitable by combatants eg television and radio broadcast stations, power stations, workshops, fertiliser manufacturers, storage etc. During operations in Iraq and Afghanistan it was clear to coalition forces that destroying or dismantling dual-use infrastructure could adversely impact the vital hearts and minds campaign.

At the beginning of the Iraq War in 2003, US aircraft bombed the Baghdad office of Al Jazeera TV, killing a reporter. It was a dual-use site and some, like Home Secretary David Blunkett, considered it to be a legitimate target: ‘this was a war and in a war you wouldn’t allow the broadcast to continue taking place.’[12] Others disagreed, including Daily Mirror journalists; by

[12] David Blunkett, ‘Blunkett: We must bomb Al Jazeera’, in *The Mirror*, dated 12 October 2006 and updated 21 February 2012, accessed 18 May 2019, http://www.mirror.co.uk/news/uk-news/blunkett-we-must-bomb-al-jazeera-tv-703191.

being ‘a civilian organisation, the bombing of Al-Jazeera would have been illegal under international law.’[13] Some ethicists, such as David Rodin, consider dual-use sites to be off-limits to conventional forces in MAC, requiring them to establish even higher moral standards of *jus in bello*, more demanding and stringent. He suggests placing ‘all ambiguous targets and dual-use facilities that have important civilian functions off-limits for attack’, which along with other tighter constraints ‘may require the stronger side to assume risks to its own forces to ensure that they do not expose civilians to avoidable risk of harm.’ [14] This form of military supererogation – doing more than military responsibility or duty requires to be discriminate – deserves further moral analysis for MAC.

Again however, it is the proliferation, more audacious and active utilisation by irregular forces of dual-use sites, facilities and materials, in the midst of current IHL interpretation that adversely affects conventional force missions. In Afghanistan, for example, small engineering workshops and areas within factories have been used to manufacture IEDs and components. Transport of them and components has often been concealed within other legitimate commodities on “jingle trucks”[15] and fertilisers, necessary for the manufacture of homemade explosives, have been stored in farm complexes, providing legitimate cover. There have been vast quantities of dual-use sites and facilities, each requiring painstaking analysis to determine the complicity of some or all occupants in manufacturing, assembling, storing or in some way supporting IED production. Such analysis, for so many potential military objectives or targets, quickly consumes resources that are essential for other operations. With the intense exploitation of dual-use facilities by irregular forces in MAC, particularly the smaller, less easily visible and discernible ones described above, their status as civilian objects or military objectives, and thus liability to

[13] Ibid.
[14] David Rodin, ‘The Ethics of Asymmetric War’, in *The Ethics of War: Shared Problems in Different Traditions*, Richard Sorabji and David Rodin eds. (Aldershot: Ashgate Publishing, 2006), pp. 161–162.
[15] A jingle truck is a slang term for a colourfully painted lorry or bus, typically found in Pakistan and surrounding areas such as Afghanistan. The decorative chains hanging from the bumpers of vehicles make the sound that gives the name.

lethal attack, requires a moral review. Soldiers operating on the ground need clear guidance and easily interpretable rules of engagement to discriminate such sites and facilities effectively.

2.4 Casualties. Notwithstanding the substantial resources that coalition forces invested in technology, personnel protection equipment, training and intelligence capabilities, particularly in Iraq and Afghanistan, the IED amassed the largest proportion of casualties in those conflicts, when compared to traditional causation: direct fire from small arms, indirect fire from artillery, rockets, mortars etc. For example, by January 2013 in Afghanistan, more than 60% of US and approximately 85% of ANSF casualties had been caused by IEDs.[16] In 2008 and annually thereafter, more than half of all coalition force fatalities in Afghanistan were caused by IEDs, dropping to between 40% and 50% from 2012 as overall fatalities reduced.[17] As the responsibility for internal security transitioned to the ANSF, beginning around 2013 until the extraction of operationally active coalition forces in December 2014, there was little reduction in the intensity of casualties caused by IEDs.

Regrettably, most casualties caused by IEDs are civilian. For irregular forces, however, IED use reduces their exposure to conventional fighting, where they would be defeated by professional militaries. Militaries seek to develop national and collective responses to combat the effectiveness of IEDs, their tactical to strategic effect, since they are simple, cheap, lethal and morale sapping for conventional troops, who seek a fair fight. IEDs have a disproportionately debilitating impact on conventional troops and adversely affect the moral component of fighting power. Moreover, the acceptance of military casualties and its political impact drives the commitment of some nations, even within coalitions, to wars of choice and humanitarian

[16] Mujib Mashal, 'Afghanistan's IED Complex: Inside the Taliban Bombmaking Industry', in *Time*, 2 January 2013, accessed 18 May 2019, http://world.time.com/2013/01/02/afghanistans-ied-complex-inside-the-taliban-bomb-making-industry/.
[17] iCasualties website, 'Operation Enduring Freedom IED fatalities', accessed 15 August 2017, http://icasualties.org/OEF/.

intervention. This is reflected in the caveats that nations impose on coalition force commanders, constraining the types of military activities that are permissible by their national contingent troops. The IED is a tactical weapon that has proven to have strategic effect, as developed countries evolve a proclivity against their own troop casualties, especially those caused by IEDs during interventionist conflicts – it is assumed to be different in wars of national survival.

During recent interventions, irregular forces caused far more civilian casualties than were caused by coalition forces. During 2010 and 2011, as in most years, insurgents in Afghanistan were directly and indirectly responsible for significantly more civilian casualties than ISAF forces. Table 1 shows civilians killed and wounded by both ISAF and insurgents, in the order of 13% and 87% respectively; statistics for fatalities alone show similar trends. At the time, ISAF Public Information and Public Affairs branches never overindulged these facts; one reason being the Taliban rhetoric that there would be no civilian casualties if ISAF (the infidels) were not present. In ISAF donating countries these statistics were not highlighted, even though there were huge efforts at all levels of command to continue minimising civilian casualties as part of respective ISAF Commanders' strategies. These periods of 2010 and 2011 are chosen to demonstrate that the surge in coalition troop numbers, the vast bulk (30,000) from the US, announced by President Obama in December 2009 but not fully operational until the second half of 2010, did not increase the proportion of civilian casualties caused by ISAF; there were clearly more military operations taking place and more conventional troops on the ground.

Table 1: Civilian casualties caused by IEDs in Afghanistan

	Insurgents		ISAF		Total
	No.	% of Total	No.	% of Total	No.
1st Half 2011	1809	87.3	261	12.7	2070
2nd Half 2010	2053	87.1	303	12.9	2353
1st Half 2010	1720	87.0	255	13	1975

According to the United Nations Assistance Mission in Afghanistan (UNAMA), the number of civilian casualties in Afghanistan has grown each year following the departure of ISAF ground forces, 'with overall civilian deaths, including child deaths, reaching record high levels' in 2018.[18] 'Anti-Government Elements' use of IEDs in both suicide and non-suicide attacks reached extreme levels and remained the leading cause of civilian casualties in 2018, accounting for 42 per cent of the total.'[19] From such figures there is a clear erosion of civilian immunity from both the direct and indirect effects of IEDs, attributable to irregular forces in MAC, which deserves a moral response.

The expansion of IED use by irregular forces – being indiscriminate when time or victim operated – and in the case of Iraq and Afghanistan intentionally targeting innocents with such as suicide bombers, will continue in future MAC. ISIL's recent behaviour demonstrates a complete disregard for non-combatant immunity, even deliberately attacking hospitals and, thereby, flouting IHL.[20] In MAC, conventional forces must convince local populations that they can deliver security; civilian casualties caused by IEDs are, therefore, much more detrimental to the conventional force's campaign, even though they are not the cause. As part of the need to minimise civilian casualties, rapid ways and means must be sought to prevent an irregular force's sustainability of IEDs, which assists their ability to prolong conflicts in their favour. In MAC, reducing civilian casualties may necessitate forsaking some force protection measures of conventional forces, at least initially, in a bid to win the hearts and minds of locals. [21] Such a

[18] UNAMA, 'Annual Report 2018, Protection of Civilians in Armed Conflict', dated February 2019, p. 1, accessed 18 May 2019, https://unama.unmissions.org/sites/default/files/afghanistan_protection_of_civilians_annual_report_2018_final_24_feb_2019_1.pdf.
[19] Ibid., p. 21.
[20] Lizzie Dearden, 'Isis gunmen disguised as doctors kill more than 30 people in attack on military hospital in Kabul' in *Independent*, 8 March 2017, accessed 18 May 2019, http://www.independent.co.uk/news/world/middle-east/afghanistan-kabul-terror-attack-latest-isis-gunmen-sardar-mohammad-daud-khan-military-hospital-us-a7617281.html.
[21] Force Protection is the measures and means to minimize the vulnerability of personnel, facilities, equipment, materiel, operations, and activities from threats and hazards in order to preserve freedom of action and operational effectiveness, thereby contributing to mission success. See UK. MOD, Development, Concepts and Doctrine Centre, *Allied Joint Doctrine for Force Protection*, Allied Joint Publication-3.14 (AJP-3.14), dated April 2015, p. 1-1,

proposition, to accept even more risk to themselves, in order to achieve the campaign goals, requires a moral analysis as previously stated – a form of military supererogation.

2.5 Summary of new IED phenomenon. Although not a new innovation, the IED has developed into a new phenomenon. It results from a culmination of the sheer scale of use, an ability to regenerate, the exploitation of dual-use sites, and a negligent attitude to non-combatant casualties. The irregular force in MAC is audacious, constantly seeking to counter the responses of conventional forces, and truly understands and exploits the IED's tactical to strategic influence. Further evidence that the IED deserves the repute of a new phenomenon is the magnitude of commitment and resources that have been invested in doctrine, training, technology and equipment to defeat it, by the majority of developed countries.

The IED is enduring and its prominence is likely to remain in all forms of irregular conflict. It is easily manufactured, cheap, effective, flexible and easy to deploy, thereby reducing conventional forces' abilities to secure ground and manoeuvre, which are essential in providing security. Irregular fighters are fully aware of the strategic impact that IEDs have on national support to expeditionary wars of choice and humanitarian interventions, and the unwillingness of developed countries to accept their own military and any non-combatant casualties. I now examine how modern militaries have sought to counter the new IED phenomenon, in order to analyse and prepare moral solutions to such irregular force tactics and activities in the following chapters.

Section 3: Defeating the IED phenomenon – the practical challenge

During the early phases of conflicts in Iraq and Afghanistan, coalition force approaches to countering the rapidly growing IED threat were severely deficient. In Iraq, greater sophistication

accessed 19 May 2019, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/454616/20150804-AJP_3_14_Force_Protection_Secured.pdf.

was also witnessed; a mix of external support (Iran), pioneering technical development and innovative deployment exacerbated the problem. Conventional military operations were prevented or at least severely inhibited and operational effectiveness suffered. The Western military manoeuvrist approach to operations – the latest doctrine based on an attitude of mind, seeking to shatter an enemy's overall cohesion and will to fight rather than their materiel, by applying strength against the enemy's identified vulnerabilities – was exposed as inadequate against irregular forces and their IEDs. The IED phenomenon necessitated a rethink in doctrine, training, equipment, intelligence gathering, strategy, tactics, techniques, and procedures.

The UK had continued to develop doctrine, technical countermeasures and training from experience in combating terrorism in Northern Ireland, sporadic Irish Republican terrorist bombings on the UK mainland, operations in the Balkans and other deployments. The US, reacting to high rates of IED casualties in Iraq and subsequently Afghanistan, raised JIEDDO to focus efforts on overcoming the impact of IEDs on military and civil operations abroad; vast amounts of resources have been and continue to be invested in countering the IED threat.[22] Other coalition forces have likewise acknowledged their shortcomings with many forming their own counter-IED task forces – designated groups of military and civilian experts tasked with countering the success of IEDs in reducing the operational effectiveness of conventional forces.

[22] To emphasise the vast investment in countering the IED threat, JIEDDO's financial year (FY) spends were: FYs 2006–08, JIEDDO supported operations in two theatres costing from US $3.7bn to $4.5bn per annum with around 3000 staff; FY 2009, JIEDDO's commitment reduced in Iraq but the Afghan surge retained its budget at $3.1bn; FY 2011, budget of $2.8bn; and FY 2012, $2.7bn to support Afghanistan and 'unanticipated needs from the warfighter.' Data provided by Kelly Porter, Chief Products Branch at JIEDDO, US Department of Defense, from a request made on 14 December 2012 about the future of JIEDDO, via LinkedIn, accessed 16 December 2012, http://www.linkedin.com/groupAnswers?viewQuestionAndAnswers=&discussionID=195820268&gid=1432147&trk=eml-anet_dig-b_nd-pst_ttle-cn&ut=2gMIdrx-8aNBw1. During 2013 the JIEDDO budget was $1.6bn. In 2015, following the withdrawal of US combat forces from Afghanistan, JIEDDO was transformed into the Joint Improvised-Threat Defeat Agency (JIDA) with a budget of $500m and around 1000 staff. On 1 October 2016 it moved from an agency status to an organisation, JIDO. It remains a formidable capability, reflective of its coverage of potential MAC threats including IEDs.

Figure 2 below is a pictorial representation of the IED network or continuum developed by NATO staff. It represents a model of the new IED phenomenon. Previous doctrines and policies that concentrated effort and resources on defeating the device, shown within the red triangle of figure 2, (detect, protect, render safe, neutralise, exploit and dispose) were failing. Detection means, using a mix of metal, chemical and electronic detectors, x-ray machines, dogs and soldiers' situational awareness are all fallible, although synergistically, combinations improve the likelihood of finding an IED and thus the opportunity to render it safe. A combination of technology, training, tactics, competence, intuition and some fortune was and remains an on-going requirement to overcome the IED functioning as intended. Targeting primarily the emplacer or triggerman and trying to prevent the device exploding when deployed at the target had minimal effect in overcoming a proliferation in IED activity. A new strategy was required that considered the defeat of the IED network holistically, beyond focusing on the device, and as early as possible.

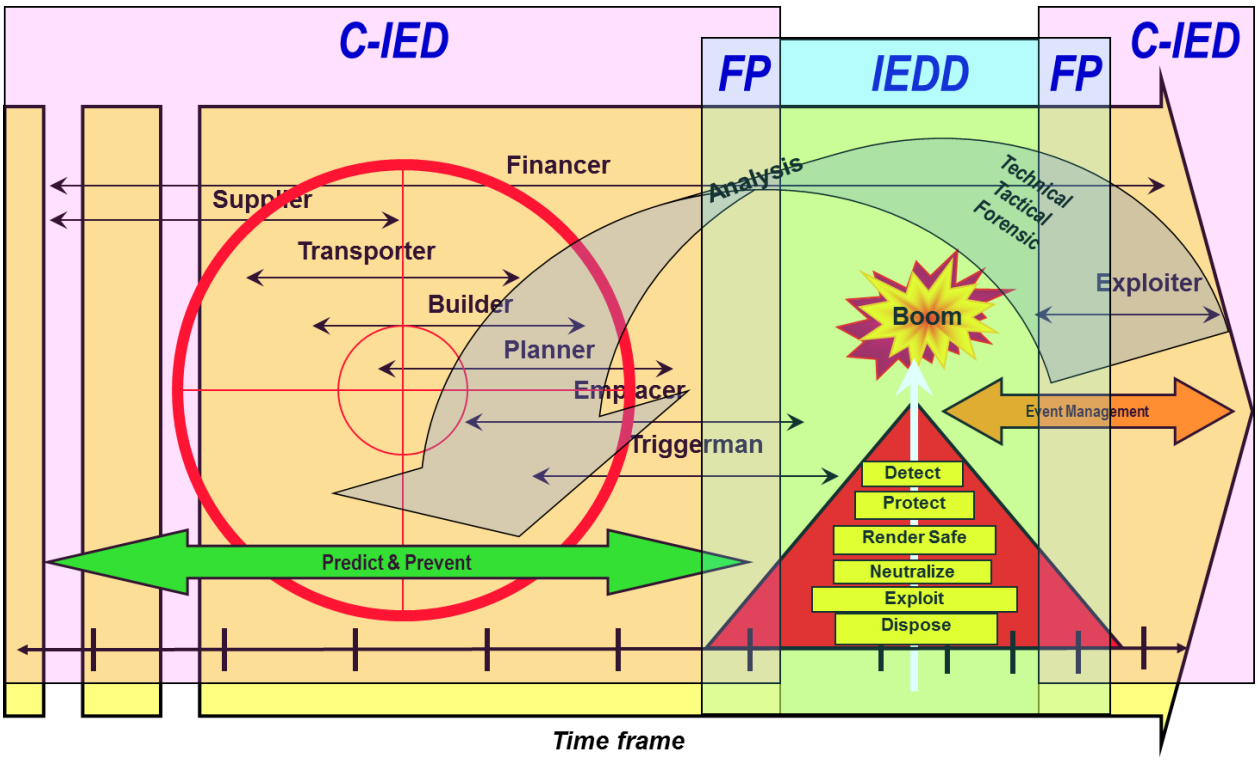


Figure 2: The IED network

Taking vital lessons from the conflicts, a new NATO and coalition strategy was developed to mitigate the IED phenomenon. It would tackle three lines of operation simultaneously: (1) defeat the device – discover and then render it safe using competent forces; (2) train the force – including bomb disposal teams, IED search teams, suitable awareness training and how to prevent becoming an IED casualty for all coalition forces; and (3) attack the network – operations, lethal and non-lethal, against all elements of the IED continuum. The strategy would address insurgent needs for intelligence gathering, planning, funding, design, development, procurement, supply, distribution, transportation, manufacture, engineering capacity, storage, training and finally, emplacement and initiation by irregular fighters. Another non-exhaustive selection of related actors is described in figure 2, within the area of the red circle (financier to triggerman). Defeating the IED needed to address the IED as a system or network – a collection of interrelated activities and events in a multi-dimensional continuum.

More effort was to be placed on training the whole force prior to and during deployment and not just specialist search and bomb disposal teams. Moreover, it was foreseen that attacking the network, as early in the continuum as possible, would reduce the likelihood of IEDs being ultimately deployed. The IED network in MAC, however, transcends national boundaries and easily recognisable and accountable organisations, often involving a mix of state and non-state actors across multiple domains. Without sufficient degradation of the IED network, as witnessed in recent conflicts in Iraq and Afghanistan, it is impossible to reduce the effectiveness of IEDs. Operations prolong, casualties increase, both combatants and innocents, and military objectives are less achievable. As previously deduced in Section 2.2, the sovereignty of state borders in this modern form of transnational conflict requires some moral revision – third-party states cannot be available as safe havens for MAC's irregular forces.

A description of the developing technologies, applications and processes that assist attacking the IED network is beyond the scope of this analysis. Evidence from Afghanistan alone has shown that the current set, as highly developed as they have been, do not cause sufficient attrition – the process of reducing the IED network's capability and effectiveness through sustained targeting – to overcome the IED's operational and strategic effects, achieve successful missions or attract the enemy to negotiate for a political settlement.[23] The upshot is that for successful missions, more effective strategies and deterrents are required, one including lethal force if necessary, against some of those involved in the preparatory and supporting roles of the IED network. The strategic military answer was initially, as stated above, to develop three lines of operation: (1) attack the network, (2) train the force, and (3) defeat the device. In Iraq, the strategy was in place following the Sunni awakening,[24] which led to a surge in US troops from the beginning of 2007. It seemed successful as the number of monthly IED incidents halved by the summer of 2007, from around 3500 per month, continuing to trend downwards to around 500 by the end of 2009.

Chapter 1 concludes that MAC is transformational, requiring agility from conventional forces. Developed countries are responding. As referenced at footnote 22 above, JIEDDO transformed to JIDO in 2016, via agency status. In 2015, its director, Lieutenant General Michael Shields, a former brigade commander in Iraq (2005–06) informed reporters about conflict against ISIL.

[23] Not to be confused with the conventional military strategy of attritional warfare – wearing down the enemy by sustained removal of combatants and materiel – which must be avoided in MAC due to the negative consequences of collateral damage. The British army is clear in its Future Land Operating Concept: the two fundamentals in such operations are to avoid the attritional approach and minimise collateral damage. Attrition is used, rather than for example erosion, in the sense of an *active* and *sustained* commitment to reduce the operational effectiveness of IEDs by causing sufficient loss or degradation of an irregular asymmetric force's capability, personnel and materiel, through a comprehensive approach. NATO defines a comprehensive approach as 'combining political, civilian and military instruments… The effective implementation of a comprehensive approach to crisis situations requires nations, international organisations and non-governmental organisations to contribute in a concerted effort.' See NATO. Topics, 'A "comprehensive approach" to crises', dated 21 June 2016, accessed 18 May 2019, http://www.nato.int/cps/en/natolive/topics_51633.htm. It is the role of the military instrument to support, among other tasks, IED network attrition by lethal force when necessary, and only as a last resort.

[24] Coalitions of tribes in a province of Iraq that united to provide internal security within their communities.

> This is not the fight that we faced when I was a brigade commander… This is very organized… [ISIL] has an industrial capacity to produce IEDs, so it's not a terrorist organization that is using them to achieve a terrorist effect; they are using them in vast quantities to help them isolate and shape the battlespace almost in phased types of operations. They are covering them with observation and fires. [25]

ISIL's industrial scale manufacture and use of IEDs caused Iraq's conventional forces and their coalition partners to rethink their strategy for combatting the particular threat. In defeating the device, it is 'less about these [explosive ordnance disposal] teams and going forth and dealing with a device, it's about combined arms maneuver and combined arms breaching'.[26] Within the Western manoeuvrist approach to warfare, JIDO hopes to provide 'rapid acquisition in support of Combatant Commands' efforts to prepare for, and adapt to, battlefield surprise'.[27] As Kilcullen states (footnote 1), the IED is now 'the standard repertoire of irregular forces in urban areas across the planet'. With urbanisation growing, particularly in areas that future MAC is likely, trying to defeat the IED network and irregular forces more generally is likely to increase collateral damage. After Iraqi and coalition forces freed Mosul from ISIL control in July 2017, Amnesty International commented: 'There is no doubt that hundreds, if not thousands, of civilian deaths could have been avoided in west Mosul, had the Iraqi forces and the US-led coalition prioritized their protection, as required by international humanitarian law.'[28] The British Deputy Commander of the international anti-ISIL coalition expressed his dismay at such comments, calling them 'naïve and deeply irresponsible', and further: 'It strikes me as being written by

[25] Jen Judson, 'As JIEDDO Becomes JIDA, IED Threat Builds In Theater' in *Defence News*, 19 November 2015, accessed 18 May 2019, http://www.defensenews.com/story/defense/land/2015/11/19/as-jieddo-becomes-jida-ied-threat-builds-in-theater/76050828/.
[26] Ibid.
[27] US. JIDO website, accessed 31 May 2017, https://www.jieddo.mil/.
[28] Lynn Maalouf, 'Iraq: Investigations, not denials needed over appalling civilian death toll in west Mosul', in *Amnesty International News*, 12 July 2017, accessed 18 May 2019, https://www.amnesty.org/en/latest/news/2017/07/iraq-investigations-not-denials-needed-over-appalling-civilian-death-toll-in-west-mosul/.

people who simply have no understanding of the brutality of warfare.'[29] Humanitarian agencies will seek to shame countries they see as responsible for collateral damage, even as irregular forces exploit urbanisation as an opportunity to increase it: it requires a moral assessment.

Subjecting irregular forces within the first line of operation (attack the network) to lethal force does not usurp the moral responsibility and desire for an escalatory response, from prevention through deterrence, warning, nullifying, restraining, and capturing, up to the final option of lethal force. Anything short of lethal force is morally preferable if it prevents IED activity and supports successful campaigns. It is within this line of operation (attack the network) that a change in moral thinking is also necessary, if the required attrition is to be realised that enables successful military objectives. If not, military missions will fail. The Christian moral challenge is to discern which of those within this line of operation are liable to lethal force and, if not at all times, when.

Summary of defeating the IED phenomenon – the practical challenge. Western military doctrines of manoeuvrist approach, traditional counter-insurgency, counter-terrorism and alike proved ineffective in countering the new IED phenomenon, which is probably the most prominent and visible component of MAC. Western forces developed a new strategy to mitigate the effects of IEDs during recent conflicts in Iraq and Afghanistan, based on attacking the IED network, training own forces better for deployment, and defeating the device with technology and improvements in personal and collective protection. Sadly, as ISAF troops transferred responsibility for security in Afghanistan to the ANSF, ending in 2014, thirteen years after the first incursion by US-led troops into the country, the scale of IED use seemed unrelenting. As at 2019, civilian casualties continue to increase in Afghanistan, reaching record levels annually.

[29] Josie Ensor, ''They have no understanding of brutality of war', says British commander over Amnesty's Mosul 'war crimes' report', in *The Telegraph*, 12 July 2017, accessed 18 May 2019, http://www.telegraph.co.uk/news/2017/07/12/have-no-understanding-brutality-war-says-british-commander-amnestys/.

Without a serendipitous military strategy, greater attrition of the whole IED network will be necessary in future MAC to achieve successful missions; a challenge since Western forces tend to honour and fulfil their obligation to minimise collateral damage and genuinely apply the spirit of IHL that, 'in case of doubt whether a person is a civilian, that person shall be considered to be a civilian.' [30] The need for greater attrition and applying IHL are not mutually exclusive. The challenge is to establish the moral conditions for enforcing sufficient attrition of the IED network to achieve successful objectives, missions and campaigns, including escalation to lethal force. Since the status of combatant and non-combatant is dynamic, a reappraisal of them within the IED network is required, which can be extrapolated largely to the whole irregular asymmetric force.

Conclusion

The IED has developed into a new phenomenon due to its revolutionary impact on the modern asymmetric battlefield – a component of the marked change in the character of modern war. The phenomenon results from: its utility, sheer scale and tempo of employment, causing greater casualties in proportion to traditional means – bullets, grenades, shells, rockets and bayonets; the ability to innovate and regenerate capability and capacity, despite substantial attrition of those involved and precursor materials and components; a greater use and exploitation of makeshift and dual-use sites, facilities and materiel, knowingly undermining or neglecting IHL, while conventional forces seek to uphold it; and negligence towards civilian immunity, even murderous at times.

The IED is likely to remain the irregular force's primary weapon of choice for the foreseeable future. It is very effective against conventional forces, easy to manufacture, cheap, adaptable to

[30] ICRC Treaties… Article 50, 'Definition of civilians and civilian population', accessed 18 May 2019, https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=E1F8F99C4C3F8FE4C12563CD0051DC8A.

many scenarios, and complements the irregular fighter's moral cowardice but personal courage, determination and audaciousness. Irregular forces recognise the IED's tactical to strategic influence and how to exploit it, being fully aware of its ability to reduce the manoeuvre and coverage of conventional forces on the battlefield, which is necessary to establish localised security and stability. They are also cognisant of the strategic impact IEDs have on developed countries' support to wars of choice, the proclivity of democracies against IED casualties, and the debilitating effect they have on the morale of conventional soldiers seeking a fair fight. Irregular asymmetric forces recognise the IED as a force multiplier.

Western military doctrines of manoeuvrist approach, traditional counter-insurgency, counter-terrorism and similar are suboptimal against the new IED phenomenon and the still evolving asymmetric battlespace. Change is necessary. NATO and coalition forces have developed strategies seeking to mitigate the IED phenomenon, focusing on experience in Iraq and Afghanistan, based on three mutually enforcing lines of operation: attack the IED network, train the force, and defeat the device. Other strategic factors are, however, equally significant such as cultural understanding, inter-agency integration, negotiation with rivalling insurgent groups, socio-politico-economic activity and reform, determining that a comprehensive approach is more likely to be successful in MAC.

Analysing the IED, as an exemplar of tools and tactics used by irregular asymmetric forces, raises a number of moral issues that can be extended to their warfighting activities in general. An overarching theme is how morally dutiful countries should respond to the immoral tactics and activities of their irregular adversaries, exemplified by their less-than discriminate use of IEDs. Combatant status is non-static; those judged to be combatant can change with the changing character of war. With one side adhering to a moral code, IHL and state practice and the other not, there is also inequality in freedom of action and, consequently, an inequality of

accountability between opposing forces. A further issue is how developed countries and their forces seek to respect the sovereignty of states and their borders, while irregular forces actively transgress them. In MAC, the inviolability of state borders requires a moral reassessment to prevent irregular forces withdrawing to third-party states for their own safety, replenishing and regrouping their military capabilities.

Acknowledging the negative impact of civilian casualties, even when the vast majority are caused by IEDs laid by opposition forces, MAC may require conventional soldiers to actively increase their own risk, in order to save civilian lives. To what extent soldiers should go beyond their military responsibility or duty and pursue greater risk of harm to themselves deserves further moral analysis. Moreover, whatever form or level of supererogation is determinable, soldiers operating on the ground need effective and easily interpretable guidance for discriminating. With the vast majority of IEDs causing civilian rather than military casualties, and in the case of suicide bombers often intentionally targeting civilians, there is a clear erosion of civilian immunity by irregular asymmetric forces that is also worthy of moral analysis. Finally, for now, as urbanisation grows and irregular forces exploit having civilians in the vicinity of their operations and activities, more collateral damage is likely with current targeting methods. This will not appeal to developed countries that seek constantly to reduce civilian casualties, which suggests that the doctrine of double effect may require some revision.

If greater and speedier attrition of the whole IED network is necessary for successful missions in MAC, then it will become more challenging for conventional ground troops, trying to fulfil their moral and legal obligations, to discriminate and minimise collateral damage. An escalatory response is desirable to erode the IED network sufficiently, from prevention up to the last resort option of lethal force and everything in between. Ultimately, defeating the IED network must be morally achieved. CJWT tools are available, developed over many years but, as will be shown in

the following three chapters, are helpful but insufficient for addressing such issues that I have derived above relating to discrimination in MAC: urbanisation and collateral damage, erosion of non-combatant immunity, sovereignty of state borders, interpretability of rules of engagement, inequality of accountability, and military supererogation.

Chapter 3
PAUL RAMSEY AND CHARITY AS A BASIS FOR DISCRIMINATION IN MAC

Ramsey, the most influential Protestant just war theorist of the second half of the twentieth century.[1]

Introduction

Paul Ramsey is one of the few Christian ethicists to consider at some length the issue of discrimination in revolutionary war. Since there are attributes similar to both MAC and revolutionary or guerrilla-style warfare, Ramsey is a most obvious resource from which to begin a Christian analysis of discrimination in MAC. Using primarily his work from the 1960s – the development of Christian moral guidance for conducting war and including his experience of the insurgency in Vietnam – I survey and critically analyse how he interprets and develops discrimination, in order to determine its suitability and sufficiency for MAC. Ramsey believed that 'there can be a counter-*insurgency* that meets the tests of just conduct in war, while insurgency does not',[2] and so this chapter analyses what of his work can be used to support, in later chapters, the hypothesis that conventional forces can meet the tests of just conduct in MAC, while irregular forces do not. Section 1 analyses the foundation of Ramsey's ethical thought on discrimination in revolutionary wars and Section 2 analyses five issues, developed in Chapter 2, that assist in building a Christian moral response to discrimination in MAC**.**

From Chapter 2, I conclude that combatant status is non-static and requires revision with the changing character of war or, as Ramsey describes it, 'the changing shape of warfare.' [3] Understanding how the task of discrimination needs to evolve and develop is an essential requirement in MAC: to assist statecraft and strategic decision-making, guide legislation and the expected conduct of conventional troops, tasked by the legitimate authorities of nation-states or

[1] Jeff McMahan, 'Unjust Wars', p. 9, accessed 18 May 2019, http://philosophyfaculty.ucsd.edu/faculty/rarneson/Courses/mcmahanjeffUnjust_War.pdf.
[2] Ramsey, 1968, p. 434. [Author's emphasis.]
[3] Ibid., p. 397.

the UN. My analysis of Ramsey's Christian-based ethic on discrimination determines that it remains extremely valuable as a development in CJWT but is insufficient for the needs of MAC.

Section 1: Love-centred discrimination

Writing prominent texts during the 1960s, Ramsey's concern was with some contemporary interpretations of CJWT and how parts of the church, both Roman Catholic and Protestant, were being, if not disingenuous, then at least insufficiently dedicated to the integrity of the tradition and to the historical relationship between church, war and statecraft. Ramsey does not advocate wholesale changes in CJWT thought, rather, in my opinion, that the shape of war changes such that it requires some revision: some further development or evolution for it to remain the most attractive tool of statecraft, for political and military leaders to think about war and make moral decisions. After all, he commits himself to CJWT being the 'most uninterrupted, longest-continuing study of *moral decision-making* known in the Western World.'[4]

1.1 Neighbour-regarding love. Ramsey's foundation for his thinking, analysis and discernment on the ethics of war, including discrimination, is taken from his exegetical understanding of Christ's greatest commandment: *to love thy neighbour*. Carefully studying Augustine, the earliest exponent of what has become CJWT, who used precisely the same text,[5] and Aquinas to support his description of the genesis of discrimination and non-combatant immunity, he writes: 'Subjectively, the Christian must never intend to kill a man, since love refuses to allow that motive, and countenances only the intention of saving life'.[6] Ramsey's foundational thought on what he often refers to as 'neighbor-regarding love'[7] is consistent with

[4] Paul Ramsey, *War and the Christian conscience / how shall modern war be conducted justly?* (Durham: Duke University Press, 1961), p. xxiii. [Author's emphasis.]
[5] Augustine, *Contra Faustum Manichaeum*, trans. Richard Stothert (Edinburgh: T&T Clark, 1887), bk. XIX, para. 24, pp. 426–8.
[6] Ramsey, 1961, pp. 42–3.
[7] Paul Ramsey, *Basic Christian Ethics* (Westminster: John Knox Press, 1950), pp. 142, 148, 177 and more, as well as Ramsey, 1968, pp. 150 and 151.

the lineage of renowned CJWT advocates. The sixteenth-century scholastic revival leader Vitoria, for example, in summarising a few canons or rules of warfare, determines that with one's enemies also being one's neighbours, 'whom we are bound to love as ourselves', then 'only under compulsion and reluctantly should he come to the necessity of war.'[8] Later, Grotius resolves that: 'Often, in fact, love for our neighbour prevents us from pressing our right to the utmost limit.'[9] Ramsey's thinking was also influenced by Luther who he quotes: 'I will therefore give myself as a Christ to my neighbor… I will do nothing in life except what I see is necessary, profitable and salutary to my neighbor…'[10]

Ramsey, consistent with a classical and Protestant CJWT evolution, interprets Jesus' command to loves one's neighbour as the authority and, where appropriate, the obligation to use military force to protect an *innocent* neighbour from an unjust threat.

> For love's sake (the very principle of the prohibition of killing)… Christian thought and action was driven to posit this single exemption (an exemption only when externally viewed): that forces should be repelled and the bearers and close cooperators in military force should be directly repressed, by violent means if necessary, lest many more of God's little ones should be irresponsibly forsaken and lest they suffer more harm than need be. [11]

'War, in spite of its horror, is the work of charity'[12] or love of one's neighbour according to him. Whilst '[n]o amount or kind of guilt in the fully personal sense as such gave any man the intrinsic right to kill another', he goes on to explain that 'the permission and duty to do this arose because of the place where the bearer of hostile force stood in relation to God's other children, and to their need to be served by Christians in the existing order of the common life by the

[8] Franciscus de Vitoria, *De Indis et de Iure Belli Relectiones*, *The Second Relectio*, ed. Ernest Nys, trans. John Pawley Bate, para. 60, accessed 18 May 2019, http://www.constitution.org/victoria/victoria_5.htm.
[9] Grotius, bk. 3, ch. 1, sect. IV, para. 2, p. 601.
[10] Martin Luther, *The Works*, vol. II. 335–6, 337–8, cited in Ramsey, 1950, p. 142. Later in the book he writes: 'Christian love has to do with the very *nature* of love itself, it does not simply provide love with another object—the neighbor—in whom one's *bonum* should still be sought. Christian love in its very nature *gives* some good, it is not primarily concerned to seek good. It is deontological as a matter of obedience, related to the neighbor as such…' Ibid. p. 148. [Author's emphasis.]
[11] Ramsey, 1968, pp. 150–151.
[12] Ibid., p. xi.

maintenance of a tolerable justice for them.'[13] He distinguishes the guilty from the innocent, with the former being '"formal aggressors" [who] are clearly guilty', including 'political commanders' but insists that 'an ordinary soldier's "guilt" is his objective and direct participation in the military offensive that has for love's sake to be repelled'.[14] In contrast 'the "innocence" of non-combatants means their lack of crucial relation or remoteness of their cooperation in the prosecution of the war'.[15]

I interpret Ramsey's understanding of innocence in the sense of being harmless, helpless or defenceless rather than blameless since, as I demonstrate more of later, he expresses the legitimacy of targeting 'to degrees of actual participation in hostile force'[16] or 'the significance of degrees of remoteness or closeness of cooperation in a nation's war effort'.[17] It allows him and us to consider an agent's participation in conflict, which is not sufficiently blameless or is sufficiently blameworthy, depending on how conflict is organised, to be the subject of legitimate targeting. I presume that Ramsey includes non-combatant immunity on any side of conflict, even though I have not discovered it to be explicitly stated.[18] Finally, from the same command to love thy neighbour, no more force than necessary is to be used against the *guilty* adversary because the command is not exclusive – it is to love the adversary also. For Ramsey, 'discriminating between direct attacks on combatants and direct attacks on non-combatants does not mean to immunize the latter while justifying the limitless killing of combatants.' [19]

[13] Ibid., p. 159.
[14] Ibid.
[15] Ibid., pp. 159–60.
[16] Ibid., p. 153.
[17] Ibid., p. 157.
[18] Richard Harries has the Christian view that 'love offers protection and immunity to all the harmless, whatever side they are on. The purpose of a just war is to protect the harmless. The harmless on the side of the enemy have just as much right to protection as the harmless on one's own side. Killing a harmless person on one's own side without due cause would be a murder. Killing a harmless person on the enemy side is no less murder.' Richard Harries, *Christianity and War in a Nuclear Age* (London: Mowbray, 1986), p. 86.
[19] Ramsey, 1968, p. 440.

In summary, an initial analysis of Ramsey's conception of neighbour-regarding love, which is core to his CJWT thinking on discrimination, establishes that he considers there to be an obligation to use military force in order to protect others from an unjust threat. Two further issues arise from Ramsey's thoughts on warfare as it has since developed. The first is that while no more force than necessary is to be used against a guilty adversary, the use of overwhelming conventional force against an enemy has been a US and UK military doctrine since at least 1992. (Chapter 4 examines the USCCB's criticism of the concept of overwhelming force.) The second relates to his recognition that contemporary war of his day was changing in character or shape, towards revolutionary wars. However, it is clear that other types of war were not made obsolete; the threat of nuclear and conventional wars remained. Likewise, although future wars are most likely to be asymmetric, other types of conflict have not become obsolescent. Ramsey's ethics on revolutionary wars, with features comparable to MAC, is the primary source of this analysis but all of his work, grounded as it is in neighbour-regarding love, is fully exploited.

1.2 Attention to *jus in bello*. Following World War Two, irreconcilably divergent philosophies grew between former allies – on the one hand, Russia, and on the other, the US and the UK, leading to adversarial relationships, unions or coalitions of nations, and the development of nuclear weapons. The potential for nuclear war and its consequences changed the character of conflict at the time; it led Ramsey to address the morality of nuclear war and deterrence. In his 1961 book, *War and the Christian conscience*, he develops how wars should be waged within the context of Christian doctrine and its moral principles, as a guide to government policy and strategic intent. His thesis informs on the nuclear threat, a watershed change in the character of conflict and necessitating a revision in some moral questions associated with war, including the revival and observance of traditional distinctions between combatants and non-combatants. Much of his analysis on *jus in bello* is also applicable to other forms of conflict. Ramsey develops his thinking further in his later book, *The Just War: Force and Political Responsibility*,

published in 1968. In the last of five parts to this book, he addresses the insurgency occurring in Vietnam at the time, and the challenges in defeating it by morally planning and ethically conducting counter-insurgency war. Reiterating Christian charity or neighbour-regarding love as foundational in his analysis, he writes:

> If then out of this self-same Christian love and responsibility one makes the decision that resistance is the necessary and most loving thing to do for all concerned, if one judges that not to resist is to have complicity in the evil he will fail to prevent, then the choice between violent and non-violent means is a question of *economy* in the *effective* force to use… A Christian who has taken the non-pacifist road must thereafter be concerned with the *morality of war*, and not mix this up with the morality contra bellum on which his pacifist brother relies… From this also flows the cardinal principle governing just conduct in war, namely, the moral immunity of non-combatants from direct, deliberate attack.[20]

Ramsey does not qualify here the moral immunity of non-combatants from *direct, deliberate* attack with agent *intention,* a vital characteristic when thinking about *jus in bello,* and one that is necessary in developing a CJWT-based form of discrimination in MAC. As previously highlighted and referenced at footnote 6, however, Ramsey clearly expresses the injunction that 'the Christian must never *intend* to kill a man', and further qualifies his view when distinguishing collateral damage as a side effect 'by what is deliberately *intended* and directly done.'[21] 'It is never right to do wrong that good may come, and anything that would be wrong to do would be wrong to *intend* to do.'[22] In Chapter 17 of *The Just War,* Ramsey critiques Robert W. Tucker's *Bellum Contra Bellum Justum,* which for this inquiry helpfully reveals how Ramsey views relationships between non-combatant immunity and the direct, deliberate and intentional attacks on legitimate military objectives. He states that 'the indestructible difference between murder and killing in war', being immoral and moral respectively, is derived from the fact that '[t]he objective of combat is the incapacitation of a combatant…because he is this particular

[20] Ibid., p. 502. [Author's emphases.] Earlier in the book, Ramsey describes combat and the difference between the incapacitation of a combatant and murder to deliver the identical sentence (less a comma) about the cardinal principle; the following sentence begins: 'This is the principle of *discrimination*'. Ibid., p. 397. [Author's emphasis.]
[21] Ibid., p. 154. [My emphases.]
[22] Ibid., p. 265. [My emphasis.]

combatant in this particular war… it is not the killing of a man… [which] would be "murder."'[23] Ramsey resolves that 'this difference is to be found in the *intention* and *direction* of the action that kills'[24] and later states:

> "Non-combatancy" is a category whose meaning varies from age to age… But "direct" or "deliberate attack" in the statement of immunity is not relative. This means, of course, that the meaning of immunity varies *in its application* from age to age; but not that the meaning of deliberate, direct attack is a relative matter. The reason for this is that the concept of "direct attack" gives shape to *an action* (its intention and thrust) while "non-combatancy" is a function of the bare facts of military organization. [25]

Here, Ramsey is refuting Tucker's 'theme: non-combatant immunity from direct attack (not only "non-combatancy but "direct attack" as well) must derive its meaning in one way or another from what is done in the objective order. Damage done that was foreseeable, for example, must have been "intended."' [26] But foreseeable collateral damage, according to Ramsey, is a side effect of what is deliberately intended and directly done, with any action being shaped by its *direction* and *thrust*. One can deliberately choose to perform an act that is foreseen possibly, probably or certainly to cause the death of innocents by direct physical causation, and yet still not "intend" it, in the sense of "wanting" it or "willing" it to happen, or as Nigel Biggar helpfully explains: 'to intend something is to desire it actively.'[27] Such is the case when in war one deliberately decides to strike a legitimate military target, foreseeing that there will possibly, probably or certainly be collateral damage that is unintended. Ramsey uses an example of an obstetrician removing the fatally cancerous uteruses of two women, one being pregnant, to illustrate that the obstetrician's objective intention to remove their uteruses, in both cases, is identical in seeking to save their lives, knowing that in one case fetal death is assured. 'The doctor does not intend the consequence simply because he *knows* that it will result from his surgery… the death of the fetus that will be brought about is *not* his intention.'[28] The obstetrician

[23] Ibid., p. 397.
[24] Ibid., [My emphases.]
[25] Ibid., p. 410. [Author's emphases.]
[26] Ibid.
[27] Nigel Biggar, *In Defence of War* (Oxford: OUP, 2013), p. 13.
[28] Ibid., p. 414. [Author's emphases.]

clearly does not wish or will or actively desire the death of the fetus, even though it will certainly occur: the loss is incidental or unintentional. I think it reasonable, therefore, to deduce that Ramsey's cardinal principle included intention; he viewed the direct (actual causation), deliberate (consciously and voluntarily) and intentional (willingly, purposely, wantonly and actively desiring) attacks against non-combatants as immoral.

By focusing on *jus in bello*, Ramsey seeks to ensure that when thinking about war, a clear recognition of a just cause, with prudent aims for good or lesser evil outcomes, does not necessarily demand that they must be achieved at any cost. He is clear that 'the *ends* for which wars may legitimately be fought are not nearly so important in the theory of just war as is the moral and political wisdom contained in its reflection upon the *conduct* or means of warfare.'[29] He gives the principle of discrimination renewed emphasis – non-combatants are not to be intentionally, directly and deliberately attacked – alongside that of proportionality. Together they are developed by Ramsey to a complementary but consequent status on the moral justification of going to war in the first place. *Jus ad bellum* and *jus in bello* are more formally established as distinct subdivisions, although they are inextricably linked, for moral thinking about waging and conducting war.

In summary, Ramsey acknowledged that *jus in bello* was the 'weakest part of the traditional theory of just war'[30] and that serious reconsideration was necessary. Johnson considers Ramsey to have had a clear 'conception of a *jus ad bellum*, even if he avoided developing one systematically' and goes on to confirm that 'from the perspective of later debate, what has proven most durable is his stress on the requirements of *jus in bello*.'[31] Reinvigorating the

[29] Ramsey, 1968, p. 152. [Author's emphases.]
[30] Ramsey, 1961, p. 33.
[31] James Turner Johnson, *The War to Oust Saddam Hussein: Just War and the New Face of Conflict* (Lanham: Rowman & Littlefield, 2005), p. 25. [Author's emphasis.]

emergence of *jus in bello* is putatively Ramsey's effort and within it discrimination and non-combatant immunity, which is investigated next.

1.3 Non-combatant immunity. Given that going to war is just, Ramsey's attitude towards non-combatant immunity begins with the foundation of Christian charity or neighbour-regarding love, as revealed above. He writes that 'the work of love will be to return ever again to the prohibition of the direct killing of any person not directly or closely cooperating in the force which should be resisted.'[32] In surveying Augustine and Aquinas' writings, he determines that one of two main alterations in CJWT, which occur between these two foremost theorists, is that 'rules for the right *conduct* of war were drawn up, particularly for the protection of noncombatants.'[33] Aquinas recognises the absolute prohibition against killing innocents when, quoting from Exodus 23:7, he states: 'The innocent and just person thou shalt not put to death' and establishes that 'it is in no way lawful to slay the innocent.'[34] For Harries, it is Vitoria, witnessing the appalling suffering of the Indians in South America, who galvanises non-combatant immunity as a formal, ethical rule within CJWT: that is 'put forward with authority and clarity.'[35] Vitoria proposes that 'if a war of the present day be just, it will be lawful to kill the innocent' on condition that '[t]he deliberate slaughter of the innocent is never lawful in itself.' [36] Similarly, Grotius, quoting Seneca, concludes that indiscriminate killing is unacceptable: 'Said Seneca: 'To kill many persons indiscriminately is the work of fire and desolation.''[37] Following on in the tradition of such prominent theologians, Ramsey begins to develop a coherent derivation of CJWT with respect to non-combatant immunity.

[32] Ramsey, 1961, p. xx.
[33] Ibid., p. 32. [Author's emphasis.]
[34] Thomas Aquinas, *Summa Theologica*, trans. Fathers of the English Dominican Province, Benziger Bros. edition, 1947, II-II q. 64, a. 6, p. 3332.
[35] Harries, p. 76.
[36] Vitoria, para. 34.
[37] Grotius, bk. 3, ch. 1, sect. IV, para. 2, p. 601.

For the genesis of non-combatant immunity, Ramsey seeks 'the meaning of the natural law immunity and the rights of the innocent (the noncombatant)'.[38] Hence, his understanding is that from charity or neighbour-regarding love, and natural law, come human rights. He acknowledges that his Christian view has similarities to the ethics of self-realisation – the fulfilment by oneself of the possibilities of one's character or the actualisation of human potentialities with those potentialities grounded on individual human rights – in that '[i]n both traditions rights devolve upon the individual on account of their relation to some service to be performed, without which he may not legitimately lay claim to rights for himself.'[39] He distinguishes, however, that rather than self-realisation ethics where

> rights for the self are forms of service to the *common* good. In Christian ethics, rights for the self are forms of service to the neighbor, and ideally a Christian agent gives no express consideration to whether he participates in, or is a mutual recipient of the good he does.[40]

As such, the ideal for Ramsey is 'self-sacrifice to the good of the neighbor'[41] rather than the self or the common good, a view also distinct from the fundamental human rights-based tradition of ethics. For example, Walzer states in his 1977 book *Just and Unjust Wars* that a 'legitimate act of war is one that does not violate the rights of the people against whom it is directed'[42] and later, in analysing "emergency ethics" in his 2004 book *Arguing about War,* he concludes that 'the weaknesses of utilitarianism lead us back to the theory of rights, and *it is rights that fix the everyday constraints on war-making* (and on all adversarial engagements).'[43] That is not to say, as is shown below, that human rights are not fundamental to Ramsey's ethics but that self-sacrificing charity or neighbour-regarding love trumps an individual's rights, in order to serve one's neighbour.

[38] Ramsey, 1961, p. 34.
[39] Ramsey, 1950, p. 187.
[40] Ibid. [Author's emphasis.]
[41] Ibid.
[42] Michael Walzer, *Just and Unjust Wars* (New York: Basic Books, 1977), p. 135.
[43] Michael Walzer, *Arguing about War* (New Haven: Yale University Press, 2004), p. 39. [My emphasis.]

Ramsey expresses a clear and fuller account of his Christian perspective on human rights in examining selective conscientious objection, which although not directly a topic associated with non-combatant immunity, is the best example to expound where he sees rights in relationship to charity or neighbour-regarding love. Highlighting US draft laws during the Vietnam War, he considers the pacifist objector to be being provided an alternate service to fighting, not as 'a *constitutional* right but a "right" granted by the "grace" of Congress in the positive legislation it enacts.'[44] He opines that Congress

> and not individuals or churches only, should recognize that in the forum of conscience there is duty to a moral power higher than the state. But the Congress is not *legally* or *constitutionally* bound to do this. In this there is the relic of the fact that while the person is transcendent he does not transcend the national common good to the whole extent of his being.[45]

For Ramsey, therefore, the grace shown by national government for a pacifist's human rights is an expression of charity, granted on an understanding that in national emergencies sufficient individuals are available 'whose political discretion has been instructed in the need to repel, and [in] the justice of repelling, injury to the common good.'[46] This form of grace cannot be extended to all simultaneously such that rights for each individual become absolute and for always: 'No political society can be founded on a principle according to *absolute* rights to possibly errant individual consciences'.[47] In the end, individual rights are trumped by the collective obligation and the social responsibility to love one's neighbour, acknowledging that:

> If political community is not to be torn to pieces between upright and errant consciences disagreeing as to the justice of the cause, there must be in each some significant measure of acknowledgement that political authority must dispose the energies of the whole to the common good…[48]

[44] Ramsey, 1968, p. 92. [Author's emphasis.]
[45] Ibid., p. 93. [Author's emphases.]
[46] Ibid.
[47] Ibid. [Author's emphasis.]
[48] Ibid., p. 98.

In reaching this verdict Ramsey quotes from *Gaudium et spes*, that 'authority must dispose the energies of the whole citizenry toward the common good…'[49] Each citizen, therefore, has their individual rights that are to be protected by the political authority of the nation-state, but which also has 'to dispose the energies of the whole citizenry toward the realization of its agreement as to the national and the international common good.'[50] The rights of the individual are to be met within a responsibility to the collective charity and the good of the citizenry as a whole.

Individual human rights are, therefore, a constituent part of Ramsey's moral thinking about war, grounded in charity and natural law; his thoughts on non-combatant immunity also use these foundations. He further determines that: 'Statements about the immunity of civilians are at one and the same time statements about the only kind of warfare that can have any minimal rational or human meaning at all.'[51] So, Ramsey is clear that indiscriminate attacks on non-combatants are always morally unacceptable: 'indiscriminate bombing exceeds the moral limits of warfare that can ever barely be justified.'[52]

As well as being coherent with CJWT and congruent with much secular academic thought,[53] Ramsey's development of non-combatant immunity – intentional attacks are permissible only on those directly or closely supporting the fight – remains consistent with IHL. The need for a consistent moral underpinning of law, to establish clear rules of engagement for combatants, cannot be underestimated. Clear and concise rules of engagement are *sine qua non* for soldiers, particularly in the vast array of situations that they find themselves in during MAC. They have

[49] Ibid.
[50] Ibid., p. 132.
[51] Ibid., p. 135.
[52] Ibid., p. 157.
[53] Walzer states that 'the theoretical problem is not to describe how immunity is gained, but how it is lost. We are all immune to start with; our right not to be attacked is a feature of normal human relationships. That right is lost by those who bear arms "effectively" because they pose a danger to other people. It is retained by those who don't bear arms at all.' See Walzer, 1977, p. 145 footnote. McMahan states that '[m]ost of us accept not only that ordinary civilians are not responsible when their country fights an unjust war but also that they are not legitimate targets in such a war.' See Jeff McMahan, *Killing in War* (Oxford: Clarendon Press, 2009), p. 204.

neither the mental capacity nor agility, nor the time that ethicists, political scientists or lawyers have in the comfort of institutions, libraries, studies and court rooms to reflect on situations or role play before having to make critical and often life-threatening decisions. Writing that 'ecclesiastical councils should listen to experts in the political and military sectors and learn the new shape war may have assumed in any age, and thus learn to know the meaning of a present application of the principle of discrimination',[54] Ramsey fully appreciates and understands the practical difficulties in trying to distinguish between combatants and non-combatants, in what he calls modern war or revolutionary war; he concludes that distinction between combatant and non-combatant is subject to change and his conclusion remains extant.

To summarise, in developing his doctrine of non-combatant immunity, which he centres on the understanding of Christian charity and which natural law complements, Ramsey still recognises the difficulties in its practical application to contemporary warfare. Moralists must, therefore, recognise the limitations of military capabilities and soldiers' competences in any moral review of combatant and non-combatant statuses. They must also seek to understand the expanding support of technological and intelligence assets that assist discernment, and the opportunities and limitations of them, if they are to add optimum value to informed debate on these issues. The practical application of a similarly Christian-based doctrine of discrimination in MAC, a type of war shown in previous chapters to be possibly more complex than counter-insurgency could, therefore, be even more demanding for conventional forces. But that does not negate the need to develop an ethic that informs accordingly – the overall intention of this thesis. Before that, however, an examination of Ramsey's development of the doctrine of double effect completes the analysis of love-centred discrimination.

[54] Ramsey, 1968, p. 455.

1.4 Doctrine of double effect. Part of Ramsey's survey of Augustine and Aquinas determines that 'the rule of double effect can correctly be applied only to the indirect killing of the innocent'.[55] He further proposes that Cajetan extensively used this rule, following his early sixteenth-century commentary on Aquinas, 'to solve cases involving necessarily the death of innocents'.[56] Vitoria had similarly been prepared to justify unavoidable collateral damage, civilian deaths or injuries, when prosecuting a just war. As previously noted of Vitoria 'the deliberate slaughter of the innocent is never lawful in itself', and he qualifies that:

> Sometimes it is right, in virtue of collateral circumstances, to slay the innocent even knowingly, as when a fortress or city is stormed in a just war, although it is known that there are a number of innocent people in it and although cannon and other engines of war can not be discharged or fire applied to buildings without destroying innocent together with guilty. The proof is that war could not otherwise be waged against even the guilty and the justice of belligerents would be balked. In the same way, conversely, if a town be wrongfully besieged and rightfully defended, it is lawful to fire cannon-shot and other missiles on the besiegers and into the hostile camp, even though we assume that there are some children and innocent people there.[57]

Ramsey develops his understanding of the doctrine of double effect with a critical analysis of Luther's work. 'Luther believed that from Christian love would follow… good conscience also in doing necessary evil if for love's sake it must be done.'[58] Reflecting on the work of Aquinas and subsequent interpreters of Aquinas' work, Ramsey goes on further to explain that from the early seventeenth century, Aquinas' passage on whether it was lawful to kill a man in self-defence,[59] which had been a principal text for analysing double effect, transferred from solving the problem of the morality of killing the unjust aggressor – killing him was inherently justifiable – to the problem of killing the innocent. In *War and Christian Conscience*, Ramsey determines that there are four conditions that must all be realised or verified in upholding the principle of

[55] Ramsey, 1961, p. 46.
[56] Ibid., p. 47.
[57] Vitoria, para. 37.
[58] Ramsey, 1950, p. 188.
[59] Aquinas, II-II q. 64, a. 7, p. 3334.

double effect. They hold the attacker responsible clearly but not accountable or guilty for any 'foreknown evil consequence of his action.'[60] They are:

> (1) the action itself must be good in its nature and object, or at least indifferent, (2) a good effect and not an evil effect must be intended, (3) the good effect must not be produced by means of the evil effect, but both effects must arise simultaneously from the (at least) morally indifferent action as cause, and (4) there must be in the good effect a proportionately grave reason for permitting the evil effect.[61]

Within CJWT the agent intent and the doctrine of double effect, together, determine the moral justification of a strike and any unintended non-combatant casualties and not any numerical or statistical calculations. Although Oliver O'Donovan suggests that it 'makes sense to ask *how many* non-combatant casualties can be incurred without making the action disproportionate,'[62] most Christian accounts of double effect do not suggest that, for a given scenario, up to and including the number "n" non-combatant casualties is acceptable to achieve a legitimate military objective but greater than "n" is unacceptable. As Ramsey writes of balancing military requirement and collateral damage, '[t]his distinction is not determined by the amount of the devastation or the number of deaths, but by the direction of the action itself, i.e. by what is deliberately intended and directly done.'[63]

Commentators speaking of 'disproportionate destruction as if that means the ratio of civilian to combatant deaths'[64] would irritate Ramsey. CJWT does not ask: if an attack on a military target or the legitimate killing of combatants is successfully completed, then how many non-combatant casualties are justifiable? Rather, attacks on military targets require the virtue of prudence to determine foreseeable collateral damage and, if any is predictable, minimise it commensurate with the nature and value of the military target or the anticipated military advantage to be gained – that is, the collateral damage permissible must be proportionate (as must the harm to

[60] Ramsey, 1961, p. 55.
[61] Ibid., pp. 47–8.
[62] Oliver O'Donovan, *The Just War Revisited* (Cambridge: CUP, 2003), p. 43. [My emphasis.]
[63] Ramsey, 1968, p. 154.
[64] Ibid., p. 535.

combatants and destruction of enemy facilities and equipment).[65] In military planning, such proportioning of collateral damage to the value of a target is not formulaic and must be prudently judged on a case-by-case basis – it is variable and situation dependent. However, perhaps O'Donovan has a point as I shall indicate later in this chapter and comprehensively in Chapter 6: the actual numbers counted seem to have an increasing, and possibly unhealthy, influence on military decision-making.

In great scholarly fashion Ramsey describes opposing views and analyses to his own. There is a strong intellectual argument challenging the proposition that the rule of double effect was ever morally justifiable, or that it was indeed Aquinas' view as suggested by the late scholastics onwards. Ramsey quotes Father John C. Ford's rejection of any such interpretation that Aquinas had an idea of the rule of double effect, as it became recognised, when applied to the killing of innocent people.[66] In opposing strategic bombing during World War Two, Ford had to refute the rule of double effect as a morally acceptable discipline, which he did by arguing that the moral problem of unintentionally but knowingly killing innocents could be assuaged 'merely by advising the air strategist to let go his bombs, but withhold his intention'.[67] Most commentators, however, accept the heritage of discrimination and the rule of double effect to be Thomistic.

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[65] Based on the principle of right intention, which includes the moral obligation to restore justice and peace following success, destruction of an enemy's military capability, including equipment, should be proportionate. Defeat of an enemy, followed by a peaceful outcome should seek to allow the defeated enemy an ability to defend itself justly following its defeat, in which case disproportionate destruction of its military capability and capacity to regenerate would be unethical. Unless nation or state based, irregular asymmetric enemies would not fall into this category. Neither would those that promote their own self-styled states such as ISIL – those not recognised by the international community.

[66] More recently, Daniel H. Weiss has made the argument that 'Aquinas holds that causing the death of innocents in a foreseeable manner, whether intentionally or indirectly, is never justified.' See Daniel H. Weiss, 'Aquinas's Opposition to Killing the Innocent and its Distinctiveness within the Christian just War Tradition', in *Journal of Religious Ethics*, September 2017, vol. 45, issue 3, p. 481, accessed 18 May 2019, https://onlinelibrary.wiley.com/doi/epdf/10.1111/jore.12187.

[67] John C. Ford, 'The Morality of Obliteration Bombing', in *Theological Studies 5*, September 1944, vol. 3, p. 289, cited in Ramsey, 1961, p. 49. Quoting work by Vicente Alonso, Ford went on to deduce that 'St. Thomas did not know the principle of the double effect as we formulate it'. John C. Ford, 'The Morality of Obliteration Bombing', in *Theological Studies 5*, September 1944, vol. 3, p. 290, n. 57, accessed 18 May 2019, http://theahi.org/wp-content/uploads/2013/10/Ford-Morality-of-Obliteration-Bombing.pdf.

Ramsey acknowledges that people's intentions will always be suspicious 'unless they are also controlled by some more objective determination of right *action*.'[68] In seeking a good effect by right action while ensuring his doctrine of double effect, he writes:

> The modern improvements of the rule make it clear that the good effect must not only be the formal object of the intention but also the immediate material object of the physical act. More simply, the good must be not only be willed directly but also done directly, if the agent is not to be held directly accountable also for the foreknown evil consequence of his action.[69]

From Ramsey's understanding of CJWT, and within it *jus in bello* and the doctrine double effect, as being centred on charity or neighbour-regarding love, then the Christian can only intend the best for his neighbour if his desire is truth and justice, and he is guided by right intention to do right action. Similarly, Christian doctrine espouses that peace is a "fruit" or a work of charity.[70] Any Christian view of a military force, used as a last resort, being responsible and accountable for protecting non-combatants, and delivering restorative peace and justice, cannot rationally bear witness to a less than sincere commitment to minimise casualties within the same non-combatant community and impart injustice. It remains the case even if the adversary plans and performs immoral acts.

Ultimately, Ramsey's survey of the rule of double effect concludes that it 'came to focus upon the moral immunity of noncombatants from direct attack.'[71] As analysed above, that means direct, deliberate and intentional attack. Together with his basis of neighbour-regarding love and inherited CJWT, he determines that the Christian 'governs himself by love and develops the rule of double effect, and the distinction between direct and indirect killing, as logical and necessary limits of action that is permitted and sometimes required by a love-informed justice.'[72] For

[68] Ramsey, 1961, pp. 50–1. [Author's emphasis.]
[69] Ibid. p. 55.
[70] 'Peace is the "work of justice" indirectly, in so far as justice removes the obstacles to peace: but it is the work of charity directly, since charity, according to its very nature, causes peace.' Aquinas, II-II q. 29, a. 3, p. 2970.
[71] Ramsey, 1961, p. 59.
[72] Ibid., pp. 178–9.

Ramsey, love-informed justice and the application of charity must inform natural or rational moral law in decision-making: 'they [natural or rational moral law] must not be closed off from the impact of charity'.[73] He confirms his belief in *The Just War* where he writes of the principle of discrimination:

> This does not require that civilians never be knowingly killed. It means rather that military action should, in its primary (objective) thrust as well as its subjective purpose, discriminate between directly attacking combatants or military objectives and directly attacking non-combatants or destroying structures of civil society as a means of victory.[74]

In summarising the doctrine or rule of double effect, Ramsey's four conditions that need to be met simultaneously, in order to uphold the rule, remain a core to moral thought on it. His view is that the military requirement – to outweigh foreknown but unintended collateral damage – is not determinable by any calculable devastation or casualty numbers but by what is willed and done: in other words, the deliberate intention and direct action. The question that arises for MAC, which I address in Chapter 6, is how can intention and direct action in this sense "outweigh" collateral damage. To overcome the debate of double effect facilitating concealment of insincere intention – that is rather than it being a means to limit non-combatant casualties, it provides an excuse for accepting them – Ramsey acknowledges the necessity for more objective determination. Through charity, the rule of double effect, rightly interpreted and acted out, permits and sometimes obligates the unintentional killing of non-combatants, by a love-informed justice, as a means of victory and restorative peace, which are the ultimate ends.

The doctrine of double effect that Ramsey developed in the 1960s is deficient for consideration in MAC without, by his own admission, 'some more objective determination of right *action*', to overcome the suspicion that is raised by intention; the suspicion being that one could simply say that the collateral damage that ensued was not intended to any and every attack. Any possible

[73] Ibid., p. 178.
[74] Ramsey, 1968, p. 429.

design, which Ramsey did not address, of a clearer and more objective evaluation process, would help to overcome the scepticism over the sincerity and integrity of intention. Combining this challenge with the new character of MAC, to assist developing moral answers to discrimination, is the task of subsequent chapters.

Summary of Section I: Love-centred discrimination

Post World War Two, Ramsey had become concerned with the integrity of modern church evolutions of CJWT. It was a time of fresh thinking with the onset of the nuclear age and insurgencies, linked to the expansion of communism, which he felt must not prevail in the world. His analysis of discrimination is grounded in charity or neighbour-regarding love and reflects historic CJWT exponents throughout the ages**.** Separating *jus in bello* from *jus ad bellum* helped him to focus on the moral attributes necessary for just conduct in war and to reveal his cardinal principle governing it – the absolute immunity of non-combatants from direct, deliberate attack – it was for him the cornerstone of CJWT. There is sufficient intersection and corroboration in his analysis to presume that his cardinal principle includes intention (a willing and active desire for the outcome), if only by the fact that Ramsey was explicit that the Christian should never *intend* to kill anyone. Moreover, he recognises that the practical application of discrimination is very challenging for politicians and militaries, and that the church and moralists need to learn of the changing character of war, in order to apply discrimination in the contemporary operating environment. It is a recurring lesson.

Ramsey interprets the doctrine or rule of double effect based on agent intent, the moral justification of a strike and its military advantage over unintended non-combatant casualties, rather than any form of predicting casualty numbers, but as O'Donovan suggests, there may be some merit in this; more broadly, with modern technologies and techniques, forms of predictive

analytics may assist.[75] Ramsey is clear, however, that intentions need control by more objective determination of right action; I analyse this in subsequent chapters. While comprehensive and coherent, Ramsey's ethics were a response to a changing character of war at that time. It was a development for its day, focusing on the nuclear threat and counter-insurgency warfare, as witnessed in Vietnam, and a climate very different from today. The following section establishes the changes in the character of revolutionary wars that led Ramsey to his moral reappraisal of CJWT. Here and in later chapters, I exploit the legacy of this work.

Section 2: Discrimination – learning from counter-insurgency

Witnessing nuclear expansion and the Vietnam War, Ramsey clearly recognises the changing character of contemporary war. Publishing in 1968, he refines his view in Chapter 22 of *The Just War*, that, 'it is a fact of life that the nuclear stalemate has made the world safe for insurgent warfare. *This is modern war*!'[76] In realising this change, witnessing in particular the modern insurgency in South Vietnam, Ramsey determines a need to review CJWT, its applicability and how its development could provide political leaders with moral justification for conducting counter-revolutionary warfare.

By examining how Ramsey develops his doctrine of discrimination in counter-insurgency war, my intent is to exploit its principles and characteristics to develop a moral guide for discrimination in MAC, which remains committed to CJWT and informed, where necessary, by other Christian and non-Christian views.[77] The aim of this section is to synthesise Ramsey's

[75] Predictive analytics is the use of techniques such as data mining, statistical algorithms, modelling, machine learning, artificial intelligence etc to analyse current data and make predictions or identify the likelihood of future outcomes. In Chapter 6, I consider the opportunities of predictive analytics in supporting moral decision-making.
[76] Ramsey, 1968, p. 481 and pp. 507–8. [Author's emphasis.]
[77] Like previous iterations and developments of Christian moral thinking about discrimination, it should be informed by non-Christian thought for its overall benefit. After all, if God created the earth and everything in it, as Christians believe (Acts 17:24), then free will is also created by the same God, including the freedom to believe in self-examination, of conscience and thought. Christians acknowledge that their God uses non-believers for His purpose as well as His faithful followers (eg 2 Tim 2:20–21). Perhaps a more obvious justification lies in combining the belief that the world that Christians and non-Christians inhabit is created and ordered by the one wise God, together with the belief that the non-Christians' grasp of created order is not absolutely obliterated by sin.

analysis of discrimination in counter-insurgency war for such use. Ultimately, his work is of great value but insufficient for the needs of MAC. That is no surprise; he himself had confirmed the need to recognise the changing character of war, in order to apply discrimination in the contemporary operating environment.

2.1 The non-static status of combatants versus non-combatants. Augustine, as originator of CJWT and whom Ramsey carefully studies, does not explicitly pronounce on the distinction between combatants and non-combatants in his writings on war. However, Ramsey also carefully studies Aquinas' development of Augustinian thought, which establishes a set of explicit criteria with which to authorise and judge the resort to and application of public force, the latter constraining hostilities such as prohibiting the killing of innocent bystanders (see analysis in Section 1.3 above). From the Middle Ages onwards, groups of people have been considered immune from attack by virtue of the lack of threat that they pose and their lack of contribution to the war effort. Johnson determines that 'canon law between the late tenth and thirteenth centuries identified certain classes of people who should not have war made against them' and provides the following list associated with the period: 'the clergy, members of religious orders, pilgrims on the road, women, children, the aged, the physically and mentally infirm, peasants on the land, townspeople, and innocent travelers, as well as the property belonging to all of these.'[78] Ramsey transforms this normative system of discrimination, with Johnson crediting him with developing a principle of discrimination that 'replaced the older just war definitions of noncombatant immunity by lists of classes of persons normally not involved in war and thus not to be directly, intentionally attacked.'[79]

[78] Johnson, 2016, p. 308.
[79] James Turner Johnson, *Ethics and the Use of Force* (Farnham: Ashgate, 2011), pp. 20–2.

Ramsey demonstrates that CJWT is adaptable for exploitation and moral guidance in conflicts as diverse as nuclear and counter-insurgency. His overall ethical position on discrimination is clear: 'the work of love will be to return ever again to the prohibition of the direct killing of any person not directly or closely cooperating in the force that should be repelled.'[80] This was uncontroversial at the time but in witnessing the Vietnam War, Ramsey sought to develop and re-evaluate those considered to be directly or closely cooperating in the force that was to be resisted, in this modern war, while retaining Christian fidelity. He determines that while '[c]ounter-insurgency as a military operation can and should make the insurgent forces the primary object of attack,' [81] it should also be the case that

> a "combatant" means anyone who is an actual bearer of the force one seeks to repress by resorting to arms. While in conventional warfare this seems easily determined by whether or not a man is in military uniform, it is still the case that (a) persons in command positions are "combatants" even though they wear tweed suits; (b) closeness of material cooperation may define a civilian as a "combatant"…[82]

Ramsey's hypothesis extends to civilians in command positions and those providing material cooperation but there is no further elucidation. Chapter 2 examined material cooperation with respect to IEDs and later, in Chapter 6, I analyse material cooperation in detail. Whatever the proposals or directives put forward, the challenge for those charged with enacting the profession of war is to interpret ethical and legal definitions and then apply them in conflict. This is relatively straightforward in conventional state-on-state war, less clear in counter-insurgencies and even more obfuscating in MAC.

Moreover, as Ramsey's development of what a combatant is demonstrates, combatant status is a non-static phenomenon – *ipso facto* non-combatant status develops nuances with the changing character of war and societal evolution. Reviewing and refining such statuses within the

[80] Ramsey, 1961, p. 190.
[81] Ramsey, 1968, p. 434.
[82] Ibid., p. 435.

principle of discrimination is necessary whenever new forms of war emerge or are engaged, people and cultures are enlightened or radicalised, or novel weapons are invented or developed. Ramsey recognises the dynamics of non-combatant status when he writes: '"Non-combatancy" is a function of how the nations or the forces are organized for war, and of military technology.'[83]

In conclusion, combatant and non-combatant statuses are always subject to social revision. Ramsey recognises that discrimination is dynamic and a function of how nations and forces of all types organise themselves for and enact warfare. Since Ramsey wrote on revolutionary wars, a mix of such as non-state actors, multi-national origins, globalisation, technology and social evolution have transformed the character of war and the way combatant status needs to be viewed and analysed. Ramsey's expansion of combatant status to include persons in command and those providing material cooperation is helpful but insufficient for new forms of war: first, because they need to be bounded with greater granularity (what activities distinguish a commander or someone providing material cooperation); second, what of those training, sustaining or preparing to cooperate and to what degree; and third, what constitutes sufficient cooperation in new applications for warfare such as cyber-attacks, mass use of IEDs etc? Ramsey's ethical resource, excellent though it is, is not insufficient for MAC. A reappraisal is necessary of those that should be considered to have combatant status in MAC.

2.2 Modern permissibility of collateral damage. Ramsey is largely responsible for reinvigorating thought about *jus in bello*, which for him had been the weakest part of CJWT. Part of his anxiety was that the form of Christian realism, espoused by Reinhold Niebuhr, had become extremely influential in US church and political thinking but was insufficiently robust as a tool for guidance in statecraft.

[83] Ibid., p. 502.

> In all that I have ever written on the morality of war I have been quite consciously drawing upon a wider theory of statecraft and of political justice to propose an extension within the Christian realism of Reinhold Niebuhr… There is more to be said about justice in war than was articulated in Niebuhr's sense of the ambiguities of politics and his greater/lesser evil doctrine on the use of force. That more is the principle of discrimination; and I have tried to trace out the meaning of this as well as the meaning of disproportion in the kinds of warfare that Niebuhr never faced… this may explain why I seem so alone in championing the recovery of the just-war doctrine…[84]

For Ramsey, Niebuhr's form of Christian realism was dissuading politicians from military action as a means to achieve morally justifiable ends. In Vietnam, collateral damage, whilst brought about by the shape and order of combat that the insurgent had purposively established, was too influential in shaping political thinking – having more sanctity assigned to it than was necessary or constructive. Although these conditions prevailed, Ramsey's view was that the principle of discrimination was being honoured in the counter-insurgency:

> I myself have no hesitation in saying that the counter-insurgency in South Vietnam in its chief or central design falls within the principle of discrimination. It is directed upon combatants as these have organized themselves for war, i.e., among the people like fish in water. No Christian and no moralist should assert that it violates the moral immunity of non-combatants from direct, deliberate attack to direct the violence of war upon the vast Vietcong strongholds whose destruction unavoidably involves the collateral deaths of a great many civilians.[85]

As described above, Ramsey's view was that agent intent and the doctrine of double effect, together, establish the moral justification of a strike and any unintended non-combatant casualties, and not any numerical calculations or theorising. Yet while his ethical Christian view is a traditional one, collateral damage from counter-insurgency in Vietnam began to have an increasingly negative impact on support for the war in America and globally, particularly civilian casualties caused by aerial bombing. The scale of civilian deaths had profound effects, notwithstanding any agreement or acceptance that deaths were genuinely collateral and, under Ramsey's assessment, a result of how the insurgents had organised themselves among the civilian population.

[84] Ibid., pp. 260–261.
[85] Ibid., pp. 502–3.

Assessing the effects of aerial bombing in Vietnam over three decades later, researchers from Yale and Cornell conclude that data and analysis from the war show 'a systematic record of civilian victimization',[86] that 'bombing civilians systematically shifted control in favor of the Viet Cong insurgents'[87] and that 'it was selfdefeating'.[88] Sometimes described as the first televised war, the general consensus has been that negative media coverage drove the loss of US popular support for the war and uncensored media coverage assisted the Vietcong's information and intelligence gathering. This has been challenged more recently by Scott Althaus, Director of the Cline Center for Democracy at the University of Illinois, based on his extensive study of war coverage and public support. He concludes that US support for their wars is determined primarily by: first, 'the type of war they are willing to support. Popular support tends to start high for conflicts involving clear and immediate threats to American national interests… [and] low for conflicts that are intervening in other countries' civil wars'; and second, 'regardless of how much Americans support a war at the beginning, that support tends to fall away at a fairly steady rate over time.'[89] So, for Althaus, even if there was a systematic record of civilian victimization etc, which is challengeable, its media coverage would not be the primary reason for the loss of home support for the war.

Opinion over the media's influence on the Vietnam War remains varied, and although Ramsey does not analyse in depth the moral issues of the political impact of mass media, he was acutely aware of media impact on the moral arguments surrounding the war. For example, he writes that

> it has become fashionable, as a first move, to disbelieve the moral credibility of one's own government; and when with no sense of political incongruity one young man in an anti-Vietnam protest could declare over television for all his fellow countrymen to hear

[86] Matthew Adam Kocher, Thomas B. Pepinsky and Stathis N. Kalyvas, 'Aerial Bombing and Counterinsurgency in the Vietnam War' in *American Journal of Political Science*, vol. 55, no. 2, April, 2011, pp. 201-218, p. 216, accessed 18 May 2019, https://www.jstor.org/stable/23025046?seq=2#metadata_info_tab_contents.
[87] Ibid., p. 201.
[88] Ibid., p. 216.
[89] Craig Chamberlain, 'Did news coverage turn Americans against the Vietnam War?', in *Illinois News Bureau*, 5 September 2017, accessed 18 May 2019, https://news.illinois.edu/view/6367/551796.

> that, of course, he'd fight in Vietnam if he knew the war there was just, but since he didn't know he had to protest its immorality.[90]

And in a later reflection, he writes 'of the need of correcting, by an effort of charitable imagination, first in our own minds and then in the minds of our fellow citizens, the fact that none of us has ever seen *televised* a Vietcong take-over of a village or an area, while we see daily on our screen the "inhumanity" of the war our nation is fighting.'[91] Ramsey, was definitely conscious of the media's impact on moral discernment in politics, church and statecraft, which undoubtedly contributed to his developing view of Christian realism.

A similar political theology, even one influenced by Ramsey, would struggle to persuade Western political leaders today to use force for good against evil. During recent wars in Iraq and Afghanistan, which in their later periods became largely distinguished by counter-insurgency, reductions in collateral damage were a constant factor in the planning and execution of military operations, and in politics and the media of democratic countries. In Afghanistan, ISAF's commanding generals, at the heights of hostilities, constantly raised the profile and issues associated with the negative effects of civilian casualties and the need to minimise them.[92] Collateral damage, even when objectively identified as a side effect of a justified military operation, seems for some to be transmutable to victimising civilians and 'the conventional wisdom among contemporary scholars says that victimizing civilians is futile, at best, or even counterproductive.'[93]

Sadly, the wars in Iraq and Afghanistan are witness to vast inconsistencies in the numbers of civilian casualties confirmed or estimated by coalition forces, humanitarian groups, journalists

[90] Ramsey, 1968, p. 99.
[91] Ibid., p. 486. [Author's emphasis.]
[92] 'We must continue – indeed, redouble – our efforts to reduce the loss of innocent civilian life to an absolute minimum. Every Afghan civilian death diminishes our cause.' See US Central Command, 'Gen. Petraeus updates guidance on use of force', 4 August 2010, accessed 19 May 2019, https://www.centcom.mil/MEDIA/NEWS-ARTICLES/News-Article-View/Article/884119/gen-petraeus-updates-guidance-on-use-of-force/.
[93] Kocher, p. 1.

and local populations. This is a vexed and disruptive issue when considering the morality of collateral damage and its true effects. Repeated denials by the Pentagon of civilian casualties, from air attacks by coalition forces against ISIL during 2014 – when 'the United States has carried out around 85 percent of coalition airstrikes in Iraq and Syria'[94] – does nothing to assist in recognising the moral utility and integrity of non-combatant immunity as a just-war principle and an agreed international convention. A *Los Angeles Times* report of 2015 states that until recently, 'Pentagon officials had insisted there were no credible reports that any of the more than 4,775 bombs and missiles that have been aimed at targets in Iraq and Syria had killed civilians.'[95] Such articles encourage scepticism towards official claims and there is good cause. Officials credit the painstaking planning, surveillance and precision-guided ordnance with ensuring the accuracy of targeting. Then they contradict the qualities of those same assets by suggesting that they are unable to confirm post-event analysis to the same trustworthiness. Some of these inconsistencies may be due to limited numbers of intelligence and surveillance assets available for post-blast and post-event analysis. Also, having none of their own forces on the ground in Iraq and Syria contributes to sub-optimal levels of confirming target effect. However, the lack of open and active investigation seems symptomatic of US fear of negativity and failings associated with acknowledging more openly the actual collateral damage.

In his analysis, Ramsay makes a strong moral argument for expanding those to be considered combatants in contemporary insurgency.

> In contemporary insurgency, the fact is that the peasant is often a civilian by day and a combatant by night. Others are close cooperators all or some of the time, and therefore technically combatants also. In short, the decision of the insurgents to conduct war by selective terror results in a situation in which a whole area in inhabited mainly by

[94] Chris Woods, 'Pentagon in Denial About Civilian Casualties of U.S. Airstrikes in Iraq and Syria' in *Foreign Policy*, 3 December 2014, accessed 19 May 2019, http://foreignpolicy.com/2014/12/03/pentagon-in-denial-about-civilian-casualties-of-u-s-airstrikes-in-iraq-and-syria/?wp_login_redirect=0.
[95] W H Hennigan, 'U.S. investigating whether strikes against Islamic State killed civilians', in *Los Angeles Times*, 11 January 2015, accessed 19 May 2019, http://www.latimes.com/world/middleeast/la-fg-civilian-casualties-20150111-story.html.

> "combatants" in the ethically and politically relevant sense that a great number of the people *are* from consent or from constraint the bearers of the force to be repressed. [96]

He concludes that '*[t]he insurgents themselves* have enlarged the target that is legitimate for counter-insurgents to attack, so far as the principle of discrimination is concerned' thereby simultaneously expanding the area of civilian death and damage that is legitimately collateral; 'and it is therefore mainly the principle of proportion that limits what should be done to oppose them.'[97]

It is, therefore, legitimate for the counter-insurgency to attempt to impose controls on a situation purposely created by the insurgents. One way, according to Ramsey, was by civilian pacification eg the strategic hamlet programme.[98] In MAC, irregular forces enlarge the area of legitimate collateral damage by their activities and actions too, and conventional forces seek to impose controls on the situation, created by their adversaries, as a result. In Iraq and Afghanistan most recently, irregular forces intentionally sought to urbanise warfare, purposely bringing more civilians to within the vicinity of potential collateral damage, while conventional forces understood the need to win hearts and minds, deliver security and improve the socio-economic climate and living standards. Irregular forces are aware of Western aspirations to abide by moral and legal norms such as preventing civilian casualties and exploit it as a weakness. Advances in conventional military technology and intelligence may offset some of the increase in collateral damage, likely as a result of the immoral intentions and actions of irregular forces, but it will remain a considerable and high-profile side effect, because irregular forces purposely shape the battlespace this way.

[96] Ramsey, 1968, p. 435. [Author's emphasis.]
[97] Ibid. [Author's emphasis.]
[98] The strategic hamlet programme was a socio-economic-political plan that aimed to resettle rural South Vietnamese and convince them that centralised accommodation facilitated better education, healthcare and security for their communities. It was a pacification project to separate and protect them from the Vietcong.

In conclusion, care must be taken to ensure that honourable cultural demands of developed countries, to reduce collateral damage, do not overburden the ability of their forces to deliver their essential military tasks in MAC. After all, they are enablers for the political and socio-economic developments that hope to convince the civilian population not to support the irregular side. Ramsey's ethic and practical wisdom remain exemplars for counter-insurgency thought but are insufficient in a climate of openness, visual records and a media and humanitarian culture that aggressively challenges official data on collateral damage. While seeking minimal collateral damage, the likelihood is that civilian casualties will remain intolerable for some. Developing an ethical response, sufficiently objective for the general public's countenance of military actions and concomitant levels of collateral damage, is a challenge addressed in Chapter 6.

2.3 Immoral adversaries. Ramsey determined the need for a renewed ethical analysis to reflect the type of warfare that insurgents purposely develop and their second-order effects. He was adamant that any insurgent use of violence to strike selectively at the civil population and by subversion gain control is 'an inherently immoral plan of war, no matter how many benefits are supposed to accrue from it.'[99] Moral ends never justify immoral ways (broad approaches) and means (resources). Notwithstanding any immoral insurgent activities, he was equally adamant that: 'If an act of war is *malum in se*, if selective terror is intrinsically wrong conduct, then the doing of such an evil by one side can never be justified by the doing of the same evil by the other side in return.'[100] It was and remains consistent with IHL: 'Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited… Attacks against the civilian population or civilians by way of reprisals are prohibited.'[101] Ramsey

[99] Ramsey, 1968, p. 433.
[100] Ibid., p. 434.
[101] ICRC, Treaties… Article 51, 'Protection of the civilian population', accessed 19 May 2019, https://ihl-databases.icrc.org/ihl/WebART/470-750065.

believed, however, that against an immoral insurgency there could and should 'be a counter-insurgency that meets the tests of just conduct in war, while insurgency does not.'[102]

By way of illustration, Ramsey makes a brief examination of the morality of the strategic hamlet programme that, as described above, sought to allow civilians a safe separation from the insurgents. He argued that the pacification programme was a moral and practical attempt to impose controls on a situation created by the insurgency, as many civilians were being placed in collateral peril as a consequence of the Vietcong's methods of operating. The programme's intent was to enable Vietnamese self-determination – for individuals openly to distinguish themselves as non-combatants and establish safe, new hamlets without interference from insurgents. Thus Ramsey concluded that 'the principle of discrimination governing just conduct in war is the regulative norm of a central part of the counter-insurgency effort'.[103] He went on to argue that if the programme did not entice the 'non-combatant to become separated from the combatant', then attacks on discriminate military targets in areas controlled by insurgents, which include non-combatants, were to be 'determined by the principle of proportionately lesser evil'.[104] Ramsey thereby established a modified way of thinking about discrimination (and proportionality), based on CJWT, for contemporary counter-insurgency warfare – modern war that bore witness to a change in the character of conflict.

Ramsey's Christian love-centred principle of discrimination permits attacks on insurgent targets, intentionally discriminate but accepting possible greater collateral damage, since it is the insurgency and not the counter-insurgency that deliberately enlarges the area of civilian death and damage that is legitimately collateral. Non-combatants in Vietnam, as elsewhere, were to remain morally immune from direct, deliberate (and intentional) attack. As described in detail

[102] Ramsey, 1968, p. 434.
[103] Ibid., p. 438.
[104] Ibid.

above, however, US public opinion and reaction to its consequences as a military strategy grew more and more antagonistic; for some commentators it was inimical and ineffective.

Ramsey considered the question: 'Can counter-insurgency abide by the distinction between legitimate and illegitimate military objectives while insurgency deliberately does not?'[105] For him, military secure, socio-politico-economic developments eg the strategic hamlet programme, retain the counter-insurgency's moral justification. One inference is that once implemented it becomes morally permissible to attack insurgent targets, as they have organised for war and accept the collateral damage, since the battlespace has by now been willingly shaped by all parties to the conflict. Counter-insurgency strikes under these conditions retain both discrimination and proportionality in a Ramsey-based ethic. In hindsight, enough evidence has been shown to demonstrate that, irrespective of the validity of Ramsey's ethical views on collateral damage as a causal effect of fighting an inherently immoral enemy, its application as a strategy lost popular support in the US. Similar questions about collateral damage against inherently immoral enemies are raised in MAC; as discussed above and analysed in depth in Chapter 6, the contemporary media seem to hold conventional forces not only responsible for all unintended civilian deaths but accountable for them eg the coalition of counter-insurgency forces in Yemen.

Two corollaries develop from Ramsey's discussion on fighting justly against an immoral insurgency.

(2.3.1) First, Ramsey's 'most urgent, practical, military and political question' was whether it was possible 'to mount an *effective* counter-insurgency war,' and being *effective* include the need

[105] Ibid., p. 433.

to 'deliver such retribution upon it [the insurgency] that future insurgency will be deterred'.[106] His declaration that nuclear stalemate would be a catalyst for a growth in insurgent warfare and that it would 'remain the military situation for decades to come'[107] was visionary, as revealed by the Dupuy Institute's records in 2007 – at least 63 insurgencies across the world since the end of World War Two.[108] The insurgencies since Vietnam show that, in these cases, previous retributions have been ineffective at deterrence. Another contributing factor is that insurgents have been sufficiently fearless and motivated by belief in their aims, that some ethical conduct was negated or overruled in their moral thinking: this presupposes that the enemy had some form of moral code.

(2.3.2) Second, O'Donovan asks a slightly different but related question in 2003: 'can the conduct of counter-insurgency hostilities ever succeed in persuading insurgency forces, too, to abide by such a distinction [between legitimate and illegitimate military objectives]?[109] Witnessing recent wars in Iraq, Afghanistan, and within the self-styled state of ISIL, O'Donovan's pertinent question has been answered emphatically – no. If anything, the illegitimate activities of modern irregular forces and alike have become even more morally reprehensible, promoting openly on modern media their abhorrent activities such as genocide, beheadings, abduction and rape of women and children, forced conversions of faith and so on.

In conclusion, like insurgents, irregular adversaries in MAC are likely to remain culpable of inherently immoral activities during conflict, undeterred by witness to retributive or rehabilitative justice and not persuaded to meet customary ethics around discrimination. For

[106] Ibid., p. 428. [Author's emphasis.] Referring to President Johnson's decision to 'step up the war in South Vietnam', Ramsey considered it probable that the decision was made because 'there was still "a reasonable chance of making a go of it," in not only stopping subversive aggression but also deterring it in the future so that other countries in that part of the world can be preserved from similar assault.' Ibid., p. 455.
[107] Ibid., p. 428.
[108] Robert M. Chamberlain, 'Lies, damned lies and counterinsurgency', in *Armed Forces Journal*, 1 May 2008, accessed 19 May 2019, http://www.armedforcesjournal.com/lies-damned-lies-and-counterinsurgency/.
[109] O'Donovan, p. 64, n. 1.

forces of developed countries to remain morally dutiful and legally compliant, while still seeking retribution that deters future insurgencies and persuades them to abide by combatant and non-combatant distinction, a revised ethic is necessary that also enables effective strategy: to devise a counter to irregular enemies that meets the tests of CJWT, while the behaviour and activities of irregular forces do not.

2.4 Non-combatant complicity. Ramsey is adamant that the insurgency and not the counter-insurgency enlarges the area of civilian death and damage that is legitimately collateral. Given that a target is a military necessity, then it is subject only to the limitation that a measured, destructive attack be proportionally the lesser evil – the principle of proportionality. Most Americans living in Vietnam during the insurgency shared a conviction that Vietnamese peasants were apolitical, and that peace and security were their main desires. Former war correspondent Neil Sheehan, referencing former US Ranger John Paul Vann, who had experienced war in Korea and then Vietnam before leaving the army and returning to Vietnam as a provincial pacification representative for the Agency for International Development (AID), writes: 'What all Asian peasants wanted most, he [Vann] was certain, was peace and security in which to till their land. They did not care whether those who established the law and order were Communists or capitalists.'[110] The strategic hamlet programme had been a genuine attempt to segregate guerrillas from non-combatants. Such a strategy, one that prevents insurgents from living invisibly amongst the people, has been and remains part of post-World War Two counter-insurgency doctrine throughout Western militaries.

While a pacification strategy similar to the strategic hamlet programme had been successful in Malaya, Vietnam was a different environment and situation. The character of the political war

[110] Neil Sheehan, *A Bright Shining Lie: John Paul Vann and America in Vietnam* (London: Pimlico, 1998), pp. 67–8.

was not fully understood by many Americans, resulting in an imbalanced application of conventional and counter-insurgency military techniques. Local Vietnamese self-defence units were often poorly trained and the camps were easily infiltrated by the National Front for the Liberation of South Vietnam (NLF). Indigenous farmers were oppose to being forcibly uprooted from their lands and moved, and the mix of favouritism and corrupt officials of the South's President at the time, Ngo Dinh Diem, created much resentment.[111] The NLF thus grew some popular support for revolution and reunification, gaining associated legitimacy by aligning it with Diem's removal. It would be too great a leap to deduce that their selective and non-selective terror tactics received backing from the same popular support but there was clearly at least partial ambivalence towards it. With selective and non-selective terror being intrinsically immoral – immoral means cannot be used even for morally justifiable ends – it could not be countenanced in Ramsey's ethic, as partially referenced above.

> If it is not incorrect to say that the strategy of contemporary insurgency in its (even in its minimal) use of violence is to strike selectively the civil population in order to subvert the country and to gain control of what's left of the government, then it is *correct* to say that this is an inherently immoral plan of war, no matter how many benefits are supposed to accrue from it.[112]

Ramsey judged the Vietcong's use of selective terror as an unjust means to gain victory in an unjust insurgency in Vietnam. Insurgents must be defeated, notwithstanding any civilian complicity, which would also prevent the wickedness of communist expansion. He wrote: 'no Christian and no man who loves an ordered liberty should conspire with communism in coming to power';[113] his personal views were clearly anti-communist.

Ramsey's Christian view for intervention was that 'if one judges that not to resist is to have complicity in the evil he will fail to prevent',[114] then perhaps insurgent-sided people's complicity

[111] 'It was estimated that of the 8,000 hamlets established, only 1,500 were viable.' See Ronald J. Cima, *Vietnam: a country study* (Federal Research Division: Library of Congress, 1989), p. 62.
[112] Ramsey, 1968, p. 433. [Author's emphasis.]
[113] Ibid., p. 449.
[114] Ibid., p. 502.

in the evil of terrorism towards their brothers and sisters, and their apparent unwillingness to segregate from insurgents, should jeopardise their absolute immunity. Close cooperation as a measure of culpability has been discussed above and further analysis is required for application in MAC, but a question arises as to what types and levels of complicity or blameworthiness, well beyond sympathy, if any, can be considered to transfer the non-combatant to combatant status or expose them to greater risk of collateral damage? Ramsey's stance, with respect to insurgency, is that since the movement of people between combatant and non-combatant is by the hour, guerrillas have already violated discrimination and it is not the business of moralists to determine that, as a result of insurgent violations of discrimination, a counter-insurgency operation 'cannot be done in a morally acceptable way because under these circumstances they have no legitimate military target.'[115] Counter-insurgents have not 'illicitly enlarged the target and chosen to fight the war indiscriminately.'[116]

Ramsey would acknowledge that, in extreme cases, Aquinas countenanced the overthrow of tyrannical leaders (preferably with subordinate rulers taking the lead); justified rebellion has been present in Christian thought since Aquinas. Ramsey was not against a justified insurgency or one that had overwhelming popular support.

> On the supposition that the South Vietnamese people did not want their government to exercise this legal right to invite legal intervention, this would doubtless alter that right and it might alter one's hope of a successful policy of nation-building; but the right of just war intervention might still stand (even if it should then be judged unwise to be done).[117]

However, Ramsey considered contemporary insurgency to be immoral, particularly the one being fought in Vietnam, and any level of popular support or complicity by locals could not trump the immoral ways and means of the insurgents, just as not to intervene would have

[115] Ibid., p. 435.
[116] Ibid.
[117] Ibid., p. 38.

demonstrated ‘complicity in the evil he will fail to prevent’ as referenced above. As already described, Ramsey had expanded a combatant to potentially include ‘persons in command positions’ and persons whose ‘closeness of material cooperation’ may define them so. As referenced above (footnote 96), he went on:

> In contemporary insurgency, the fact is that the peasant is often a civilian by day and a combatant by night. Others are close cooperators all or some of the time, and therefore technically combatants also. In short, the decision of the insurgents to conduct war by selective terror results in a situation in which a whole area in inhabited mainly by “combatants” in the ethically and politically relevant sense that a great number of the people *are* from consent or from constraint the bearers of the force to be repressed.[118]

So, a direct, deliberate attack on an insurgent site would remain discriminate, in Ramsey’s ethic, so long as the intent (shape and direction) was to incapacitate only combatants, as newly ordered – a consequence of the change in the shape or character of war. He clearly determines that none of these newly ordered combatants fall into the category of those whose status is in doubt and who should, therefore, be regarded as civilians. Further, he did not consider the support for insurgency by the people to be sufficiently great that, whether morally justifiable or not, counter-insurgency would be imprudent, and thus potentially immoral; his ethic was also informed by his disdain for communism and its potential expansion through an insurgent victory in Vietnam.

Ramsey’s Christian perspective leads to an assessment that locals’ complicity is not the prime determinant for legitimising an insurgency. Rather, much more weight is given towards whether the insurgency makes use of activities such as intimidation, subversion, terrorism, genocide etc, which are all intrinsically immoral acts. Ramsey’s argument would be less robust if there had been significant popular support for insurgency and acts of intimidation, subversion, terrorism, genocide etc had been very limited or sporadic, but he provides telling casualty statistics to reveal the scale of immoral activities by insurgents in Vietnam. ‘In 1960–61 alone, the Vietcong murdered 6,130 and abducted 6,213 persons, or a total of over 12,000’ and he concludes that

[118] Ibid., p. 435. [Author’s emphasis.]

'[t]his terrible terror, while "selective," is not therefore limited or a rarity'[119]; he determines the selective terror campaign to be inherently immoral. Ramsey's view suggests that the perpetrators did not deserve full rights of war, were guilty of crimes against humanity and that complicit civilians were morally answerable for their support, benign or otherwise, to such atrocities. So, complicity and blameworthiness, not merely sympathy, may attract levels of harm that are morally attributable to future irregular forms of war, including MAC.

In summary, neighbour-regarding love and the parable of the Good Samaritan propel proponents of Ramsey to resist extremist insurgencies that impose their will on others, through terror and fear of violence, disrupting daily life, destroying faith in government, and so sapping the political will to resist. That terrorism is 'intrinsically wrong conduct', that the world must not be left 'defenseless in the face of selective or non-selective terror', and that we should be '[jogged] loose from the notion that revolutionary causes are so just and so good that these ends can justify *selective* terror',[120] lead Ramsey to his moral position. He never explicitly states what acts or levels of complicity would confer on people the status of combatants. However, if guerrilla isolation is unattainable, due in part to sufficient complicity of locals, then given that the insurgency must be repelled, the non-combatant status of those locals may be jeopardised. While they may not be closely cooperating in the force that should be resisted, according to Ramsey they have a moral obligation to detach themselves from complicity towards evil.

Ramsey's discussions surrounding complicity do not suggest any ethically permissible and suitable courses of action. Discriminating levels of complicity, blameworthiness, material or close cooperation, and relating them to combatant status in MAC such as the one initiated by

[119] Ibid., 1968, p. 507. According to Guenter Lewy, 39,000 South Vietnamese civilians were assassinated by communist forces between 1965 and 1974. Cited in Charles Hirschman, Samuel Preston and Vu Manh Loi, 'Vietnamese Casualties During the American War: A New Estimate' in *Population and Development Review*, vol. 21, issue 4, December 1995, p. 791, accessed 19 May 2019, http://faculty.washington.edu/charles/new%20PUBS/A77.pdf.
[120] Ramsey, 1968, p. 454. [Author's emphasis.]

ISIL in northern areas of Syria and Iraq, where the two countries have distinctly different political and military relationships with coalition forces, suggest added complexities. The urbanising of conflict by irregular forces compounds the problems even further. It is another moral issue to consider for MAC: to what extent, if at all, does civilian complicity or blameworthiness jeopardise immunity from harm, perhaps increasing their self-determined risk to collateral damage, which remains morally acceptable and does not unduly restrict legitimate military action? War must remain possible, using no more force than necessary but accepting a level of collateral damage. This level must be factored by how the enemy organises itself for conflict, and with due consideration of the effects of those complicit or blameworthy.

2.5 Inviolability of state borders. For Ramsey, '[i]f intervention can sometimes be immoral as well as tragically ineffective, so also can non-intervention.'[121] At the beginning of the Vietnam War, he made a forceful Christian moral argument for intervention on behalf of the South Vietnamese, which included the international law-based justification of '"intervention by invitation." On this score, United States intervention in South West Viet Nam is clearly justified.' [122] As well as the importance of morality in the processes of statecraft and political decision-making with respect to war, he clearly recognised both the importance and necessity of international law, writing that '[t]here is, indeed, an ethico-political quality to be assigned to intervention by invitation, because of the importance of the legal order.'[123] He went on:

> One criterion of the justifiedness of the action of nation-states—especially today when the ordered justice and the peace of the world depend so much upon the upbuilding of international law and institutions that can guard against the escalation of war—is whether such action has legality…. To base our action in South Viet Nam upon the legality of the invitation is both correct and qualitatively important… counter-intervention by invitation adds weight and clarity to just war intervention, and insures that the intervention in South Viet Nam may also directly (and not only indirectly) serve the upbuilding of a legal order.[124]

[121] Ibid., p. 24.
[122] Ibid., p. 37.
[123] Ibid.
[124] Ibid.

Ramsey's analysis of the counter-insurgency assumes that while some activities occur across national borders, the focus of an insurgency is to achieve autonomy through activities such as subversion and terror – it is primarily a national exercise, which exploits international order. However, he recognised that by '[t]his doctrine [of nonintervention across legal borders], the United States denied itself and its ally [South Vietnam] legitimate targets north of the border while this novel type of warfare denied us targets by its furtiveness on the south side of the border.'[125] Noting that South Vietnam was under insurgent attack, Ramsey argued that unduly restricting the counter-insurgency fight to its internal borders could be immoral:

> to fight the insurgent… where in fact one has reason to believe most are combatants or close cooperators and almost everyone is unavoidably within range of justified collateral damage, rather than to strike the legitimate targets where are his source of command and supply north of the border, simply because this age assigns more sanctity to legal borders even when subversion violates them than it assigns sanctity to the life of a peasant—or to do this out of unreasoning fear of escalation or of the Chinese communists—this would be certainly immoral.[126]

Trying to identify and fight insurgents in populated areas – including civilians participating in a mix of active, passive, culpable and blameless material cooperation, some fleeting and with almost everyone within range of justifiable collateral damage – could also be a flawed politico-military strategy. Thus, morally and strategically, achieving the lesser of two evils and the greater likelihood of success could have been to strike the legitimate and more easily discriminable sources of command and resupply routes north of the border.

Restricting the tactical and operational level counter-insurgency fight, primarily to the internal borders of South Vietnam, did not have the military and political effect desired by the US. Analysis and reflection by William Broyles from his interviews with Bui Tin, military correspondent for the Vietnamese Communist Party newspaper, *Nhan Dan*, suggest that the US could never win the hearts and minds of the Vietnamese people while simultaneously bombing

[125] Ibid., p. 35.
[126] Ibid., p. 441.

them. Moreover, the 'Communist leaders were ruthless and insulated from suffering. Death did not deter them.'[127] That is not to suggest that the US did not attack targets in North Vietnam – far from it. During Operation Rolling Thunder (1965–68), as part of the strategic bombing campaign, large-scale bombing occurred in the north, intending to reduce the Communists' capacity to wage war. While some contend that it was a strategy that came close to succeeding, it was stopped; the argument for it being discriminate did not resonate sufficiently in the US and across the world. Its likelihood of success could have improved by more focused and discriminate attacks against the communist leadership, headquarters, supplies and facilities north of the border, rather than what was seen as mass or carpet bombings. That is, in Ramsey's ethic, the US was unable to overcome the suspicions of its military intention not being sufficiently discriminatory; it needed to be controlled by some more objective determination of right action.

The rationale, military logic and game theory[128] of the US may have supposed that mass casualties of insurgents would ultimately bring victory. In Vietnam, however, as the price of US casualties grew too high, the insurgency seemed to become almost immune to its casualties. 'And the soldiers they kept sending down the trail were prepared to die, and their families prepared to mourn.'[129] So a mix of US tactical ineptitude, driven in part by the assignment of inviolability to legal borders, cultural ignorance of the enemy and failure to appreciate the evolution in the character of insurgency, as well as Vietnamese patriotism, ideology, indoctrination, and subversion is, albeit simplistic, a summation of the reasons why the counter-insurgency failed. One conclusion is that national borders should not be available as a hideaway

[127] William Broyles Jr., *Goodbye Vietnam, A Journey from War to Peace* [Online] (New York: Open Road Integrated Media, 2013), accessed 19 May 2019, https://books.google.co.uk/books?isbn=0292783396.
[128] 'Game theory is the formal study of conflict and cooperation. Game theoretic concepts apply whenever the actions of several agents are interdependent. These agents may be individuals, groups, firms, or any combination of these [in this case belligerents]. The concepts of game theory provide a language to formulate, structure, analyze, and understand strategic scenarios.' See Theodore L. Turocy and Bernhard von Stengel, 'Game Theory', Centre for Discrete and Applicable Mathematics Research Report LSE-CDAM-2001-09, 8 October 2001, p. 4, accessed 19 May 2019, http://www.cdam.lse.ac.uk/Reports/Files/cdam-2001-09.pdf.
[129] Broyles.

to unjust or immoral insurgencies for the safe and secure command, control, support and facilitation of their activities. A second conclusion is to recognise a change, development or evolution in the character of a war as it occurs, address the new complexities and challenges, and adapt military responses that will also need a moral perspective and, if necessary, review.

Grotius' view is that 'he who supplies an enemy with things necessary for warfare is on the side of the enemy.'[130] While this view alone does not provide moral authority for using lethal force against all facilitators (or suppliers in Ramsey's lexicon), in all conditions, Grotius makes the boundaries clearer: 'If, now, the enforcement of my right shall be hindered by the supplying of these things, and if he who supplied them has been in a position to know this… then he will be liable to me for injury culpably inflicted.'[131] Ramsey's reflections on external support to enemies (land and facilities) well after the Treaty of Westphalia, which determined the sovereignty of nations and their borders, are consistent with Grotius' writing in the run-up to the treaty. A CJWT-based view is, therefore, that lethal force is morally permissible against those who furnish safe bases for command, training and facilitation of irregular forces in other countries. However, as at Ramsey's time of writing and possibly more so now, the legal permissibility of such action is highly contestable but morally it remains defendable. There are also international socio-political issues that may have detrimental consequences, as witnessed during the war in Afghanistan where US drones were used to target enemy fighters in parts of Pakistan. With Pakistan being a part of the NATO-led coalition, US drone strikes on targets in Pakistan were seen as egregious acts by the Pakistani government.

[130] Grotius, bk. 3, ch. 1, sect. IV, para. 2, p. 602.
[131] Ibid., para. 3, p. 602. The country within which military equipment is being manufactured does not change the moral reasoning. For example, a NATO nation, not in conflict, manufacturing mines for export to the UK for use during a conflict involving the UK, would not escape their moral liability to an attack on the establishment manufacturing the mines – as a military objective, the principles of discrimination and proportionality would assist the prudence of any attack.

In summary, the sanctity of sovereign borders is a vexed topic. It introduces additional challenges such as the willingness or ability of external sovereign states – from which attacks, training, command or facilitation may be occurring – to achieve just military objectives themselves. Discriminating legitimate military targets morally across borders in MAC is analysed in Chapter 6 – the legal dimension is not addressed. MAC is a global phenomenon where radical fighters are not necessarily fixed to securing self-rule within historically imposed state boundaries, but often seek broad and sometimes indeterminate objectives, through frenzied means, with seemingly no room for compromise. It will be shown that the Christian moral discourses of Grotius and Ramsey map comfortably to the transnational character of MAC including, potentially, the moral liabilities of those transnational facilitators, manufacturers, suppliers and leaders to lethal force against them, wherever they locate.

Conclusion

Studying Paul Ramsey's ethics on war finds him to be an exemplar of Christian moral thought. He acknowledged the changing shape of war most explicitly by declaring that nuclear stalemate had made the world safe for insurgency and recognised the need to review and develop the moral doctrine of discrimination in the evolving character of revolutionary and insurgency warfare – combatant status and collateral damage needed rethinking in light of how an insurgency arranges itself for conflict, in relation to the surrounding community. His foundation for writing about war and ethics is centred on charity or neighbour-regarding love. He charged the church of the day with compromising the integrity of its just-war heritage, to the detriment of its invaluable use as a moral guide for statecraft and the legitimate use of military force.

Surveying how Ramsey reinvigorated attention to *jus in bello* as discrete from *jus ad bellum* within CJWT, and how he analysed the rule of double effect, revealed that his cardinal principle governing just conduct in war remained the absolute immunity of non-combatants from direct,

deliberate attack; it was his cornerstone of CJWT, with the moral justification of an attack and any unintended non-combatant casualties being based on the intention of the attacking force. He was, however, clear that intention had to be controlled by more objective determination of right action and that there were significant challenges in practically applying discrimination at the operational and tactical levels. Analysing and proposing just what kinds of objective determination could benefit MAC is to be taken forward in this thesis, as I gather other Christian and some non-Christian views, and synthesise them with my own practical experience and analysis. Of the issues discerned in Chapter 2, in need of moral review and analysis to support discrimination in MAC, Ramsey's ethics assist as follows.

First, Ramsey recognised that the shape or character of war affects how combatants and non-combatants are distinguished; the character of war was changing and the non-static nature of combatant status needed updating. He declared that non-combatant status belongs to any person not directly or closely cooperating in the force that should be repelled or resisted. Since his writing on revolutionary wars, however, a mix of such as non-state actors, multi-national origins, globalisation, technology and social evolution (eg collapse of the Warsaw Pact) have helped transform the character of war again. Ramsey's expansion of combatant status to include persons in command and those providing material cooperation is helpful but insufficient for MAC: first, because the two need to be bounded with greater granularity (which activities or characteristics distinguish a commander or someone providing material cooperation as a newly ordered combatant); second, what of those training, sustaining or preparing to cooperate and to what degree; and third, what constitutes sufficient cooperation in new applications for warfare such as cyber-attacks, industrial-scale manufacture of IEDs etc? A reappraisal is necessary of those that should be considered to have combatant status in MAC.

Second, Ramsey claimed that insurgency and not counter-insurgency enlarges the area of civilian death and damage that is legitimately collateral – by the guerrillas living among the people and purposely not distinguishing themselves – which maps helpfully to MAC. While his development remains virtuous, and a strategy that intended direct, deliberate (and intentional) attacks on insurgents only was ethical, once collateral damage is seen or perceived to transmute to civilian victimisation in the thoughts of friends (and foes), then that strategy loses credibility. My analysis of collateral damage from more recent conflicts demonstrates that ethically based intentions, to minimise civilian casualties, is problematic as modernity strives evermore towards their impermissibility – expectations that are probably unachievable without reimaging a type of prudence that was unforthcoming in Vietnam. The increasing distrust in official casualty figures released by Western officials that contradict humanitarian agencies, media and locals' assessments is unhelpful. Irregular forces in MAC will continue to urbanise warfare and purposely bring even more civilians to within the vicinity of potential collateral damage, in order to exploit Western proclivity for liberty, rights and the rule of law. Ramsey's work does not provide an ethical response, sufficiently objective to convince the media to make their moral analysis more sophisticated, and the general public to back military operational needs and concomitant levels of collateral damage in MAC; it is a challenge that I address later.

Third, evidence suggests that future insurgencies are unlikely to be deterred by retributions following successful counter-insurgencies; neither has witnessing counter-insurgency distinction between legitimate and illegitimate conduct been persuasive in convincing insurgencies to follow similar just conduct. Ramsey argued that counter-insurgency can still be fought justly when an insurgency does not, by allowing counter-insurgents to impose some ethical controls on the situation eg strategic hamlet programme, and ensuring that collateral damage was unintended and a consequence of the way the insurgency organised immorally for war. However, a morally acceptable but poorly executed counter-insurgency strategy contributed to the US strategic-level

defeat in Vietnam and is a lesson for future irregular wars like MAC. It suggests a greater need for prudential thinking and wisdom in future but we can take forward Ramsey's idea to argue that conventional forces can fight justly when irregular fighters in MAC do not. A revised ethic is necessary that also enables effective strategy against the old (selective terror, subversion, intimidation etc) and newer forms of immoral activities such as IEDs, suicide bombings, and televised beheadings, and against a world of social and technological transformations.

Fourth, guerrillas willingly plan and execute immoral activities. According to Ramsey, civilians that do not resist such evil demonstrate complicity with the evil that should be prevented and, moreover, they have a moral obligation to detach themselves from any such complicity towards barbarity. Ramsey never explicitly states what acts or levels of complicity would confer on people the status of combatants. However, from his moral stance, I propose that there is room for some of those complicit in supporting insurgents and their immoral activities to lose or at least jeopardise their own absolute civilian immunity and certainly for conventional forces to accept unintended civilian casualties, rather than aborting missions due to growing Western intolerance of collateral damage. Ramsey teaches us to factor in how the enemy organises itself for conflict so that we do not allow ourselves to be prevented from discriminate acts that cause unintended civilian casualties, because of the enemy's immoral activities. For MAC, the revised question is to what extent, if at all, does civilian complicity or blameworthiness jeopardise immunity from harm, perhaps increasing their self-determined risk to collateral damage, which remains morally acceptable and does not unduly restrict legitimate military action?

Fifth, while the insurgency in Vietnam was primarily a national exercise, although some activities crossed international borders, MAC is a global phenomenon. Often, it is not affixed to states and their territories, or bounded or constrained by national borders. Added complications to statecraft and the just application of force result. Ramsey's view from Vietnam was that with

the sanctity of international borders, trying to identify and fight insurgents in populated areas, with almost everyone within range of justifiable collateral damage, could have been a flawed strategy. For him, morally, the lesser of two evils would have been to strike the legitimate and more easily discriminable sources of command and resupply centres north of the border; his view is helpful in today's debate about striking across internationally agreed boundaries but it remains a controversial issue. It introduces legal challenges and such as the willingness or ability of external sovereign states – from which attacks, command or facilitation may be occurring – to achieve just military objectives by themselves. What may be morally acceptable and militarily successful may not be prudent, particularly in MAC when it is more than a national exercise; it requires a moral guide beyond Ramsey's that is limited to insurgency.

As well as being visionary, declaring that nuclear stalemate would catalyse growth in types of revolutionary wars, Ramsey was also a perspicacious ethicist:

> We need only examine carefully the case of insurgency and counter-insurgency warfare in order to show what was always the meaning of "aiming discriminately" upon legitimate military targets, and the meaning of this in the case of newer forms of war the world will face for decades to come.[132]

MAC is just such a newer form of war that needs a moral revision of discrimination. Ramsey has left a distinguished legacy on Christian ethics, following in a long tradition of notable Christians. When thinking about morality surrounding revolutionary types of conflict, his views remain an invaluable source of scholarly wisdom, being thought-provoking and persuasive, although by his own admission, insufficient for future wars. The same declaration has been made recently by Johnson, a former student of Ramsey, who with respect to contemporary irregular warfare states that 'recent moral discourse has largely failed to engage [it].'[133] This thesis is a part of that engagement.

[132] Ramsey, 1968, p. 507.
[133] Johnson, 2016, p. 311.

Chapter 4
US CONFERENCE OF CATHOLIC BISHOPS AND DISCRIMINATION

If you want Peace, work for Justice.[1]

Introduction

Two decades after Ramsey's recovery and development of CJWT, and his view that nuclear stalemate made the world safe for insurgency and revolutionary wars, the US Conference of Catholic Bishops (USCCB)[2] began to reconsider the morality of war in light of the potential devastation of a nuclear exchange. The Cold War changed the character of conflict, warranting some revision and reinterpretation of CJWT, and led this ecclesiastical body to write two pastoral letters: *The Challenge of Peace: God's Promise and Our Response* in 1983 and *The Harvest of Justice is Sown in Peace* in 1993. They are discussion documents on morality associated with this new form of war and its consequences, such as how revolutionary conflicts were encouraged. While the letters, particularly the first, lead with the destructive potential of a nuclear confrontation, a vastly different type of conflict to MAC, deliberations and reflections on the morality of conventional and non-conventional conflicts are addressed, as the bishops were clear that 'these principles apply as well to all forms of violence, including insurgency, counter-insurgency, "destabilization," and the like.'[3] It makes them another suitable source of Christian moral thinking about war, acting as a continuum of CJWT and complementing Ramsey's Protestant perspective.

This chapter examines these two pastoral letters as a Roman Catholic (Catholic) position on discrimination in war. My intent is to extract reflections where they assist in the application of

[1] Pope Paul VI, Message of his Holiness Pope Paul VI for the Celebration of the Day of Peace, 1 January 1972, Vatican: Libreria Editrice Vaticana, accessed 19 May 2019, https://w2.vatican.va/content/paul-vi/en/messages/peace/documents/hf_p-vi_mes_19711208_v-world-day-for-peace.html.
[2] Also known as the National Conference of Catholic Bishops in the US.
[3] US. National Conference of Catholic Bishops, *The Challenge of Peace: God's Promise and Our Response*, Washington DC: USCC Office for Publishing and Promotion Services, 3 May 1983, para. 221, accessed 19 May 2019, http://www.usccb.org/issues-and-action/human-life-and-dignity/war-and-peace/nuclear-weapons/upload/statement-the-challenge-of-peace-1983-05-03.pdf.

moral thought to discrimination in MAC. I begin with a short review of the relevant part of social teaching on war from the Second Vatican Council, then the USCCB's two pastoral letters, before critically analysing four issues related to moral thinking about contemporary discrimination. In the second pastoral letter, the bishops state that: 'Important work needs to be done in refining, clarifying and applying the just-war tradition to the choices facing our decision-makers in this still violent and dangerous world.' [4] Twenty-six years after its publication, this thesis is one piece of that important work covering the task of discrimination in MAC, 'in this still violent and dangerous world.'

Second Vatican Council

A Catholic view of CJWT, like others, stipulates non-combatant immunity within the conduct of war and that any collateral damage must be incidental and minimal.[5] Reflecting on the avoidance of war, *Gaudium et spes* – the primary document of the Second Vatican Council concerning social teachings – states that those devoted to the military service of their country 'should regard themselves as the agents of security and freedom of peoples. As long as they fulfill this role properly, they are making a genuine contribution to the establishment of peace.'[6] Fulfilling their role *properly* must include a soldier's obligation to discriminate combatant from non-combatant; with the terminology developed in Chapter 3, they must avoid any direct, deliberate and, therefore, intentional attack against non-combatants. As previously described, that does not mean that non-combatants will not be consciously targeted, with the attacking force acknowledging that non-combatants are likely to (or indeed will) be killed, but that the attacking force does not

[4] US. National Conference of Catholic Bishops, *The Harvest of Justice is Sown in Peace*, 17 November 1993, accessed 19 May 2019, http://www.usccb.org/beliefs-and-teachings/what-we-believe/catholic-social-teaching/the-harvest-of-justice-is-sown-in-peace.cfm.
[5] In *The Challenge*, the bishops' state: 'Our concern about protecting the moral value of noncombatant immunity, however, requires that we make a clear reassertion of the principle our first word on this matter.' *The Challenge*, para. 149.
[6] Second Vatican Council, *Gaudium et spes*, Pastoral Constitution on the Church in the Modern World, 7 December 1965, sect. 1, para. 79, accessed 19 May 2019, http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_const_19651207_gaudium-et-spes_en.html.

intend their deaths, in the sense of wishing, wanting, willing or choosing to kill them. So, the desire must be to ensure that in attacking enemy combatants or legitimate targets, any non-combatant casualties are accidental (or unintentional) and minimised. Also, in fulfilling their duty to discriminate, a natural corollary is to ask what risk, if any, conventional soldiers should be morally obliged to take in order to reduce the chances of collateral damage.

Produced in 1965 and reflecting on the devastation of World War Two, the Cuban missile crisis and the developing arsenals of what were termed "scientific weapons", capable of inflicting 'massive and indiscriminate destruction, thus going far beyond the bounds of legitimate defense'[7], the focus of discrimination in *Gaudium et spes* is clearly on the use of weapons that the Catholic Church considered to be immoral. It goes on to state that: **'**Any act of war aimed indiscriminately at the destruction of entire cities [or] extensive areas along with their population is a crime against God and man himself. It merits unequivocal and unhesitating condemnation.'[8] This statement is ambiguous as it can mean: (a) intentionally aiming to destroy a population and, therefore, targeting a city, which would be immoral; or (b) intentionally aiming to destroy a vital military object, knowing that very large numbers of civilians will be killed, which need not be immoral if the collateral damage is unintentional, minimal and proportionate. In my view, the bishops wrongly consider that any killing of vast numbers of civilians is necessarily immoral.

To aim at the destruction of a city and its civilian population also brings in the use of mass bombing (also known as saturation, obliteration or carpet bombing) using conventional weapons. Both the Nazis and Allied forces can be accused of targeting civilians during World War Two with air-bombing campaigns. Likewise, Syrian forces backed by Russia in northern Syria, as part of the fight against ISIL but the question becomes one of differentiating between responsibility

[7] Ibid., para. 80.
[8] Ibid.

and culpability. Allied bombers killed 35,000 French civilians during the invasion of Normandy in 1944 – although the deaths were unintentional, with allies wanting to free France of German occupation, the allies were clearly responsible but not determined to be culpable. In a technical sense they aimed indiscriminately since bombing technology at the time did not permit greater precision but discrimination has to do with the intention of an attack, not with the technical limitations of the ways and means of an attack. Morally, the allies were not intending to kill civilians and, provided they took all reasonable measures within their capability to minimise civilian casualties, their intention was serious.

Notwithstanding the centrality of the destructive potential of a nuclear arms race and delivering indiscriminate casualties too fearful to contemplate, *Gaudium et spes* also refers to forms of non-conventional conflict and that

> the complexity of the modern world and the intricacy of international relations allow guerrilla warfare to be drawn out by new methods of deceit and subversion. In many causes the use of terrorism is regarded as a new way to wage war.[9]

Recalling Ramsey, writing in the same decade and reflecting on the war in Vietnam, he assessed that it was 'a fact of life that the nuclear stalemate has made the world safe for insurgent warfare.'[10] Broad Catholic and Protestant views seemed consistent in this regard but, as will be shown, there are some significant divergences.

USCCB: *The Challenge of Peace: God's Promise and Our Response,* 1983

On 3 May 1983, the USCCB authorised a pastoral letter on war and peace entitled *The Challenge of Peace: God's Promise and Our Response* (*The Challenge*). Released as an exercise of its teaching ministry to describe Catholic teaching on war and peace, it was an expression of Christian faith and a call to peace-making in the midst of the Cold War and a nuclear arms race.

[9] Ibid., para. 79.
[10] Ramsey, 1968, p. 481 and pp. 507–8.

The bishops wrote the letter because they agreed that the world was 'at a moment of crisis, the effects of which are evident in people's lives.'[11] In November 1982, Yuri Andropov replaced Leonid Brezhnev, the leader of the Soviet Union since before the Second Vatican Council, but there was no let-up in animosity towards and vituperative attacks on Western leaders, particularly Ronald Reagan and Margaret Thatcher. Vitriol was not exclusive to one side though: in March 1983, Reagan made his "Evil Empire" speech, stating that the Soviets were 'the focus of evil in the modern world.'[12] In response, Andropov accused Reagan of being 'deliberately "provocative" and obsessed by a "bellicose, lunatic anti-Communism."'[13]

Edmund Morris, Reagan's official biographer, determines that while little attention was paid to Soviet domestic opinion, in hindsight 'the word evil had penetrated the Russian soul as surely as the cadmium poisoning Russian beets.'[14] Regan upped the critical rhetoric even further later that month with his "Star Wars" speech where, 'security did not rest upon the threat of instant U.S. retaliation to deter a Soviet attack, [but] that we could intercept and destroy strategic ballistic missiles before they reached our own soil or that of our allies?'[15] Thankfully, the strategy of Détente held restraint, even with such tension caused by provocative interplay. Whether, as suggested by the USCCB, it was a crisis in the world at that time is open to conjecture but the letter, by such a prominent body, was a welcome contribution to the discourse of morality in a changing character of war.[16]

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[11] *The Challenge*, para. 2.
[12] US. Ronald Reagan Presidential Library, *Remarks at the Annual Convention of the National Association of Evangelicals*, 8 March 1983, accessed 19 May 2019, https://www.reaganlibrary.gov/research/speeches/30883b.
[13] Edmund Morris, *Dutch: A Memoir of Ronald Reagan* (New York: Random House, 1999), pp. 473–4.
[14] Ibid., p. 474.
[15] US. Ronald Reagan Presidential Library, *Address to the Nation on Defense and National Security*, 23 March 1983, accessed 19 May 2019, https://www.reaganlibrary.gov/research/speeches/32383d.
[16] There was a crisis twenty-one years before, the Cuban Missile Crisis of 1962, and possibly the Berlin Airlift a year earlier, where events seemed to be leading to confrontation but that was not the case in 1983 and the years preceding. That is not to downplay the concerns of the bishops and such wisdom is always valuable to debate and learning. However, there has been no nuclear exchange since 1945 and in an equally uncertain climate, nuclear weapons have not been made available or become accessible to non-state actors.

The Challenge was written predominantly as a moral analysis of US nuclear policies during the Cold War – a pastoral desire to halt the arms race. It is, however, more broadly reaching, reiterating CJWT principles and making observations on discrimination; it is worthy of analysis particularly when combined with a follow-on pastoral letter ten years later. *The Challenge* reiterates the cardinal principle that '[t]he intentional killing of innocent civilians or non-combatants is always wrong' [17] within its main headings and identifies that Catholic tradition 'prohibits directly intended attacks on non-combatants and non-military targets.'[18] The bishops differentiate between *direct* attacks, which are those engagements against combat forces and military targets, and '*indirect* attacks, aimed similarly against combat forces and military targets, which nevertheless kill non-combatants at the same time'.[19] So, in USCCB terminology, intended and legitimate attacks are *direct* if they are against explicitly military targets and *indirect* if they are against military targets where there is possible, probable or even certain likelihood of non-combatant casualties, ie unintended but foreseen deaths as a consequence of a legitimate and proportionate attack on a military target.[20]

Recognising that the principle of discrimination 'raises a series of questions about the term "intentional," the category of "non-combatant," and the meaning of "military"'[21], the bishops were encouraging debate on such questions since 'concise and definitive answers still appear to be wanting… It is not always easy to determine who is directly involved in a "war effort" or to what degree.'[22] While they were clear that 'entire classes of human beings such as schoolchildren, hospital patients, the elderly, the ill, the average industrial worker producing goods not directly related to military purposes, farmers, and many others... may never be directly

[17] *The Challenge*, p. 2.
[18] Ibid., para. 107.
[19] [My emphasis.] Ibid., para. 109. For the USCCB, indirect means unintended: 'targets could involve "indirect" (i.e., unintended)…' See Ibid,. para. 180.
[20] Although I am critical of the language of 'direct/indirect', as it can be confused with physical causality, I shall have to reflect the language of the bishops where necessary; I prefer to talk of 'intentional/unintentional'.
[21] *The Challenge*, para. 107.
[22] Ibid., para. 108.

attacked',[23] the changing character of conflicts, characterised by the potential for nuclear exchange and revolutionary upheaval, was sufficiently bereft of Christian moral discourse at the time that a moral response was deserving.

The Challenge raises important questions about discrimination and collateral damage too that relate directly to the current challenge of MAC:

> Which targets are "military" ones and which are not? To what degree, for instance, does the use (by either revolutionaries or regular military forces) of a village or housing in a civilian populated area invite attack? What of a munitions factory in the heart of a city? Who is directly responsible for the deaths of noncombatants should the attack be carried out?[24]

These issues relating to discrimination and collateral damage remain contemporary; the letter is, therefore, a helpful resource in the search for a CJWT guide to discrimination in MAC, although it lacks a further stage of discernment that could lead to potential solutions. In referencing revolutionaries using the cover of villagers to dissuade attacks, the letter provides a foundation for the enhanced problems of discriminating in MAC. For example, as concluded in Chapters 2 and 3, there is greater urbanisation of the battlespace, which brings even more civilians into the vicinity of potential collateral damage.

Following these questions posed by the bishops, *The Challenge* reverts to a distinctly consequential measure of collateral damage: 'how many deaths of non-combatants are "tolerable" as a result of indirect attacks'?[25] This is an issue of proportionality rather than discrimination with the letter seeming to conflate the two issues. The suggestion is that the actual number of non-combatant casualties should form a prominent factor and measure in discerning discrimination, possibly a most prominent one, rather a CJWT that determines discrimination to

[23] Ibid. Directly attacked meaning intentionally attacked.
[24] Ibid., para. 109.
[25] Ibid.

be assessed based on the intention of the agent, leading to the doctrine, principle or rule of double effect. Such a departure from traditional doctrine constitutes a significant adaptation to CJWT thought that is worthy of reflection, in assisting moral discussion about discrimination in MAC. As analysed in Chapter 3, actual civilian casualty numbers, no matter their size, have become much more conspicuous in the twenty-first century to a war-weary West. *The Challenge* also raises other topics associated with discrimination that are worthy of reflection, as does another letter written by the USCCB a decade later.

USCCB: *The Harvest of Justice is Sown in Peace*, 1993

Ten years after *The Challenge*, in late 1993, the USCCB published *The Harvest of Justice is Sown in Peace* (*The Harvest*), as a further reflection and statement on moral aspects of war. The bishops recognised that the world had become dramatically different within a decade. Although nuclear conflict was 'not as imminent, international injustice, bloody regional wars and a lethal conventional arms trade [were] continuing signs that the world [was] still marked by pervasive violence and conflict.'[26] The Cold War was over with the collapse of the Berlin Wall in 1989 and with it, ironically, an element of world order and stability as regional conflicts arose. In 1993, US President Clinton stated that '[r]esurgent ethnic conflict is challenging the very meaning of the nation state.'[27] Civil war and ethnic cleansing had begun in the Balkans, the Gulf War of 1991 (Gulf War One) had removed Saddam Hussein's Iraqi invasion force from Kuwait, and fighting continued in the Middle East and Africa.

The Harvest further developed several of the issues raised in *The Challenge* and addressed some activities requiring more general Catholic thinking and teaching on the morality of war. From the

[26] *The Harvest*.
[27] US. Public Papers of the Presidents of the United States: William J. Clinton, 1993, Book 1, *Remarks to the American Society of Newspaper Editors in Annapolis, 1 April 1993*, Washington: US Government Printing Office, p. 373, accessed 19 May 2019, https://www.gpo.gov/fdsys/pkg/PPP-1993-book1/html/PPP-1993-book1-doc-pg372.htm.

pastoral letters, four prominent issues concerning discrimination are worthy of study in addressing a moral analysis and guide to discrimination in MAC, complementing those in Chapter 3. They are: (1) intention and the rule of double effect; (2) the application of the *jus in bello* principles of proportionality and discrimination within *jus ad bellum*; (3) concern over the military strategy of "overwhelming force", raising issues of discrimination and collateral damage; and (4) supererogation – friendly (as opposed to enemy) combatants taking additional risk to their own lives and going beyond what is expected, in order to reduce civilian casualties.

Section 1: Intention and the rule of double effect

The intention of any military force must be to attack only legitimate targets and combatants, although it is recognised that collateral damage is probable, including foreseen but unintended non-combatant casualties; the intention must be to avoid killing non-combatants wantonly and unnecessarily. The rule of double effect allows actions to be taken in war that produce both good and evil effects, subject to the following conditions:

> (1) The act itself must be morally good or at least indifferent. (2) The agent may not positively will the bad effect but may merely permit it. If he could attain the good effect without the bad effect, he should do so. The bad effect is sometimes said to be indirectly voluntary. (3) The good effect must flow from the action at least as immediately (in the order of causality, though not necessarily in the order of time) as the bad effect. In other words, the good effect must be produced directly by the action, not by the bad effect. Otherwise the agent would be using a bad means to a good end, which is never allowed. (4) The good effect must be sufficiently desirable to compensate for the allowing of the bad effect.[28]

Meeting these conditions makes military action permissible despite foreseeable but unintentional collateral damage. It is a way of reconciling the absolute prohibition of attacking non-combatants with accepting that non-combatant casualties are possible, even likely but an unintended consequence of a legitimate military action. Put another way, some civilian casualties are

[28] FJ Connell, 'Double Effect, Principle of' in *New Catholic Encyclopedia*, The Gale Group Inc., 2003, accessed 19 May 2019, https://www.encyclopedia.com/religion/encyclopedias-almanacs-transcripts-and-maps/double-effect-principle.

acceptable so long as they are unintended and that the military target is sufficiently warranting of an attack. From analysing the pastoral letters this section seeks to assist the development of intention and the rule of double effect, begun with Ramsey in Chapter 3, as it could be applied to discrimination in MAC.

By highlighting that the principle of discrimination raises 'a series of questions about the term "intentional,"'[29] and that 'concise and definitive answers still appear to be wanting'[30], the bishops challenged the developed thoughts on the rules of intention and double effect. The potential for such vast numbers of civilian casualties, caused by what the bishops considered to be inherently immoral weapons (nuclear), using mass weapons (obliteration bombing) or overwhelming force could not be offset or tempered by the long-held Christian rule of double effect. Nuclear attacks could be, in the language of the pastoral letters, intentionally or unintentionally discriminate (or in fact theoretically indiscriminate by bad moral choice) but proportionality could never be achieved.

> The location of industrial or militarily significant economic targets within heavily populated areas or in those areas affected by radioactive fallout could well involve such massive civilian casualties that, in our judgment, such a strike would be deemed morally disproportionate, even though not intentionally indiscriminate.[31]

The novelty of the argument is that the quantity of non-combatant deaths is sufficient to render their discriminate use *intrinsically* immoral, since the bishops judge that massive civilian casualties would always be disproportionate. It was, after all, a new character of war that was being described, yet the bishops clarified that the same principles applied to other forms of conflict, as partially referenced above: 'Though our primary concern through this statement is war and the nuclear threat, these principles apply as well to all forms of violence, including insurgency, counter-insurgency, "destabilization," and the like.'[32] I presume that the bishops

[29] *The Challenge*, para. 107.
[30] Ibid., para. 108.
[31] Ibid., para. 182.
[32] Ibid., para. 221.

would view principles that apply to 'all forms of violence' also, as principles, apply to MAC. They must apply to forms of humanitarian intervention, often a precursor to MAC, since quoting Pope John Paul II, the bishops state that 'humanitarian intervention [is] obligatory where the survival of populations and entire ethnic groups is seriously compromised.'[33]

In *The Challenge* the bishops 'hope that leaders will resist the notion that nuclear conflict can be limited, contained or won in any traditional sense.'[34] They are equally clear that nuclear weapons are immoral means: 'good ends (defending one's country, protecting freedom, etc.) cannot justify immoral means (the use of weapons which kill indiscriminately and threaten whole societies).' [35] No matter the intention and the rule of double effect, the use of nuclear weapons, even in a limited sense, is *intrinsically* immoral as indiscriminate according to them as 'it becomes increasingly difficult to make a decision to use any kind of armed force, however limited initially in intention'.[36] While conventional weapons could be used in immoral ways – the bishops 'recall with horror the carpet and incendiary bombings of World War II'[37] – the conventional ordnance used, the means, is not *intrinsically* immoral. Therefore, by the bishops' own statements, the principle of discrimination, which applies to 'all forms of violence', must in fact be interpreted differently between such as a conflict leading to a limited nuclear exchange (intrinsically immoral) and humanitarian intervention, which is 'obligatory' in certain cases. This leads to the question: what if obligatory intervention, leading to a MAC, requires a limited nuclear exchange or the use of overwhelming force?

Oliver O'Donovan has analysed the concept of intrinsically immoral weapons. In his book *The Just War Revisited*, and the chapter entitled 'Immoral weapons', O'Donovan seeks to capture

[33] *The Harvest*.
[34] *The Challenge*, p. 3.
[35] Ibid.
[36] Ibid., para. 101.
[37] Ibid., para. 102.

comprehensively the characteristics of immoral weapons and distinguish them by class and paradigm. Writing a decade after *The Harvest* in 2003, he determines three broad classes of objections against weapons that are unsuited to Christian just-war strategies, namely if: '(i) their operational design implies the unjust conduct of war; (ii) the destruction they effect is too great a scale; (iii) their methods are inhumane or cruel.'[38] He argues that there can be a weapon that is intrinsically indiscriminate and

> [t]he paradigm case would be a biological weapon designed to spread dangerous viruses through the water supply. Its indiscriminacy would not depend upon its uncontrollable effects; it would be indiscriminate even if one could determine precisely the duration and diffusion of its effect. It would be indiscriminate because its mode of operation is to strike directly at the normal life-sustaining resources of a community, which are essentially common to military and civilian populations. If this weapon were used, it would make no sense to ask whether the destruction of the community's means of life was intended. It would be intended as a means to military victory, but intended none the less. It is not a matter of how many people are killed by it, or even how many civilians are killed compared with how many combatants. It is a matter of its structure of operation, which is an attack on a basic function of a community's life rather than on its military operations.[39]

O'Donovan goes on to state that 'it does seem certain that some nuclear warheads are categorically disproportionate, at least on the score of radically unpredictable consequences, and that whole nuclear arsenals, even those that remain today, are categorically disproportionate on the score of their certain destructiveness.'[40] Similarly, using O'Donovan's criteria, obliteration bombing or the use of overwhelming force could be argued to be *intrinsically* immoral as a 'ways' (broad approaches) rather than 'means' (resources), by the destruction they bring being too great a scale.

From the USCCB's position and O'Donovan's ethics, a Christian-based observation is that some means of war could be considered as *intrinsically* immoral (nuclear and biological), some ways of war as immoral (obliteration bombing and overwhelming force) and that these means and

[38] O'Donovan, p. 79.
[39] Ibid., pp. 79–80.
[40] Ibid., p. 85.

ways are immoral, even for a just end or outcome. I acknowledge the argument that describes some weapons as intrinsically immoral, particularly examples suggested by O'Donovan above and other examples of his, including those that are inhumane or cruel, 'designed to inflict injury first and then kill, i.e., to inflict untreatable injuries… the cruel weapon, which effects an increase of suffering for which there is no military rationale.'[41] I appreciate why, according to O'Donovan, 'we have felt it necessary to ban biological weapons as a class' since '[s]ome of these weapons… are intrinsically indiscriminate and categorically disproportionate, threatening grave and uncontrollable damage to non-combatant populations.'[42] I can also imagine that a weapon, possibly with a collection of warheads, which on initiation is so powerful that it is likely to cause swathes of casualties in every other nation, could be classified as *intrinsically* immoral.

However, if I use *any* weapon or tactic to destroy a vital military target, which is no more powerful or destructive than necessary, then my use is discriminate and proportionate, and my action is moral, no matter the level of destruction or number of casualties. During the Cold War, NATO forces planned the use of tactical nuclear strikes on the battlefield as a last resort against an overpowering ground invasion of Europe by conventional Warsaw Pact forces. Smaller yields of nuclear weapons were also to be intentionally targeted against military bases, armaments factories and the likes; these would be discriminate and likely to cause very large but proportionate collateral damage. Further, while I remain sympathetic to the argument that weapons that are inhumane or cruel could be considered inherently immoral, my view is that weapons are not *intrinsically* immoral as their immorality depends on the circumstances of their use.[43]

[41] Ibid., p. 87.
[42] Ibid., p. 89.
[43] For O'Donovan, to distinguish a cruel weapon, the 'scale of intensity of pain… must also encompass such non-commensurable factors as duration of pain, hope of recovery from injury, and, the most difficult factor to describe but probably the deepest rooted, indignity and humiliation.' Ibid., p. 88. Lasers that are intentionally designed to blind individuals or some biological weapons may be characterised this way, whereas the incendiary effects of some weapons, such as thermobaric weapons using fuel-air explosions, are likely to cause appalling burns and

Further, the bishops do not address a situation such as a "supreme emergency", where national survival may suggest a need to override moral norms, including discrimination;[44] unless they believe that, even in cases such as likely extinction, good ends cannot justify immoral means or ways or both. The bishops do not address the situation whereby the survival of populations and entire ethnic groups is so seriously compromised, and requiring humanitarian intervention, but where the only form of credible intervention possible is to use what they assess to be an immoral means or ways eg nuclear weapons or obliteration bombings respectively. Arguably, fewer people would have died if Britain and its allies had accepted Nazi rule and the extermination of all Europe's Jews, but surely Nazi expansion needed halting. If preventing further Nazi expansion, delivering proportionate punishment and providing sufficient justice for victims could only be meted out by including a mass or obliteration bombing campaign then it was probably, morally, the lesser of two evils. Clearly there is no precise, arithmetical way of determining how many human deaths are worth such justice, notwithstanding hindsight, which tells that conventional weapons killed up to 80m people during World War Two. Moreover, if a "supreme emergency" makes it necessary to take greater risks with civilian lives – as distinct from intentionally trying to kill them – then the norm of discrimination is not overridden. And if a "supreme emergency" really does warrant high risks and costs, then nor is the norm of proportionality overridden. The rule of double effect is being enacted.

The USCCB's apparent suspicions of intention and the rule of double effect were not original, especially relating to obliteration bombing. As described in Chapter 3, during World War Two,

asphyxiation towards death but these are secondary components of weapon design and such killing does not constitute 'an affront to human dignity.' Ibid., p. 89.

[44] Churchill used the term "supreme emergency" to describe Britain's predicament in 1939. It was taken by Walzer in *Just and Unjust Wars*, Chapter 16 to analyse a situation when the constraints of the war convention could be morally overruled. Walzer states 'that there is a fear beyond the ordinary fearfulness… of war, and a danger to which that fear corresponds, and that this fear and danger may well require exactly those measures that the war convention bars.' Walzer, 1977, p. 251.

American Catholic moralist John Ford wrote on the morality of obliteration bombing and was sure that the rule of double effect should be based on intention:

> The principle of the double effect, though basic in scientific Catholic morality, is not, however, a mathematical formula, nor an analytical principle. It is a practical formula which synthesizes an immense amount of moral experience, and serves as an efficient guide in countless perplexing cases.[45]

However, as also described in Chapter 3, Ford refuted the rule of double effect as a morally acceptable discipline with respect to obliteration bombing, arguing that the moral problem of unintentionally but knowingly killing innocents could be tempered, 'merely by advising the air strategist to let go his bombs, but withhold his intention'.[46] Ford's view that the rule of double effect permits wantonly indiscriminate action, provided that the attacker performs an entirely inward mental act of 'withholding intention' is unfair, because a genuinely discriminating intention will take objective steps to avoid or minimise casualties.

At the forefront of the bishops' reflection in *The Challenge* was the incalculable horrors of nuclear exchanges, and to a lesser degree the effects of obliteration bombings. They discern that such attacks can never be discriminate or proportionate – as such, the disproportion of massive casualties becomes more determinative of the morality of an attack than the issue of intention. It leads to the rule of double effect's obsolescence – using a bad means (or ways) to a good end is never allowed. Further, it seems that while conventional and non-conventional military exchanges were not ignored, their particularities, especially those of insurgencies and counter-insurgencies, were either acknowledged as not in need of a more refined moral analysis or minimised, in order to retain focus on the nuclear threat. This seems a considerable shortcoming to me, particularly as the US had been involved in a momentous counter-insurgency fight, in Vietnam, less than a decade earlier where well over a million deaths occurred: 75,900 casualties,

[45] Ford, p. 289.
[46] Ibid.

including 48,000 civilians, caused during Operation 'Rolling Thunder', a sustained campaign of aerial bombardment in North Vietnam between 1965 and 1967.[47] Concern is raised in *The Harvest* for 'strategies calling for [the] use of overwhelming and decisive force [that] can raise issues of proportionality and discrimination'[48], which relates directly to intention and the rule of double effect. The morality of such strategies being incompatible with necessary discrimination is analysed in Section 3 below.

As introduced above, within CJWT it has developed that agent intent and the doctrine of double effect, together, determine the moral justification of a strike against a legitimate target and any foreseeable but unintended non-combatant casualties, and not the amount of devastation or number of casualties. Whilst nuclear attacks and mass bombings on the scale envisioned in the pastoral letters are most unlikely military activities in MAC, any focus on the actual numbers of casualties, rather than intention is a diversion from the historical interpretation of CJWT. As an adaptation or development to the principle of discrimination in the contemporary age, however, the bishops' seemingly promoting a different or parallel view – actual numbers of non-combatant casualties, caused by collateral damage, were to be a focus for discernment – resonates with some of today's assessments, particularly by humanitarian agencies. Frequently, media accounts of attacks against irregular forces in MAC focus on civilian casualties, with huge resources being redirected by governments and their conventional forces to try and counter, rebalance and mitigate damaging accusations. The ethically based intentions of most developed countries to minimise civilian casualties is problematic, as they strive evermore towards their impermissibility – expectations that are probably unachievable. Added to this is the increasing

[47] US. Department of Intelligence, Intelligence Memorandum, *Assessment on the Rolling Thunder Program Through December 1967*, March 1968, p. 32, accessed 19 May 2019, https://www.cia.gov/library/readingroom/docs/CIA-RDP80T01629R000300080012-1.pdf.
[48] *The Harvest.*

distrust in official casualty figures released from the governments of developed states that contradict humanitarian agencies, media and locals' assessments, which is unhelpful.[49]

In conclusion, the sheer scale of potential non-combatant casualties from escalatory modern war was so grave as to raise doubts in the USCCB about the rule of double effect and its emphasis on intention. Though a primary concern of the bishops was nuclear engagement, by stating that these principles apply as well to all forms of war (including insurgency, counter-insurgency, "destabilization," and the like), they suggest that an extensive moral re-thinking is similarly required for newer forms of irregular conflicts. By not making a clear distinction between nuclear and non-nuclear conflicts when analysing intention and collateral damage, the bishops display discordant moral thinking since according to them, the survival of a race or ethnicity that is seriously compromised justifies humanitarian intervention. If limited nuclear attacks, obliteration bombing or overwhelming force are the only means or ways, then would the USCCB allow the extinction of a group of people or their total overrun? How we measure collateral damage and by what means in MAC must be addressed – it is vastly different from nuclear conflict, different from conventional conflicts, and has unique irregular attributes – as must the significance placed on the actual numbers of non-combatant casualties. The mistrust between militaries and agencies on determining true casualty figures must also be attended to; suspicions raised by intention must be overcome.

Section 2: Discrimination and proportionality within *jus ad bellum*

Following the revival of just-war theory in the 1960s, as illustrated in Chapter 3, and by the time the bishops wrote their pastoral letters, CJWT had developed two sets of well-instituted norms: the first establishing the right to go to war (*jus ad bellum*) and the second establishing the right conduct during war (*jus in bello*). *Jus in bello* followed on naturally from *jus ad bellum* as a

[49] See Chapter 3 for examples, evidence and analysis.

distinct successor, enacted following the decision to wage war and its engagement. In *The Challenge* the bishops choose to apply the principles of proportionality and discrimination

> to the question of jus ad bellum as well as jus in bello; for today it becomes increasingly difficult to make a decision to use any kind of armed force, however limited initially in intention and in the destructive power of the weapons employed, without facing at least the possibility of escalation to broader, or even total, war and to the use of weapons of horrendous destructive potential. This is especially the case when adversaries are "superpowers," as the council clearly envisioned…[50]

The bishops clearly felt that the principle of proportionality within *jus ad bellum* – the desired end being proportional to the means used – was insufficient as a guide to withhold going to war in the first instance. 'Modern war' could never be fought with means that they considered inherently indiscriminate and disproportionate to any conceivable political goal. This section aims to determine what effect such a transformation in CJWT thinking – to include *jus in bello* components as principles to be overruled in going to war in the first instance – may have on supporting moral thinking about discrimination in MAC. Restraining military action once war has commenced, so that all activities are morally discriminate and proportionate, requires active participation by all actors and at all times. However, to predict that sufficient restraint is unachievable implies that war could never be fought other than immorally. It also implies that either or both sides are unable to restrain themselves once conflict has commenced. Certainly, irregular forces in MAC have shown very little restraint at times, in their willingness to commit the most abhorrent war crimes.

The centrality of nuclear exchange and mass military effect in *The Challenge*, visible with reference to escalation and superpowers, had modified by 1993. As partially cited above, the bishops 'recall with horror the carpet and incendiary bombings of World War II, the deaths of hundreds of thousands in various regions of the world through "conventional" arms… [and] the utter suffering war has wrought during the centuries before and the decades since the use of the

[50] *The Challenge*, para. 101.

"atom bomb."'[51] In *The Harvest* the bishops remark that 'the wars fought in the last fifty years show a dramatic rise in the proportion of noncombatant casualties.'[52] This conflation of potential casualties from nuclear confrontation and those realised in conventional and irregular wars shaped 'the need for clear moral restraints both in avoiding war and in limiting its consequences.'[53] Such discourse, with the bishops writing also that '[t]he high level of civilian deaths raises serious moral questions about the political choices and military doctrines which have had such tragic results over the last half century,'[54] resonates with MAC, as civilian casualties are preeminent in modern political choices and military doctrines.

Yet, as suggested above, could it truly have been morally acceptable, even foreseeing the 80m civilian deaths of World War Two, not to have engaged Nazi tyranny by military force? Surely it would have been morally wrong to comply with Nazi or Japanese aggression simply because the costs of not complying were foreseeable as too prohibitive. Finland in 1939, outnumbered in soldiers and vastly inferior in military equipment such as tanks and aircraft, had no realistic chance of success against invading Russians but fought nonetheless; pride, self-determination and national identity were all contributory factors to defending Finland. Some consider it to have been a moral failure when the UK parliament rejected supporting US intervention in Syria, in 2013, notwithstanding the Syrian regime's use of chemical weapons against its own people. Rightly interpreted, CJWT remains a way of morally and rightly establishing justice and restoring peace. As Pope Paul VI stated at the World Day of Peace on 1 January 1972: 'If you want Peace, work for Justice.'[1] As a last resort, that work may mean fighting.

Some allied bombing acts during World War Two may be considered to have been objectively indiscriminate: the firer knew that all those in the blast radius of the bomb were likely casualties

[51] Ibid., para. 102.
[52] *The Harvest*.
[53] Ibid.
[54] Ibid.

but that the military objective was vital and any likely civilian casualties were proportionate. An act is immorally indiscriminate, if it kills civilians intentionally or unnecessarily through culpable negligence. Some allied bombing was performed with the intention of killing civilians: that is subjectively indiscriminate and, therefore, immoral. Within the CJWT, the requirement is not to avoid killing civilians, but to avoid killing them intentionally, which means, minimally and to avoid killing them wantonly and unnecessarily as expressed above. Such avoidance necessitates self-control but with statements such as '[a] number of expert witnesses advise us that commanders operating under conditions of battle probably would not be able to exercise strict control',[55] the bishops shun any form of de-escalation controls available.

A more reflective analysis across the spectrum of war could have assisted the bishops in determining the suitability of integrating *jus in bello* within *jus ad bellum*, particularly to assist moral discernment in the many contemporary forms of war other than nuclear (or escalation to nuclear), such as a counter-insurgency that had taken place within a generation eg Vietnam War. At the beginning of the Vietnam War, no one could have forecast the length of the conflict, the numbers of casualties, the devastation that occurred (in particular by carpet bombing of strategic proportions), or the outcome: tactical victories but strategic defeat for the US-led coalition. Each of these outcomes, if proposed and accepted as most likely, could have been sufficient to conclude that either the US-led coalition should not commence the war or that a different approach and strategy be used, in order to plan successful and morally acceptable ways, means and ends. The addition of *jus in bello* principles to *jus ad bellum* would have provided no additional value to achieving this: the criterion 'probability of success' within *jus ad bellum* would have sufficed as a suitable deterrent, as would 'proportionality' in that 'the damage to be inflicted and the costs incurred by war must be proportionate to the good expected by taking up

[55] *The Challenge*, para. 152.

arms.'[56] In Vietnam, even if the US strategic intent had been achieved then the actual damage and costs, if foreseen, could have been assessed to be disproportionate; this assessment could have been trumped, however, by the US desire to prevent communist expansion.[57]

The bishops' statement that civilian casualties have dramatically risen in the last fifty years may be injudicious or is at least contestable as it depends on the assumptions and measures used. There have been many recent conflicts where civilian casualties have been relatively low. During the Falklands War of 1982 only three civilians were killed compared to around 900 military, and during the US invasion of Grenada in 1983, military fatalities were more than two-and-a-half times as many as civilians. Gulf War One is a vindication of CJWT relating to discrimination and proportionality if the following argument is accepted: the scale of the military action was truly enormous, with over 2.5m combatants yet the application of *jus in bello*, in its traditional form, is reflected in less than 5000 civilian deaths and in the order of 20,000–35,000 Iraqi combatant deaths.

There is some resonance with current forms of MAC, however, that predicted numbers of civilian casualties is likely to prevent waging military action in the first instance. As developed states continue to foster liberty, human rights, accountability, governance and the rule of law, there is an ever-growing desire to reduce amounts of collateral damage. Alongside will be human rights activists, equally morally virtuous in desire, arguing that the threat of even the smallest number of civilian casualties should negate any form of military intervention or actions of the types seen in recent years. Some contend that certain conventional ways and means used in

[56] Ibid, para. 99.
[57] No one would doubt that North Vietnam achieved its strategic objective of unifying Vietnam, arguably at a disproportionate cost of vast casualties and social submission in a closed state, and that in 1975 the US failed in its strategic objective. However, scholars such as Victor Hanson subsequently argue that time has demonstrated that the US has ultimately been strategically victorious, with its own and allied growth, and the demise of the Soviet Union: 'America lost the war but won the peace'. See Victor Hanson, *Carnage and Culture: Landmark Battles in the Rise of Western Power* (New York: Anchor Books, 2002), p. 433.

MAC by regular forces, such as stand-off attacks using armed drones, are intrinsically immoral by virtue of their imprecision, leading to, in the opinion of proponents, their use being insufficiently discriminate.

The numbers of potential casualties influenced the USCCB's moral thinking on war. Similarly, NATO-led military actions in recent MAC have been disproportionately influenced by a focus on the numbers of potential civilian casualties, rather than the rules of intention and double effect. The appeal of modern states to seek unrealistically low levels of civilian casualties was analysed in Chapter 3, Section 2.2, under the heading 'modern permissibility of collateral damage'. It must be balanced with what is possible, even with enhanced troop training, tactics, and procedures as well as technological advancements in weapon accuracy and control of collateral damage by enhanced warhead design. The lack of discrimination and proportionality as foreseen by some in MAC, similar in principle to that proposed by the bishops in the escalatory war context, could persuade others to consider bringing these two *jus in bello* principles into the considerations of *jus ad bellum* for MAC. However, in any form of unconventional war, including MAC, there is no evidence to suggest that such a transformation in CJWT interpretation would add value to a holistic moral thinking and in particular about discrimination.

In fact, what it implies from a limited nuclear context to MAC, and all other forms of warfare, is a complete lack of faith in the ability of humans to apply restraint once war is in progress. Reflecting on their fear of a war leading to a tactical nuclear exchange, then escalating into total war, the bishops fail in discerning the considerable amount of cooperation and restraint shown, for example, during the two world wars. In his book *Cooperation under Fire: Anglo-German Restraint during World War II*, Jeffrey Legro asks why nations cooperate, even as they try to destroy each other, and uses the example of World War Two to show that agreements limiting the use of force can be sustained; he includes examples of commerce raiding by submarines,

strategic bombing of civilian targets, and chemical warfare. In 1944 Germany began to deploy V-rockets against the UK, primarily aimed at London. 'Britain's leaders debated using gas either to retaliate or shorten the war' even with the possibility that among the UK population 'no weapon was more reviled than poisonous gas.'[58] The UK and US held significant quantities of chemical weapons during World War Two and it is false to suggest that they had no intentions of using them. The UK had a contingency for escalatory use of chemical weapons that could have been executed following the V-rocket attacks. 'Yet despite Churchill's vigorous advocacy of escalation and Britain's relative immunity to retaliation in kind, restraint prevailed.'[59] Similarly, 'after Germany had transgressed the submarine rules, Britain continued to maintain restraint, *despite the sacrifice of military gains*.'[60] I consider further examples of restraint as part of my analysis of supererogation, beginning in Section 4 below and then specifically in Chapter 6.

This is not to downplay the scale of the challenge for conventional forces to act with restraint in MAC, when fighting, at times, an unrestrained enemy that disregards the laws of war and eagerly commits abhorrent acts. Further, research into post-traumatic stress disorder symptoms from a large population of US service personnel, many with experience in Iraq and Afghanistan, concludes that the 'unpredictability and intensity of urban combat, constant risk of roadside bombs, multiple and prolonged tours, and complex problems of *differentiating enemies from allies* can leave many troops with high stress levels and possible lasting health consequences.'[61] Added to these ordeals is the inequality of accountability that conventional troops feel for their actions in conflict, compared with irregular fighters, which I analyse in the following chapters.

[58] Jeffrey W. Legro, *Cooperation under Fire: Anglo-German Restraint during World War II* (London: Cornell University Press, 1995), p. 152.
[59] Ibid., pp. 152–3.
[60] Ibid., p. 62. [My emphasis.]
[61] Tyler C. Smith et al, 'New onset and persistent symptoms of post-traumatic stress disorder self reported after deployment and combat exposures: prospective population based US military cohort study', in *BMJ*, 14 February 2008, accessed 19 May 2019, http://www.bmj.com/content/336/7640/366.full.print. [My emphasis.]

In conclusion, the bishops' decision to include *jus in bello* principles within *jus ad bellum*, whether judicious or not, was shaped by their reflections on a potentially horrifying escalation in civilian casualties from nuclear exchange, the historic casualties of obliteration bombing, and by their measure of growing civilian casualties during preceding conflicts. Foreseeing the potential for escalation to total war between the superpowers determined that, 'condemnation is demanded by the principles of proportionality and discrimination.'[62]

By using *jus in bello* principles as a means of determining whether to intervene militarily is justifiable or not and failing to develop an adequate understanding of proportionality, the bishops seem to diverge from, rather than develop, their CJWT, to one that is unlikely to be suitable for any other type of war, including MAC. It demonstrates little or no faith in restraint by conventional forces once conflict is engaged. This is a significant failing of the bishops' witness in my view; for example, both allies and Nazis demonstrated self-restraint during World War Two. Further, the potential of insufficient discrimination and proportionality, which could have been thought possible during the World War Two, did not deter the UK and its allies from doing the right thing and entering into war with the Nazis: a commitment to overcoming tyranny, bringing justice and an ordered peace. West Germany was rebuilt after the war, with substantial Western support, again showing a commitment to moral ends of justice and a peaceful settlement.

Restraint, however it is designated and instilled into ethical codes of conduct and rules of engagement, will remain enormously challenging to regular forces in MAC, as the enemy is often invisible, immoral and exploits the law-abiding nature of democracies. Unlike Western militaries that have established codes, values and standards, and very largely abide with rules of engagement, as well as upholding IHL, irregular adversaries have no such compunction; they

[62] *The Challenge*, para. 103.

often slaughter innocents and treat opponents abhorrently and mercilessly for effect. Unable to distinguish readily friend from foe, under enormous fear, stress, provocation and nervousness about their own accountability, regular soldiers deserve the freedom to act within knowable ethical restraints, but which currently lack clarity given the number of UK soldiers and veterans being subjected to post-conflict investigations. The integration of *jus in bello* within *jus ad bellum* is unsuitable for moral thinking about restraint and discrimination in MAC.

Section 3: Use of overwhelming or decisive force

During the period spanning the pastoral letters, Western militaries began to develop doctrines such as "overwhelming" or "decisive" force, exposing their strategists to potential charges of indiscriminate and disproportionate use of force by organisations including the USCCB. *The Challenge* clearly articulates that the 'justifiable use of force must be both discriminatory and proportionate'[63] and *The Harvest* makes specific reference to the bishops' fear of such military thinking and planning:

> strategies calling for [the] use of overwhelming and decisive force can raise issues of proportionality and discrimination. Strategies and tactics that lead to avoidable casualties are inconsistent with the underlying intention of the just-war tradition of limiting the destructiveness of armed conflict. Efforts to reduce the risk to a nation's own forces must be limited by careful judgments of military necessity so as not to neglect the rights of civilians and armed adversaries. In light of the preeminent place of air power in today's military doctrine, more reflection is needed on how traditional ethical restraints should be applied to the use of air forces.[64]

This section analyses the doctrine of "overwhelming" or "decisive" force, which remains extant in NATO forces; it has been directed as recently as 21 August 2017 against the Taliban in Afghanistan, by US President Donald Trump.[65] Recognising the USCCB's wise counsel, my

[63] Ibid., para. 144.
[64] *The Harvest*.
[65] At a speech at Fort Myer, Arlington, Virginia, covering the future US strategy supporting Afghanistan against the Taliban, President Trump stated: 'When America commits its warriors to battle, we must ensure they have every weapon to apply swift, decisive, and overwhelming force.' US. The White House, *Remarks by President Trump on the Strategy in Afghanistan and South Asia, 21 August 2017*, Office of the Press Secretary, accessed 19 May 2019,

intent is to determine whether the doctrine can be discriminate and proportionate and, thereby, morally acceptable as a strategy in MAC, to support such as the attrition of the IED network. As stated, "overwhelming" or "decisive" force reflects doctrinal changes within the US military and the publication in 1992, a year before that of *The Harvest*, of a revised US strategy. By alliance, NATO countries adopt similar or complementary doctrines and strategies.

In 1988, before the collapse of the Berlin Wall the following year, NATO members were anticipating the fall of the Soviet Union, and began to discuss future military strategies and force structures. Between 1989 and 1992, US Joint Staff deliberations resulted in the "Base Force Concept", a strategy to guide the reduction in US armed forces 'without breaking them or reducing their quality.'[66] Colin Powell, at that time Chairman of the Joint Chiefs of Staff, 'believed that the deployment of overwhelming force was the most effective deterrent in a regional crisis. He introduced into the NMS [National Military Strategy] the concept of using overwhelming force—on Mr. Wolfowitz's advice later modified to decisive force—quickly to defeat an adversary.'[67] Powell's view is worth noting – it was the most effective deterrent in 'a regional crisis' and, therefore, potentially suitable for phases in MAC. The transfer of terminology from *overwhelming* to *decisive* force portrays a more clinical or surgical military activity, possibly more discriminatory and proportionate. For example, the use of guided weapons to destroy a specific target rather than using mass bombings, in order to curtail collateral damage. However, in military parlance they have identical meanings, delivering the same military effect.

https://www.whitehouse.gov/the-press-office/2017/08/21/remarks-president-trump-strategy-afghanistan-and-south-asia.

[66] Lorna S. Jaffe, *The Development of the Base Force 1989 – 1992*, Joint History Office, Office of the Chairman of the Joint Chiefs of Staff, July 1993, p. Forward, accessed 19 May 2019, http://www.orchestratingpower.org/lib/Military%20Force%20Structure/1989-1992%20baseforce.pdf.

[67] Jaffe, p. 48. Paul D. Wolfowitz chaired the Department of Defense NSR (National Security Review) 12 Steering Committee.

In seeking debate in the development of US military doctrine, a 1996 US National Defense University paper proposed a new doctrine of 'Achieving Rapid Dominance, by virtue of applying 'Shock and Awe''.[68] It was a potential evolution in doctrine to replace or complement "overwhelming force", which the 1996 paper defines as: 'to apply massive or overwhelming force as quickly as possible on an adversary in order to disarm, incapacitate, or render the enemy militarily impotent with as few casualties and losses to ourselves and to noncombatants as possible.'[69] As a doctrine it is not inconsistent with the moral requirements of CJWT: to achieve the required military objective with minimal own and non-combatant casualties. It was, however, incomplete with respect to acceptable enemy losses; the bishops highlight in *The Harvest* as referenced above that our actions must 'not to neglect the rights of… armed adversaries.' The military strategy of "overwhelming force" raises four moral issues, relating to discrimination and collateral damage, that are worthy of specific analysis.

3.1 Justification of overwhelming force. Military success may require rendering the enemy militarily impotent: that is to prevent their re-emergence by breaking their capability and will to fight. There are some objective tools of analysis available to military planners that assist in forecasting successful military outcomes, assessing the actual or percentage losses of enemy equipment, materiel, installations, communications and resources generally. In non-conventional conflicts, however, any prediction of enemy combatant casualty numbers required to achieve a successful mission is fraught with uncertainty: enemy combatant casualties may be larger than some may deem necessary simply to hold an enemy in some form of abeyance.

[68] Harlan K. Ullman and James P. Wade, *Shock and Awe, Achieving Rapid Dominance*, Prepared by Defense Group Inc. for The National Defense University, 1996, accessed 19 May 2019, http://www.dodccrp.org/files/Ullman_Shock.pdf.

[69] Ullman, p. 21. '"Decisive Force," on the other hand, implies delivering massive enough force to prevail. "Decisive" means using force with plenty of margin for error. "Force" implies a traditional "force-on-force" and attrition approach. This concept does not exclude psychological and other complementary damage imposition techniques to enhance the application of force; they have been used throughout the history of warfare. But such nondestructive means would have an ancillary role. Military force would be applied in a purer form and targeted primarily against the military capabilities of an opponent. Time is not always an essential component. As in Desert Shield/Storm, enough time would have to be allowed to assemble an overwhelming force.' Ibid., p. xxvii

The deployment of overwhelming force may seem too cruel, ruthless or domineering on first reading, since it purposely seeks to shatter the enemy's will to continue fighting any further. The alternative, however, which is to use just sufficient force to defeat or delay them, making them powerless for an instant if that point were ever determinable, may be counter-productive. It could allow an enemy to maintain a willingness to fight, even reenergise and motivate them further, regroup, reconstitute their forces and fight again. The likelihood of extending conflict is clear, more casualties guaranteed and our own military chances of success lessened. Based on the rule of accepting the lesser of two evils, it would be prudent to use overwhelming force if it is thought to increase the likelihood, sufficiently, of shattering the enemy's will to fight and bringing conflict to an earlier resolution, thereby reducing overall casualties and destruction. The use of overwhelming force in this account would be morally just and thus, as a doctrine, "overwhelming force" could not be judged to be immoral as presupposed by the bishops.

3.2 Minimising own casualties. That forces seek to minimise their own casualties is a natural response and a moral duty of commanders. It is also a practical military goal since fewer of our own casualties allows more troops to continue in the war effort. Having accepted the unique role of being lawfully able and required to kill on behalf of a sovereign state, liability to sacrifice one's own life, and the duty to accept orders from military superiors, certain rights are forfeited by conventional combatants. Commanders have a responsibility and a moral obligation to assess the likelihood of their own casualties in planning a battle or military operation, and weigh-up the value of a successful mission against their own potential casualties, before deploying any military effect.

Soldiers commit knowingly and willingly to conflict where the risk and likelihood of themselves becoming casualties is foreseen but unintended. They accept it, governed by their own values,

standards and an ethical code of conduct, cognisant that all resources will be made available to achieve their objectives, and inhibited only by their enemy's activities. They would possibly commit themselves, accepting even greater risk of personal harm and beyond that which would be reasonably expected, for the sake of the mission or for their team members – personal sacrifices formed from *esprit de corps*, tradition, friendships and a sense of duty, not abandoning or letting down other team members. They would, however, be confounded at any suggestion not to use a form of offensive action or protection that was ethical, increased their own survivability and was available. There is, after all, no part of CJWT that forbids the kind of warfare envisaged here, or any secular version and, moreover,

> widespread public attitudes [are] that national military forces should not be asked to assume unnecessary risks, that indeed it would be immoral for military leadership not to insist on minimising risk of injury to its own soldiers, and that the civilian governments owe those soldiers a duty of care since they are essentially citizens in uniform forced into danger by others' aggression.[70]

In the most recent conflicts in Iraq, Afghanistan and against ISIL in Syria and Iraq, collateral damage and civilian casualties were recognised by senior commanders to have immensely negative effects on the success of strategic socio-politico-military campaigns. Recognising this, strategic and operational commanders directed tactical commanders to ensure that their plans and the actions of their subordinate leaders and troops display forms of "courageous restraint" when prosecuting military actions.[71] The objective is to reveal to enemy non-combatants and those monitoring the activities of conventional forces that there is a real desire and conviction to reduce collateral damage to the absolute minimum. Evidence from recent MACs, however, reveals that some tactical commanders felt so constrained by rules of engagement and the lack of

[70] David Fisher and Brian Wicker, *Just War on Terror?: A Christian and Muslim Response* (Farnham: Ashgate, 2010), p. 166.

[71] A doctrine called "courageous restraint" was introduced by General Stanley McChrystal, a US commander of coalition forces in Afghanistan, to reduce the number of non-combatant casualties, caused mainly by indirect fire eg aircraft bombs and artillery shells. It was criticised by some coalition troops for being too restrictive, preventing them from carrying out their military duties, allowing members of the Taliban to exploit the doctrine by placing themselves amongst civilians, and increasing coalition combatant casualties as a result.

freedom to operate within such burdensome interpretations of rules – directed by operational level commanders and above, seeking to express the pre-eminence of minimising civilian casualties – that the security and safety of their own troops were being put at undue risk.[72]

Subjecting one's own forces to the increased potential for harm, unnecessarily, is immoral. For example, if a higher command is so concerned with the effects of collateral damage for political reasons, to such an extent that it prevents a proportionate counter-attack against an enemy, called for by a tactical commander in danger of being attacked, then such could be a moral failure of care towards its own troops. If that same tactical commander, however, accepted a degree of increased risk by not calling for an available counter-attack, aborting one, or restricting its lethality in order to reduce the likelihood of civilian casualties, thereby acknowledging and applying themselves to the greater strategic need, then such demonstrates a form of "courageous restraint" or supererogation, in keeping with the sense and spirit of the USCCB. The key to ensuring that the latter and not the former is established is: (1) for the tactical warfighter to be aware of the operational and strategic level intent and to be convinced of, and committed to, the plans for a successful mission; (2) for each level of command to understand and have trust in the application of "mission command";[73] (3) that tactical level troops will implement military plans within the principles of "mission command" and ethical codes of conduct; and (4) that there is some form of relationship-covenant between the forces, government and society.[74] In so doing the balance between accepting greater risk to one's own troops, those same troops

[72] US retired Lieutenant General Daniel Bolger blamed General Sir Nick Carter's 'risk averse' mentality – refusing to carry out air strikes when they were asked for out of fear of causing civilian casualties – for the deaths of 'young riflemen' when Sir Nick was head of the British Army in Afghanistan, circa 2009–10. Tom Kelly, 'Troops died because of UK general, says U.S. chief: Former General claims 'young riflemen paid the price' for Sir Nick Carter's 'risk-averse' mentality' in *Mail Online*, 17 November 2014, accessed 19 May 2019, http://www.dailymail.co.uk/news/article-2837198/Troops-died-UK-general-says-chief-Former-General-claims-young-riflemen-paid-price-Sir-Nick-Carter-s-risk-averse-mentality.html.

[73] The UK's philosophy of mission command has four enduring tenets: (1) timely decision-making; (2) thorough understanding of a superior commander's intent; (3) clear responsibility on the part of subordinates to fulfil intent; and (4) determination to take the plan through to a successful conclusion. See JDP 0-01, ch. 3, para. 2.11.

[74] In the UK a covenant exists between the Government and its military forces to redress the disadvantages that the armed forces community may face in comparison to other citizens, and to recognise sacrifices made.

acknowledging and becoming willingly compliant with their increased vulnerability, and minimising non-combatant casualties is optimised. The integrity of CJWT is also retained: 'Often, in fact, love for our neighbour prevents us from pressing our right to the utmost limit.'[75] I address the issue of supererogation later: the expectation that soldiers as the profession of arms should accept higher risks to themselves and their colleagues, in order to prevent too many civilian casualties and unnecessary suffering.

3.3 Minimising enemy combatant casualties. Minimising non-combatant casualties is morally indubitable. An enemy's combatant casualties are also to be minimised commensurate with military necessities such as preventing their re-emergence by using overwhelming military force, which can range from army-scale operations all the way down to the level of a section (around eight soldiers) and individual troops. The military necessity to use overwhelming force, accepting a level of attrition and possibly a significant margin for error if using indirect fire weapons, must not be considered as mutually exclusive with minimising non-combatant casualties. The extent of potential collateral damage has to be measured against the value and necessity of an attack on a military target and available weaponry.

As already highlighted, some consider Gulf War One to 'confirm the validity of the doctrine of overwhelming or decisive force and of ensuring that both strategic objectives and tactical methods were in congruence.'[76] Using "overwhelming" or "decisive" force remains current US military doctrine and the 'principle of restraint does not preclude the application of overwhelming force, when appropriate, to display US resolve and commitment.'[77] War is imprecise, as is intelligence gathering and often plans need to change or be adapted. Targets are sometimes fleeting or appear different to the intelligence picture but still require action to be

[75] Grotius, bk. 3, ch. 1, sect. IV, para. 2, p. 601.
[76] Ullman, p. 4.
[77] US. *Joint Operations*, Joint Publication 3-0, 11 August 2011, p. V-62, accessed 19 May 2019, https://studylib.net/doc/11020488/joint-operations-joint-publication-3-0-11-august-2011.

taken, even if the option chosen is to take no action. Our own forces may have limited or less than suitable weaponry at particular times, or restrictions on the munitions available to them; they must measure and balance the opportunity to engage a target, the likelihood of success, the best, worst and likely outcomes, and the impact of any collateral damage.

The USCCB had 'profound skepticism about the moral acceptability or any use of nuclear weapons'[78] including 'where many, even "discriminating," weapons would cumulatively kill very large numbers of civilians.'[79] They considered that weapons deployed in a mass way, such as the obliteration bombing of cities during World War Two, was an immoral strategy. It is understandable, therefore, that they posted these concerns in their pastoral letters, even though nuclear weapons have not been used since the end of World War Two and mass bombings were last used by a Western coalition force early during the Vietnam War; less than discriminate mass bombings were not used by coalition forces during Gulf War One in 1991, initially a conventional conflict. Post-Gulf War One, it would have been prudent for the bishops to address the morality of what is considered to be overwhelming force in the context of that war, within *The Harvest* (1993). It was, after all, a non-escalatory and conventional war where both Iraq (chemical weapons) and coalition forces (nuclear weapons) were thought or known respectively to have weapons of mass effect. The USCCB did not consider moral lessons of the use of overwhelming force from Gulf War One, therefore leaving a gap in moral analysis and also, as part of the evolving CJWT, a basis from which to form moral ideas of future developments in war, such as MAC.

3.4 Humanitarian intervention. The bishops did address an emerging type of modern conflict – ethnic cleansing and genocide, with the need for intervention to overcome such evil.

[78] *The Challenge*, para. 193.
[79] Ibid., para. 183.

The Harvest has a comprehensive sub-section discussing humanitarian intervention and includes the bishops' recommendation that 'the principles of sovereignty and nonintervention may be overridden by forceful means in exceptional circumstances, notably in the cases of genocide or when whole populations are threatened by aggression or anarchy.'[80] Although the coalition attack against Iraqi forces in 1991 was limited to liberating Kuwait only, and not removing Saddam Hussein's regime, Iraqi leaders had already demonstrated genocidal behaviour against the Kurds and other non-Arab groups, during Operation ANFAL, towards the end of the Iran-Iraq War.[81] Again the question arises as to what levels of genocide or aggression would be necessary and sufficient to trigger the bishops' moral support for intervention. Guidance by the bishops on this issue could have been a useful foundation to debate and make assessments on, for example, recent atrocities performed by ISIL in the northern areas of Syria and Iraq.

Sadly, there is no guidance on, for example, the limits of overwhelming force, relating to the proportionate use of that force and the enforcement of morally acceptable discrimination. Nor is there any guidance on what levels of genocide trigger overriding the principles of sovereignty and non-intervention. Rather, the language remains more of discussion, reaffirming the need to engage debate, suggesting such as the 'particular difficulties involved in meeting criteria of success and proportionality in cases of humanitarian intervention deserve careful scrutiny and further examination.'[82] The bishops conclude their reflections in *The Harvest* with an outline to an agenda for action that will guide their future advocacy, and one of the areas that they promise to seek to work for is: 'Clarification of the right and duty of humanitarian intervention in exceptional cases, by means consistent with Catholic teaching on nonviolence and just war, when the survival of whole populations is threatened.' [83] Although much has been written on the

[80] *The Harvest*.
[81] Operation ANFAL was a campaign of genocide by Iraq's Baathist led government against the Kurdish people in northern Iraq, a series of systematic attacks against the Kurdish population towards the end of the 1980s.
[82] *The Harvest*.
[83] Ibid. I have no confidence that humanitarian intervention involving cases of genocide, ethnic cleansing or anarchy could realistically be achieved by nonviolent means.

ethics of intervention by other writers, in accepting that MAC is concomitant with some form of military intervention, a detailed analysis of discrimination in MAC, and the use of overwhelming or decisive force remains deficient.

In concluding this section on the doctrine of "overwhelming" or "decisive" force, the USCCB views its use as potentially incompatible with the principles of discrimination and proportionality. As a doctrine, however, it remains morally justifiable because its fundamental aim is to defeat an enemy's military capability, shatter its will to continue fighting, and hopefully bring conflict resolution sooner, thereby minimising the overall number of casualties. Applied properly, it does not seek gratuitously harmful effects that are indiscriminate or disproportionate and it falls within the principled guide of *jus in bello*. Being overwhelming, decisive and achieving "shock and awe", is not synonymous with being indifferent, cruel, merciless and wanton in battle.

Troops from developed countries have demonstrated their ability to achieve the necessary moral balance: sometimes taking more risk in order to reduce non-combatant casualties, not at undue or disproportionate cost to themselves, but remaining focussed on achieving the military strategy and thus the political goal. Overwhelming or decisive force may well be applicable to MAC, as part of Grand Strategy. How it should be applied, if at all to humanitarian intervention, or as a most effective deterrent in a regional crisis as envisaged by Colin Powell, was not addressed by the bishops, although they are clear that humanitarian intervention may be a moral obligation. If applied, then the moral constraints that should be enforced in order to discriminate sufficiently in MAC, associated most likely with some form of Western intervention, are questions I address in the final chapter. Given well-established ethical codes of conduct and rules of engagement, some element of discretion will always be required by military forces, in order to apply a CJWT to

their actions, rather than trying to overcome a collection of almost unsurpassable moral hurdles and rules of engagement.

Section 4: Supererogation

The bishops reflect on the awesome power and potential dominance available to those with superior or substantial airpower, and the fact that such weaponry allows significant stand-off distances between attacker and target, lowering the risk of harm to attacking forces. Quoted above is their comment that efforts 'to reduce the risk to a nation's own forces must be limited by careful judgments of military necessity so as not to neglect the rights of civilians and armed adversaries.' The reference is to civilians having the right not to be killed intentionally during conflict, in accordance with the laws of war, rather than rights interpreted as individual human rights to life. Air power, even if surgical[84] in character, using the latest technological guidance systems, can still be devastating to civilian conurbations if not meticulously planned, tightly controlled or intelligence is inaccurate.

Some contend that the airpower of conventional forces in the form of armed drones is an expression of the desire to reduce friendly combatant casualties, at the expense of potentially greater levels of harm to enemy combatants and, more contentiously, collateral damage. Care must be taken to ensure that the use of such stand-off weapons does not cause disproportionate collateral damage such that local resentment is exacerbated, as it can lead to an undesirable growth in irregular fighters and the loss of hearts and minds among the local population. Unfortunately, there is evidence to suggest that the West's air support to friendly nations fighting irregular asymmetric adversaries, may not be achieving its desired strategic effect. Using data from The Bureau of Investigative Journalism, news reports from 2015 state such as: 'The rate at

[84] Surgical strike air-assets are those 'using weapons that have pinpoint accuracies and produce minimal collateral damage.' Richard H. Shultz Jr. and Robert L. Pfaltzgraff, *The Future of Air Power: In the Aftermath of the Gulf War* (Alabama: Air University Press, 1992), p. 199.

which civilians are being killed by United States airstrikes in Afghanistan is now at its highest point since 2008, an analysis of newly published United Nations data reveals.'[85]

Supererogation means going beyond that which is strictly demanded, with supererogatory acts being those actions performed that are morally good although unnecessary. In conducting war, it affirms that combatants should morally accept more risk of harm to themselves, in order to commit more positively to the prevention of civilian casualties. The idea is not new but is an important concept to analyse with respect to the principle of discrimination and a moral challenge, not only from the domination of air power over an irregular enemy in MAC, but also for the other two domains, sea and land. Walzer favours a call on soldiers to accept greater risk of harm to themselves, as an offset to further reducing civilian casualties: 'if saving civilian lives means risking soldier's lives, the risk must be accepted. But there is a limit…'[86] This final section analyses the principle of supererogation in the context identified by the pastoral letters, and lays the foundation for discussing the levels of risk to be taken, if any, by conventional troops, in order to ensure sufficient discrimination in MAC, based on a developed CJWT.

Beyond their reflections on nuclear war and obliteration bombing, the USCCB are explicit that the principle of discrimination 'must be applied to the range of weapons - conventional, nuclear, biological, and chemical'.[87] Their clear concern is that conventional weapons could be used in less than discriminatory ways to reduce the threat of harm to our own troops – a reflection that maps easily across to MAC. It is also clear, from the bishops' referenced comment in the first paragraph of this section, that they believe that some greater risk to one's own combatants is not simple to accept but needs careful judgment and may be morally necessary: a positive appeal to

[85] Jack Serle, Abigail Fielding-Smith and Payenda Sargand, 'U.S. Airstrikes in Afghanistan Are Killing Civilians at Greatest Rate in Seven Years', in *Newsweek.com*, 18 February 2016, accessed 19 May 2019, http://europe.newsweek.com/us-airstrikes-afghanistan-killing-civilians-427877.
[86] Walzer, 1977, p. 156.
[87] *The Challenge*, para. 109.

accept greater risk of harm to conventional troops, in order not to neglect the moral rights of both enemy combatants and non-combatants. The question is what level of risk to one's own troops would be a Christian response to the moral need to reduce enemy combatant and particularly non-combatant casualties in MAC, and for it to be acknowledged that one's own forces were, in fact, taking a higher level of risk of harm to achieve it? How could it be assessed and demonstrated? I analyse this fully in Chapter 6 but in the meantime, accepting that discrimination is affected by the design and use of conventional weapons, then what limits should be placed on them to achieve at least the spirit of the bishops' desire?

'The production and sale of conventional weapons throughout the world is a truly alarming and evidently growing phenomenon'[88] is a reference to a UN address by Pope John Paul II. Later, in *The Harvest*, the bishops remain concerned about the arms trade and the prominent role that the US plays.[89] A growth in arms trading suggests evolution in design and performance of those arms, in order to maintain the technical edge and stave off competition. The bishops' alarm, anxiety and distress caused by the potential for indiscriminate attacks and the loss of civilian life, from conflicts involving conventional munitions, is unmistakable as already referenced (footnote 52). The problem is exacerbated if, as O'Donovan suggests '[w]eapons technology has terrorised the twentieth century by running ahead of moral, political and legal control.'[90] And if so then there should be 'a serious attempt to apply moral reasoning to the task of weapons design'.[91] The counter-evidence is that two of the largest deployments of US forces since World War Two, Vietnam and Gulf War One, witnessed a transformation from the use of large-scale and indirect bombardments witnessed in the former, to much more surgical strikes in the latter by, for example, exploiting technology in the guidance systems of weapons and munitions. Evolution of

[88] Ibid., para. 212.
[89] 'As the world's largest supplier of weapons, the United States bears great responsibility for curbing the arms trade by taking concrete actions to reduce its own predominant role in this trade.' *The Harvest*.
[90] O'Donovan, p. 93.
[91] Ibid., p. 94.

precision-guidance munitions continued during campaigns in the Balkans, wars in Iraq and Afghanistan, and coalition force air campaigns against the Libyan regime and ISIL.

Modern weapon designers have a number of conflicting requirements within a finite budget. The first is to improve performance – lethality, range and accuracy in order to hold the technological edge and equipment advantage over adversaries – the physical component of fighting power. Second, they are being directed to reduce the collateral effects of warheads so that the target, and only the target, is affected. Third, dependent on how weapons and munitions are deployed, designers seek to reduce the risk to their own forces by increasing stand-off distances and protecting the firer, by both physical and electronic means, eg stealth technology.[92]

One example that encapsulates these three desirable but conflicting requirements with reducing budgets is the Royal Air Force's "fire-and-forget" dual mode Brimstone missile. It necessitates trade-offs: performance is improved by the use of a dual mode seeker (Millimetre Wave Radar and Semi-Active Laser) and tandem warhead; collateral damage is reduced by the accuracy of the missile and the low fragmentation warhead; and the aircrew can fire from vastly greater ranges, without the need to revert to straight and level flight, or can use drones to reduce the risk of harm to themselves as they engage targets. The weapon became state-of-the-art in 2015 when deployed first by the UK against ISIL in northern areas of Iraq. While surgical strike capacity is desirable, using a costly weapon system, limited by affordability, has to be balanced against the value of the legitimate target.

The value of a target must be matched against the cost and availability of the weapon and ammunition deployed against it. An attack against an insurgent driving a civilian vehicle could

[92] There are other requirements for weapon designer to address such as environmental constraints, which are equally important but they are morally neutral when considering discrimination.

be by rapid-fire bullets, at a fraction of the cost of a precision-guidance missile, to achieve a comparable target effect: rapid-fire bullets, however, would be unlikely to defeat a fast moving jet or armoured vehicle, whereas the missile would be more likely and more suitable for that role. Hence, targets and the munitions used against them must be matched. It may be unreasonable through the cost effectiveness and efficiency of a missile to use it against a particular type of target, notwithstanding its precision and potential for minimal collateral effects when, from the same or a different platform, a spray of rapidly fired bullets can achieve the necessary outcome, even though there is potential for greater collateral damage.

As technology develops, precision-guidance warheads with reduced collateral damage will grow in availability and affordability. It should provide Western forces with the ability to improve continually the tasks of discrimination and minimising collateral damage. In *The Harvest* the bishops speak of the need for demilitarization in general and disarmament of nuclear weapons in considerable detail but there is no reflection on the morality of designing non-nuclear weapons. For that, the views of others must be sought such as O'Donovan's recommendation above that there should be 'a serious attempt to apply moral reasoning to the task of weapons design'. Analysis above demonstrates that it is being taken seriously. The challenge for the designers is to continue to take ethical considerations into serious account in their innovations and future designs. The task for political, church and military leaders is to manage the expectations of some Christians, ethicists, human rights activists, pacifists and the general public. It is simply not possible to reduce non-combatant casualties to anywhere near zero, particularly with the way that irregular forces in MAC establish and frame the battlespace to allow if not promote them.

To conclude this section, the overall increase in civilian casualties in conflict following World War Two and the need to limit the trade of conventional weapons concerned the USCCB; governing their design and use to maximise discrimination is also essential. My analysis covered

the competing requirements of weapon design, which are broadly performance (including reducing collateral effects), safety and cost. The precision-guidance Brimstone missile, fired from either a piloted aircraft or drone, was used as an example to demonstrate that designers are proactively seeking to minimise the collateral effects of warheads, while not needing to be, necessarily, at the expense of our own troops' safety. However, while precision-guidance warheads will grow in availability as technology develops, their expense and the ingenuity of the enemy will prohibit their use as a means to achieving the surgical defeat of all military targets. The bishops express their concerns of further mitigating risks to one's own troops by technological advancement amongst other factors, at the expense of minimising enemy combatant and non-combatant casualties. Their Christian desire is for their own forces to accept and take a higher level of risk of harm to themselves to achieve it. That would mean, therefore, a need for military personnel to determine and accept a level of supererogation that they believe is critical to them achieving their mission and culminating in campaign success. This is addressed in Chapter 6.

Conclusion

The USCCB's two pastoral letters provide a Catholic position, with moral reflections, on a contemporary change in the character of conflict – nuclear exchange, which made the world safe for insurgency. They are, therefore, suitable as a primary source for review, complementing Ramsey, in preparation for any moral investigation into the latest change in the character of war, namely MAC. My intent has been to determine where the bishops' discussions and discernments assist in the application of moral thought to discrimination in MAC. After a short review of the relevant part of social teaching on war, from the Second Vatican Council and the two pastoral letters, I analysed four issues to support the development of a guide to discrimination in MAC.

First, examining the bishops' expression of intention and the rule of double effect, I sought to discover limits surrounding morally tolerable collateral damage in unconventional conflicts. While their coverage surrounding weapons of mass destruction is extensive, leading to much discernment, there is less analysis and depth to their reflections on unconventional warfare, although they clearly state that the principles apply to all forms of war, giving examples of 'insurgency, counter-insurgency, "destabilization," and the like'. In so doing, with this latest change in the character of war, the bishops' stance advocates a similar and extensive moral re-thinking for MAC with respect to intention and the rule of double effect. How we measure collateral damage and by what means must also be addressed, as must the significance placed on the actual numbers of non-combatant casualties and the mistrust between militaries and agencies on determining true casualty figures: suspicions raised by intention must be overcome, which I address in the final chapter.

Second, the USCCB's inclusion of *jus in bello* principles within *jus ad bellum*, whether judicious or not, is shaped by their reflections on a potentially horrifying acceleration in civilian casualties. Even from an initial tactical nuclear exchange, their belief is that restraint is impossible once deterrence is compromised. The *jus in bello* principles of proportionality and discrimination in this case are used to determine that war is to be condemned in the first instance – it simply cannot be waged morally. The inclusion is also shaped by conventional war – by how the bishops measured the growth in civilian casualties during recent conflicts, to which I provided counter-examples. By using *jus in bello* principles to determine whether any form of military intervention is justifiable or not, the bishops diverge from a traditional view of CJWT, to one that demonstrates little or no faith in restraint once conflict has commenced. This is a significant failing of the bishop's witness, as examples given demonstrate that Western forces have shown significant self-restraint during recent wars. At the onset of World War Two, if the UK and its allies had foreseen the immensity of the challenge to ensure *jus in bello* principles, could that

have truly, morally justified their not entering the war: a commitment to defeating tyranny and bringing justice and an ordered peace. West Germany was rebuilt after the war, with substantial Western support, again showing a commitment to justice and a peaceful settlement. A traditional just-war interpretation, separating *jus in bello* from *jus ad bellum* is more helpful to moral thinking, particularly about MAC.

Even for well-intentioned and well-drilled regular soldiers, restraint will remain an enormous test for them in MAC since the enemy is often invisible, immoral and exploits the law-abiding nature of conventional troops. Unlike Western militaries that largely abide by well-established ethical codes of conduct and rules of engagement, as well as upholding conventions and state practices, their irregular adversaries have no such compunction, often slaughtering innocents and callously beheading those not fully allied for effect. Providing conventional forces with the moral guidance for restraint, while they are under enormous fear from such as IEDs, stress, provocation, and nervous about their own accountability, even when they believe that they are acting ethically and lawfully, deserves a moral response that is currently lacking. Integration of *jus in bello* within *jus ad bellum*, is an unhelpful trend away from CJWT, especially when considering discrimination, principally by not recognising that restraint is possible, even if only by one side.

Third, the USCCB express concerns over the use of overwhelming or decisive force, suggesting its incompatibility with the principles of discrimination and proportionality. My analysis suggests that, as a doctrine, “overwhelming force” remains morally justifiable because its fundamental aim is to defeat an enemy’s fighting capability and shatter its will to continue, bringing quicker conflict resolution and fewer casualties. It does not seek gratuitously harmful or disproportionate effects and it falls within the principled guide of *jus in bello*. Further, being overwhelming, decisive and achieving “shock and awe”, are not synonymous with being

indifferent, cruel, merciless and wanton in battle – applied properly they are both discriminate and proportionate.

Western troops are able to discern and achieve a necessary moral balance: taking more risk in order to reduce non-combatant casualties, not at undue or disproportionate cost to themselves, but remaining focused on achieving the military aim and political goal. Overwhelming or decisive force may well be applicable to MAC, as part of Grand Strategy. How it should be applied, if at all to humanitarian intervention is not addressed by the bishops, although they are clear that humanitarian intervention may be a moral obligation. When it should be applied and the moral constraints that should be enforced, in order to discriminate sufficiently in MAC, concomitant most likely with some form of Western intervention, remain to be addressed. What is clear is that given well-established ethical codes of conduct and rules of engagement, some elements of discretion are still required by conventional forces if they are to apply CJWT, and discrimination within it, to their actions.

The final issue taken from the pastoral letters relates to supererogation and two sub-components: the design and use of more discriminate weapons with higher protection for one's own troops; and the risk of harm that our troops should be morally obliged to undertake in order to reduce collateral damage (analysed in Chapter 6). Analysis of the competing requirements of weapon design – broadly performance (including the reduction of collateral effects), safety and cost – shows that designers proactively seek to minimise the collateral effects of warheads, while not needing to expose their own troops to unnecessary risk. In so doing it allows military personnel to determine and accept any extra level of supererogation that they believe is necessary to first, support the overall mission and second, apply as a virtue. While technology will assist further in reducing collateral damage, expense and the ingenuity of enemies will determine that it will never be the absolute answer – collateral damage can never be reduced to zero.

Chapter 5
JAMES TURNER JOHNSON: THE EROSION OF NONCOMBATANT IMMUNITY IN ASYMMETRIC WAR

The 'challenge is to confront realistically the face of contemporary war.' [1]

Introduction

If, as James Turner Johnson proposes, the 'challenge is to confront realistically the face of contemporary war'[1], then this thesis engages part of that challenge, namely a Christian response to discrimination in MAC. The previous two chapters conclude that: first, the work of Paul Ramsey is a most suitable source from which to explore discrimination in irregular warfare, although I expose its shortfalls in addressing the task of discrimination in MAC; and second, that the USCCB's pastoral letters, which address a fundamental change in the character of war, including an upsurge in irregular conflicts, is a Catholic continuum of CJWT and complements Ramsey's Protestant ethics. I have also explored some parts of the work of the renowned secular ethicist, Michael Walzer, where it suitably challenges or assists discourse. Therefore, while conceding that my analysis of Walzer is limited, I have conducted a comprehensive analysis of the Christian elements of what Johnson considers to be 'the three pillars of the recovery of the just war idea, Paul Ramsey's two books from the 1960s…, Michael Walzer's *Just and Unjust Wars* [1977], and the U.S. Catholic Bishops' pastoral letter, *The Challenge* [1983]'.[2] There remains, however, a shortfall in Christian moral discourse that specifically addresses discrimination, or engages it sufficiently for MAC.

Johnson is an acclaimed modern ethicist in the subject of morality in war.[3] His work on discrimination is an apposite final choice to review and analyse, developing as he does the ethical arguments of both Ramsey and the USCCB; he was a student of Ramsey and remains a

[1] James Turner Johnson, 'Just War, As it Was and Is', in *First Things*, January 2005, accessed 19 May 2019, http://www.firstthings.com/article/2005/01/just-waras-it-was-and-is.
[2] Johnson, 2016, p. 310.
[3] James Turner Johnson is Professor of Religion and Associate Member of the Graduate Department of Political Science at Rutgers University and co-editor of the Journal of Military Ethics.

prominent critic of the USCCB's transformation in CJWT. Moreover, for more than a decade, having witnessed many attacks – such as the Rwandan massacre of 1994, those on the World Trade Center in 2001, Madrid in 2004, London in 2005, and well before the terrorist attacks in Paris (2015), Brussels (2016), and in 2017 those strikes in Manchester, London (twice), Barcelona and New York – Johnson has recognised the moral and practical changes, and consequent challenges in confronting contemporary war. The burdens of harm on non-combatants in modern conflicts is 'of a different kind from those imposed by warfare in which either or both belligerent parties consciously make no distinction between non-combatants and combatants or, worse yet, in which one or both belligerents target non-combatants directly as a method of war.'[4]

This chapter analyses Johnson's prominent work relating to discrimination in what he calls 'contemporary war' or 'contemporary asymmetric war' and what I call MAC. Six issues raised by Johnson are analysed surrounding discrimination, which build on the ethics of Ramsey and the USCCB, in order to determine their suitability and sufficiency in supporting the development of a moral guide to discrimination in MAC. The first is what Johnson calls the direct, intentional killing of non-combatants by irregular adversaries. The second is the ambiguity of international law that has developed from modern interpretations of the 1977 Protocols I and II Additional to the Geneva Conventions of 12 August 1949, which relate to the Protection of Victims of International and Non-International Armed Conflicts respectively: both are recurring themes in his recent work. I take the remaining four issues from one of his latest essays entitled, 'Enforcing and Strengthening Noncombatant Immunity' within *The Ashgate Research Companion to Military Ethics*.[5] Written around the same time, the almost identical essay published in the *ASJP*

[4] James Turner Johnson, 'Maintaining the protection of non-combatants', in *Journal of Peace Research*, July 2000, vol. 37, no. 437, p. 421, accessed 19 May 2019, http://jpr.sagepub.com/content/37/4/421.full.pdf+html.
[5] Johnson, 2016, ch. 23.

Africa & Francophonie journal has the more representative title, in my view, of this particular work: 'The Erosion of Noncombatant Immunity in Asymmetric War'.[6]

The first of this set of four issues is the significance of cultural differences between asymmetric adversaries, with irregular forces not abiding by international norms such as non-combatant immunity. Second, Johnson raises the challenges of distinction between combatants and non-combatants, stressing how difficult it is to discern in MAC, as irregular fighters move between the two effortlessly, often without detection. He argues that international laws, specifically the 1977 Protocols, are written in such a way that their interpretation in MAC creates ambiguity in discrimination, causing problems for conventional troops attempting to enforce right conduct. Third, Johnson addresses the asymmetry of weapon types and targeting methods used by parties involved in MAC, and the challenges that these different standards and paradigms bring. Fighting ethically and lawfully is problematic when one side uses what could be described by some as inherently immoral weapons (as analysed in Chapter 4), or uses weapons immorally, targets indiscriminately, and even targets its own civilians directly, deliberately and intentionally. Finally, I analyse Johnson's account of the inequitable accountability between the two sides in MAC – for their actions and their prospects of being brought to justice, during or post-conflict, for breaches of IHL.

Johnson is clear in his essay that he does not intend to make specific recommendations, unfortunately, but in highlighting these erosions of non-combatant immunity within contemporary asymmetric war (or MAC), he provides further discussion and reflection that I examine in the final chapter. Overall, what an analysis of the works of Johnson, Ramsey and the USCCB reveals is the insufficiency of Christian moral discourse on the new moral challenges to

[6] James Turner Johnson, 'The Erosion of Noncombatant Immunity in Asymmetric War', in *ASPJ Africa & Francophonie*, 1st Quarter 2015, accessed 19 May 2019, https://www.airuniversity.af.edu/Portals/10/ASPJ_French/journals_E/Volume-06_Issue-1/johnson_e.pdf.

the task of discrimination, for developed states that are prepared to engage in MAC. The requirement remains for these states, with their conventional militaries, to develop morally secure strategies that meet the contemporary tests of *jus in bello* discrimination, while the actions and activities of irregular adversaries do not.

Section 1: The direct, intentional killing of non-combatants

Writing in 2005, Johnson states that in contemporary war 'we see a new kind of confrontation… we see non-state actors, as well as warlords and heads of state who use relatively unsophisticated means to gain their ends by targeting, terrorizing, and killing noncombatants'.[7] This modern characteristic of war, the intentional killing of non-combatants by irregular forces, is readily identifiable in MAC; it is a common thesis in Johnson's writing and has been for more than a decade. He considers it to have 'been a regular, even preferred, means of war.'[8] Recent conflict involving ISIL demonstrates this direct, deliberate and intentional killing of non-combatants. For example, a UN report on protection of civilians in Iraq, published in 2014, states that '[m]embers of Iraq's diverse ethnic and religious communities, including Turkmen, Shabak, Christians, Yezidi, Sabaeans, Kaka'e, Faili Kurds, Arab Shi'a, and others have particularly been affected by the situation.'[9] The UN report goes on to state that 'Islamic State of Iraq and the Levant (ISIL) and associated armed groups intentionally and systematically targeted these communities for gross human rights abuses, at times aimed at destroying, suppressing or cleansing them from areas under their control.'[10] Johnson exposes a distinct change in the character of MAC and its moral and practical challenge as follows:

> In such conflicts the moral and legal distinction between combatants and noncombatants is not so much ignored as used as a weapon by the relatively weak to gain advantage over

[7] Johnson, 2005.
[8] Johnson, 2011, p. 142.
[9] UN Assistance Mission for Iraq, 'Report on the Protection of Civilians in Armed Conflict in Iraq: 6 July – 10 September 2014', p. i, accessed 19 May 2019, http://www.ohchr.org/Documents/Countries/IQ/UNAMI_OHCHR_POC_Report_FINAL_6July_10September2014.pdf.
[10] Ibid.

> their more powerful adversary: when such attacks by the former succeed, they demonstrate the inability of the latter to protect those who should be protected; when the latter respond in kind, they lose whatever moral advantage they might have had and yield ideological ground to their opponents.[11]

Johnson, like Ramsey, judges any thought of reprisals to be counter-productive. Whereas irregular fighters use such tactics, ignoring any morality or internationally agreed protocols associated with discrimination, it is expected by developed countries that their conventional forces will adhere to them, whatever the provocation. 'Holding to the combatant–non-combatant distinction is basic to the moral conduct of war'.[12] In so doing, it requires a development in the moral interpretation of discrimination that copes with the intentional killing of non-combatants by irregular forces. That there remains such a gap in moral discourse is recognised by Johnson: 'For just war tradition such protection is a central concern, and the failure of one major branch of recent just war thinking to engage this crisis leaves a moral gap in the moral debate.'[13]

Chapter 3 analyses the late Paul Ramsey's approach to protecting non-combatants from the immoral actions of revolutionaries, specifically the Vietnamese insurgents, and the necessity to limit the destructiveness of war. It concludes that combatant and non-combatant statuses are always subject to social revision. Ramsey recognised that discrimination is dynamic and a function of how nations or forces of all types organise for war. Johnson, similarly, recognises how irregular forces are organising themselves for contemporary wars. Significant non-state actors, multi-national origins, globalisation and social transformation, all affect the way combatant status is analysed and determined, to a greater or lesser extent, in MAC.

In conclusion, Johnson's recognition that in irregular war, and now MAC, militarily weaker adversaries intentionally target civilians is not new, but his admission that there is a gap in its

[11] Johnson, 2011, p. 142.
[12] Johnson, 2000, p. 446.
[13] Johnson, 2011, p. 142.

moral discourse is significant. Chapter 3 concludes that Ramsey's ethical resource, excellent though it is, is not sufficient for today's MAC. Analysis of Johnson's reflection on this new characteristic of contemporary war – the intentional killing of non-combatants by irregular forces becoming weaponised – confirms that a reappraisal is needed to evaluate this form of indiscriminate targeting, which is both immoral and illegal. The sheer scale of intentional attacks by such as ISIL against non-combatants, disregard for collateral damage and the development of terrorist attacks on mainland Europe in particular, by diaspora of irregular forces, raise to new heights the repugnance of such actors and their actions. Account of their transitory statuses between combatants and non-combatants is also necessary, with greater granularity than is currently available, which I address in Chapter 6.

Section 2: Developments in international law

In his book, *Ethics and the Use of Force*, Johnson describes what he considers to be failings in some of the developments of the 1977 Protocols I and II, following on from the 1949 Geneva Convention – changes that were made to promote the protection of civilian populations. He refers to 1977 Protocol I, Article 43, quoting: 'In order to promote the protection of the civilian population from the effects of hostilities, combatants are obliged to distinguish themselves from the civilian population *while they are engaged in attack or in a military operation prior to an attack*'.[14] His view is that 'their actual effect seems to be just the opposite: to erase the visible distinction between civilians and combatants… and thus to place the civilian population in greater danger.'[15]

Johnson gives an example of a fighter who participates in a clandestine attack. Immediately following the attack, the fighter discards his weapon and resumes life as a civilian, dressed as a

[14] Ibid, p. 146. [Author's emphasis.] There is a typo here: the actual article that Johnson is referring to is Article 44 – Combatants and Prisoners of War, not Article 43 – Armed Forces.
[15] Ibid.

civilian, behaving like a civilian, and performing civilian activities and duties. Johnson uses the illustration of the clandestine attacker to demonstrate how they endanger those with genuine civilian status in the area, as a conventional force legitimately seeks to capture or kill the attacker. 'The protection of noncombatants during armed conflict, desired in both morality and law, depends on the ability of combatants to distinguish them from those involved in fighting.'[16] Johnson is clear that with respect to the actors in contemporary war, where at least one of the parties may be a non-state actor, there is currently, in law, 'no real provisions for enforcement of its protections on such actors, and thus it tends to bear more heavily on the conduct of state actors in such conflicts while leaving the door open for non-state actors to violate provisions of the protocol with impunity.'[17]

The abuses of the Protocols and the spirit of their intentions by irregular fighters determine the need for a moral review. Ramsey made a moral revision with respect to insurgent violations during the Vietnam War: '*The insurgents themselves* have enlarged the target it is legitimate for counter-insurgents to attack, so far as the principle of discrimination is concerned'.[18] In other words, the insurgents were to blame and, likewise, a Christian-based moral argument is deserving that reveals the truly objectionable nature of irregular forces in MAC, and their responsibility and culpability for purposely and wantonly increasing the likelihood of non-combatant casualties. Currently, moral and legal accountability and admonishments are overwhelmingly sought-after on the conduct of conventional forces, simply because they are easily accessible and verifiable, with a plenitude of recordings of their actions and locations. That should not be the case but if it is then the conventional forces in MAC should, morally, be

[16] Ibid., p. 147.
[17] Ibid.
[18] Ramsey, 1968, p. 435. [Author's emphasis.]

able to impose controls that are morally justifiable on a situation created by the immoral activities of their adversaries, if we share Ramsey's ethics.[19]

Johnson concludes that while developments in international law 'add to the nexus of restraints on state actors involved in such conflicts, they have done little to affect the conduct of non-state actors so involved. Indeed, certain developments in international law have opened the door further to abuses by the latter, at the expense of the former.'[20] If this is the case, and my experience as a soldier and reservist supports it, then as law develops from our moral thinking, so serious moral thought is needed to the application of discriminate force, upon an adversary that undermines most international moral codes, as well as laws and practices relating to conduct in war. Previous analysis in Chapter 2 considers different activities in the IED network, which can be extrapolated to most war-like activities performed by irregular forces, those involved and their contributions. It concludes that there is insufficient discourse on how to address such behaviour, and determine the levels of liability of those involved to lethal force against them. Likewise, Johnson acknowledges that '[i]nternational law does a great deal to identify what sorts of behavior are prohibited, but it does not provide adequate means to address how to end such behavior.'[21] Following these two prominent moral issues, I now analyse Johnson's latest moral thinking on discrimination, specific to MAC, by reviewing his recent essay entitled 'Enforcing and Strengthening Noncombatant Immunity'.

Section 3: Non-combatant immunity in asymmetric war

Johnson refreshes the theme of international law and its development in this essay, as well as the identical accountability, in principle, of all combatants, on all sides of a conflict. He highlights

[19] The domestic democratic acceptability of attacking civilian targets that irregular forces are culpable for jeopardising may increase if the war being fought is considered one of national survival, rather than one that is remote and where defeat is not intolerable. MAC is likely to be a remote and so a constant moral challenge.
[20] Johnson, 2011, p. 149.
[21] Ibid.

the inequity of facing justice as a non-state actor in comparison to a state actor from a developed country. Following a chronology of the conventions and protocols, reflecting a decisive shift in the law as to who is accountable for war crimes against non-combatants – beginning with the war crimes tribunals that took place after World War Two and ending with the 1977 Protocols – Johnson explains that 'the positive law of armed conflict has importantly converged with the concerns of the deeper moral tradition to mark off such classes of people and avoid direct, intended harm to them.'[22] He continues that in enforcing justice, 'punishing violations is placed on the parties to the conflict,' and that the 'Rome Statute of the International Criminal Court gives it jurisdiction over four categories of offenses: genocide, crimes against humanity, war crimes, and aggression' but that 'in practice, not all states can be relied on to enforce the rules against these kinds of actions'.[23]

However, his reason for explaining the development of the laws of war relating to the protection of civilians, with some fidelity, is to contend that compared to its rigour and detail '[r]ecent moral discourse relating to protection of noncombatants has by no means been so broadly gauged or so finely grained.'[24] He qualifies this by describing, as mentioned above, the three pillars of modern just-war recovery, Ramsey, the USCCB's 1983 pastoral letter and Walzer, and their contributions to the debate, particularly Ramsey and the USCCB's analyses that simply did not address '[h]ow to transfer this reasoning in some way to limitation of the behavior of others in irregular warfare of the recent sort'.[25] Johnson, therefore, clearly views that moral discourse with respect to discrimination in MAC remains seriously deficient.

Recall Ramsey's argument that, with respect to the Vietnam War experience, the insurgency and not the counter-insurgency enlarges the area of civilian death and damage that is legitimately

[22] Johnson, 2016, p. 310.
[23] Ibid.
[24] Ibid.
[25] Ibid., p. 311.

collateral (this argument is expounded later). Having left a distinguished legacy on Christian ethical thought surrounding discrimination in irregular warfare, however, Ramsey's own perceptive admission was that his work was insufficient for future wars. Johnson deduces that 'Walzer too did not in his discussion of noncombatant immunity anticipate the ways irregular warfare has come to be fought.'[26] Further, Johnson contends that, with respect to modern discourse on discrimination, it is 'important to consider the moral implications for noncombatants of dual-use targeting or drone strikes', more openly and broadly as 'too often moral discourse focused on showing the immorality of such practices effectively becomes an attack on how the United States makes war.'[27]

Other 'highly developed countries' with similar capabilities, such as the UK, 'too become a target for the same criticism.'[28] In other words, being parties to a war, both developed countries and non-state actors are equally responsible and culpable for any moral violations or legal transgressions, but because the former are readily accessible (whereas the latter are not), then the burden of investigation and criticism is concentrated on them. That is an inequitable, undeserving and unjust situation. It must be addressed to remove or reduce the increasing anxieties and related stresses that it places on the service personnel of conventional forces and their families, and to restore trust and integrity of the principle of impartiality in the rule of law.

In his closing analysis of recent moral discourse and responsibilities, Johnson concludes that 'protection of noncombatants is a matter of the policies and practices of all the parties to a conflict. This includes the terrain of contemporary irregular warfare, which recent moral discourse has largely failed to engage.'[29] Moreover, 'the direct and intended targeting of civilians

[26] Johnson, 2016, p. 311. Johnson considers 'two of the most important theorists of just war over the past forty years have been the Protestant theologian Paul Ramsey and the political philosopher Michael Walzer.' Johnson, 2005.
[27] Johnson, 2016, p. 311.
[28] Ibid.
[29] Ibid.

has become a common feature of irregular warfare of all sorts, and moral discourse has neither engaged this directly nor considered how to weigh it in calculations of proportionality when criticizing actions used against forces employing such means.'[30] I tackle this issue in the final chapter.

So, what is Johnson's own discourse on the erosion of non-combatant immunity in contemporary asymmetric war? Irregular warfare, including the new character of MAC, 'presents serious challenges to the effort to limit the destructiveness of warfare by regularizing it' according to him and he also considers that '[f]our particular kinds of issues are especially problematic'.[31] These issues relate to cultures, distinction, decisions regarding weapons and targets, and the accountabilities of opposing forces. I shall now analyse his arguments and conclusions to determine how they may assist the aim of this thesis: to develop a Christian-based moral guide to the task of discrimination in MAC.

3.1 Cultural differences. Johnson highlights that 'recent irregular warfare has frequently been defined in terms of significant cultural differences, particularly ethnic or religious dissimilarities or both, between the warring parties.'[32] He had previously stated that the 'functional role of civilians in war differed not only over history, but also from culture to culture and even, within a culture, from one armed force to another, depending on its structure; it will continue to change according to context.'[33] The culturally developed norms of Western nations and their militaries are to discriminate between combatants and non-combatants, never to directly, deliberately and intentionally attack non-combatants, and apply the doctrine of double effect to the issue of apportioning the value of a military target with foreseen but unintended collateral damage. Many other cultures and nationalities have similar approaches but not so the

[30] Ibid.
[31] Ibid., p. 313.
[32] Ibid.
[33] Johnson, 2000, p. 445.

irregular adversaries in MAC. According to Johnson, militarily weaker agents in recent irregular warfare, including MAC, consider that 'all Americans and their allies are equally subject to being killed, with no distinction as to combatant or noncombatant function.'[34] Further, an 'Al Qaeda statement not only rejects the efforts to provide for noncombatant protection defined in just war tradition and in international law, but also those in Islamic tradition.'[35] Johnson refers to Quincy Wright's renowned book, *A Study of War*, to observe that 'war across major cultural boundaries is especially hard to moderate, and here we see this manifest in the denial that internationally recognized norms in fact matter in such warfare.'[36]

For Johnson, '[r]eaffirming and enforcing these norms present a problem to the entire international community.'[37] He goes on to stress that the best way to achieve this 'remains largely unaddressed and uncertain, as enforcement in particular would likely require more aggressive use of military measures against violators'.[38] There is, however, very little appetite for large-scale intervention by Western countries currently and even less for any that would involve the mass deployment of ground troops. Evidence for this is the West's limited combat air-only support to conflicts in places such as Afghanistan, Iraq and Syria, the provision of high-tech weapons to Saudi Arabia in their coalition fight in Yemen, and the deployment of training teams around the world; but, as described previously, no Western country has deployed ground troops following the use of chemical weapons in Syria. 'Nor does the institutional structure of United Nations peacekeeping operations provide much hope for the kind of robust military action that would be needed in cases of serious danger to a civilian population caught in the midst of irregular war'.[39] Johnson had earlier written that the UN 'lacks in itself the attributes necessary to make it capable of effectively playing the role stipulated in its Charter… It lacks an

[34] Johnson, 2016, p. 313.
[35] Ibid.
[36] Ibid.
[37] Ibid.
[38] Ibid., p. 314.
[39] Ibid.

effective chain of command for military forces it may wish to deploy in a conflict, which means such forces cannot be an effective arm of international statecraft.'[40] And that is where Johnson concludes on the issue of cultural differences with respect to the erosion of non-combatant immunity in MAC. He expresses clearly the problems and challenges, leaving potential solutions to others.

Witnessing the disregard for warfighting norms and conventions of his day, Ramsey faced a similar issue in studying irregular warfare and the insurgency in Vietnam. As analysed in Chapter 3, he argued that, by their actions and denial of just war and international laws of war, such as not identifying themselves as combatants and living covertly amongst the people, the insurgents and not counter-insurgents enlarge the area of civilian death and damage that should be judged to be legitimately collateral. He went on to conclude that it was, therefore, legitimate for the counter-insurgency to attempt to impose controls on a situation created by the insurgency. One strategy used by the US to impose controls in Vietnam was civilian pacification eg the strategic hamlet programme: a socio-economic-political plan aimed at resettling rural South Vietnamese, separating and protecting them from the insurgents.[41] Ramsey argued that the pacification programme was a moral and practical attempt to impose controls on a situation created by the Vietcong, as many civilians were being placed in collateral peril as a consequence of the insurgents' methods of operating. The US attempts at pacification in Vietnam were morally virtuous, therefore, in seeking to aid discrimination but its execution was unsuccessful.

Irregular fighters in MAC, by their activities and actions, also enlarge the area that should be judged to be legitimate collateral damage; at the same time, conventional forces seek to impose

[40] Johnson, 2005.
[41] The British had used similar separation tactics. During the Second Anglo-Boer War, Lord Kitchener had recognised the Boer's guerrilla tactics and the support that the Boer fighters received from the civilian population. Concentration camps were established around South Africa to hold civilians and prevent them supporting the guerrillas. In Malaya, Harold Briggs planned to cut off the insurgents from their supporting population by forcibly relocating rural civilians into guarded village camps.

controls on the situation created by their adversaries. Irregular forces in MAC, as witnessed during recent conflicts in Iraq, Afghanistan and Syria, intentionally seek to urbanise warfare, purposely bringing more civilians to within the vicinity of potential collateral damage. They use weapons immorally, such as multiple victim operated IEDs in highly populated areas, or 'daisy chains' where large numbers of IEDs are linked to cause maximum devastation along a route transited by conventional forces but with no care for collateral damage. They also terrorise, torture and intentionally attack civilians.

Conventional forces on the other hand have core values, codes of conduct and doctrines that seek to win hearts and minds, deliver security and improve the socio-economic climate and living standards. Aware of the cultures of Western democracies and their desires to abide by moral and legal norms, such as preventing civilian casualties, irregular forces in MAC exploit them. For example, irregular forces directly, deliberately and intentionally target civilians, with suicide bombs in crowded places and where there are no security forces, police or government officials; they also target civilians indirectly with mortar fire, rockets and IEDs.[42] Western militaries seek to reduce collateral damage from their own attacks, partly by advances in technology and intelligence. Technology may also offset some of the increase in non-combatant casualties likely as a result of the immoral intentions and actions of irregular forces in MAC, but collateral damage will remain a considerable and high-profile side-effect, because the irregular force's intent is to shape the battlespace to include this arrangement.

In conclusion, wars that cross cultural boundaries are not new. Conventions and protocols seek to garner a common baseline of discrimination, agreeable across all nations, cultures, religions and ethnicities, and one that is self-enforcing. The added threat of punishment by internationally

[42] Between 2011 and 2014, 82% of casualties caused by IEDs were civilian (85% in 2014). See Rob Perkins, 'Four years of harm: Explosive Violence Monitor 2011-2014' in *Action on Armed Violence*, 14 September 2015, accessed 19 May 2019, https://aoav.org.uk/2015/four-years-of-harm-impact-of-explosive-weapons-2011-2014/.

appointed courts, post-conflict, for those found guilty of indiscriminate attacks, seeks to dissuade further individuals and groups from flouting international laws of war and acting immorally. It is clear, however, that in MAC, *jus in bello* restrictions are not simply ignored or disregarded by irregular forces, they are purposely abused by them as they act indiscriminately and disproportionately, to such an extent that any forms of compromise or negotiated concessions seem hopeless. The challenge for developed countries, with their conventional militaries, is to acknowledge the complete disregard of just-war norms by irregular adversaries, and then to develop strategies that meet the tests of *jus in bello*, while the actions and activities of irregular forces do not. This challenge must be clearly explained in order for the general public to understand and appreciate the realities of MAC, and gather the support and backing needed to give confidence to their own troops operating in this environment.

3.2 Distinction between combatants and non-combatants. For Johnson, 'exactly who is a noncombatant and who a combatant in irregular warfare may be unclear and, in practice, difficult or impossible to discern'; fighters in such conflicts 'may move into and out of combatant functions frequently and seamlessly.'[43] Both Ramsey and the USCCB expose comparable challenges. Johnson also recognises that since non-combatants in irregular warfare

> are typically among and around the combatants on one or both sides, it is of the utmost importance to be able to know who the noncombatants are—not just so that only combatants can be targeted, but also, and very importantly, so that the fighters on both sides can know who among the enemy poses a threat.[44]

In highlighting the importance of non-combatant recognition and the need to distinguish them at all times, Johnson contrasts the development of the 1977 Protocol I, which he readdresses in this essay and was partially analysed above, to suggest again that it 'has in fact contributed to creating ambiguity regarding who is a combatant and who a noncombatant.'[45]

[43] Johnson, 2016, p. 314.
[44] Ibid.
[45] Ibid.

Johnson quotes once more from the 1977 Protocol I, Article 44[46] to raise a further concern emanating from an argument that he made in his 2011 book, *Ethics and the Use of Force*, also referred to above. In that account he uses an example of a clandestine attack – where, following the attack, the perpetrator resumes a civilian life in the community – to express that the protocol creates ambiguity in distinction and places the civilian population in collateral danger, from legitimate attacks against the perpetrator. In this essay, addressing a different issue to demonstrate the Protocol's potential ambiguities, he uses the well-known example from a US experience during the 2003 US-led invasion and subsequent war in Iraq. I summarise it as follows:

Iraqi paramilitary groups, dressed as Bedouin or civilians, approached US forces in a non-confrontational manner. When in close proximity to the US forces, the Iraqi paramilitaries would remove their robes and open fire. Consequently, American troops began to mistrust all Iraqis, fearing them as potential combatants until they confirmed otherwise. On subsequent occasions, anxious and frightened Iraqi civilians, fleeing from areas of combat, who approached US checkpoints in their vehicles, were shot at for not adhering to strictly enforced US rules on approaches to checkpoints, because of previous US military experiences with Iraqi paramilitaries.

Combatants disguised as civilians who then attack enemy forces are clearly in violation of IHL and the Geneva Convention, by not distinguishing themselves as the combatants that they truly are. They may also lose any rights to prisoner-of-war status. Johnson suggests that this type of

[46] 'Recognizing . . . that there are situations in armed conflicts where, owing to the nature of the hostilities an armed combatant cannot so distinguish himself, he shall retain his status as a combatant, provided that, in such situations, he carries his arms openly: (a) during each military engagement, and (b) during such time as he is visible to the adversary while he is engaged in a military deployment preceding the launching of an attack in which he is to participate.' Ibid., p. 315.

behaviour by the Iraqis 'might be read as permitted by the modified Lieber rules found in 1977 Protocol I' and as such the protocol 'undermined the protection of noncombatants by creating ambiguity as to who is a noncombatant and endangered genuine noncombatants who were behaving in a way that seemed to pose a threat.'[47] In this example, Johnson's concern for ambiguity caused by the protocol is not the targeting of irregular combatants within the civilian population, as in Section 2 above, but the effect that it has on regular forces' mistrust of civilians going about their legitimate daily business. Whether success in irregular wars is more likely by an enemy-centric approach – focus main effort on destroying the enemy, which has an effect of protecting the population – or a more people-centric approach, both require winning the hearts and minds of the population, to a greater or lesser extent.[48] Winning the hearts and minds of a population is adversely affected by uncompromisingly hard-line force protection measures – those activities to protect one's own troops – which are a direct consequence of this type of ambiguity. It is already immensely difficult to distinguish combatants from non-combatants in MAC, due to the character of the conflict. Laws that create, even potentially, greater ambiguity, as recognised by Johnson, unintentionally harm our own interests: they are truly an 'own goal'.

To conclude, Johnson clearly acknowledges the practical difficulties of discerning combatant from non-combatant in MAC. He argues convincingly that a development of international law, intended to reinforce the identification of combatants and thereby distinguish them from non-combatants, has in fact introduced unnecessary ambiguity to discrimination; the impunity of

[47] Ibid. During the American Civil War, Professor Francis Lieber catalogued the developed customs of war into the 'Instructions for the Government of Armies of the United States in the Field', promulgated originally as General Order No. 100 by President Lincoln in 1863. The laws of war have evolved ever since.

[48] William F Owen argues for an enemy-centric approach to irregular war and that within a given rule of law, 'success against insurgents and guerrillas has nearly always been delivered by effective attrition' and that '[i]n this context, "protecting the population" should not be the activity, but should be the benefit gained from destroying the enemy.' William F Owen, 'Killing Your Way to Control', in *The British Army Review*, Number 151, Spring 2011, p. 35. An alternate strategy, currently a UK military doctrine, is a 'more people-centric approach required for complex operations.' UK. MOD, Development, Concepts and Doctrine Centre, *Understanding and Decision-making*, Joint Doctrine Publication 04 (JDP 04) (2nd Edition), dated December 2016, p. 39, accessed 19 May 2019, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/584177/doctrine_uk_understanding_jdp_04.pdf. A people-centric approach places the military main effort on protecting the population by providing security, in order to facilitate politico-socio-economic development. See Chapter 2 for analysis.

insurgents encourages them to exploit the law-abidingness of conventional forces by hiding behind civilians and jeopardising them. Such ambiguity has had a detrimental impact on discrimination in recent wars, as shown with the example of civilian vehicles approaching US troops during the war in Iraq. It is likely to continue as irregular forces in MAC flout moral norms, conventions and protocols of discrimination, exploiting the desires of developed countries to apply them. Being routinely unable to distinguish combatant from non-combatant could, potentially, lead to more collateral damage than desired or intended, which democracies are increasingly finding difficult to tolerate. How we may discriminate and accept a higher level of collateral damage than would be expected or thought permissible, due to moral asymmetry and as a consequence of the immoral actions of irregular fighters, is addressed in Chapter 6.

3.3 Decisions regarding weapons and targets. I have already expounded the different values and standards of morality, adherence to the laws of war and common state practice between asymmetric sides in MAC. The strategies, operations and tactics, as well as the tools and techniques used by the two sides are also asymmetric, including weaponry. Previous analysis identified the immorality of irregular forces in their use of conventional weapons such as mortars and rockets, directly, deliberately and intentionally targeting civilians on the "home" side. The IED is an example of an unconventional weapon of this asymmetry used by irregular forces. In such as the victim operated mode and being improvised, it is constructed without quality assurance, self-destruct capability, or formal recording of placement, together with precarious switching mechanisms, and frequently deployed in urban areas for much broader intentions – including to intimidate, coerce, terrorise and even intentionally kill civilians. If IEDs are subjected to O'Donovan's tests of determining intrinsically immoral weapons,[49] they would arguably match his class of those that 'the destruction they effect is too great a scale', killing, as

[49] Recall from Chapter 4, O'Donovan determines three broad classes of objections against weapons that are unsuited to Christian just-war strategies, namely if: '(i) their operational design implies the unjust conduct of war; (ii) the destruction they effect is too great a scale; (iii) their methods are inhumane or cruel.' O'Donovan, p. 79.

they do, vastly more civilians than conventional forces; also, possibly, the class that are 'inhumane' in method, being deliberately deployed in urban areas. As referenced above, 85% of IED casualties in 2014 were civilians.

I compare the IED with conventional mines deployed by conventional forces in Chapter 6: the latter are quality assured and have shelf-lives dependent on design, chemistry and storage; they have fail-safe switches and self-destruct mechanisms that activate after a set time; they have position records or are at least marked as minefields; and they are intended to canalise the enemy, prevent their freedom of manoeuvre and cause enemy combatant casualties. Moreover, even with these intentions and quality assurance, it is not sufficient for the anti-personnel variant to be deployed and their use is internationally banned and upheld by the vast majority of the international community, because of their after-effects on civilian lives – they are considered inhumane. Johnson recognises this asymmetry in standards, stating that '[a]s a result of the asymmetry between the parties to the conflict, different standards may be held to apply to the types of weapons used by each party and the decisions made as to their targets.'[50] Rightly, conventional forces will continue to be scrutinised to ensure that a morally acceptable weapon is not redesigned or adapted to become immoral by a development in ordnance selection, or by being operated in a revised manner that could subsequently turn out to be immoral.

Regarding targeting, Johnson states that there is a fundamental difference 'between the direct, intended targeting of noncombatants or intentional disregarding of noncombatants present in a targeted area and the effort to target only combatants while accepting the possibility of harm to noncombatants and seeking to minimize it.'[51] He goes on to state that 'the issue is not centrally the weapons themselves—e.g., missile strikes from UAVs (drone aircraft) versus the explosion

[50] Johnson, 2016, p. 316.
[51] Ibid.

of a car bomb by a suicide bomber—but the nature of the decision behind a given strike and its intention.'[52] Within the overarching *jus in bello* criterion, Johnson reflects on this apparent asymmetry of intention, as well as again the asymmetry of bringing to justice those culpable of indiscriminate and disproportionate force in MAC. He returns to arguments already analysed whereby investigation, evidence collection and law enforcement is much easier against well-organised militaries, with recorded activities, than it is against irregular fighters, who purposely shield their actions and identities. The irregular force creates confusion and ambiguity about individual roles, responsibilities and activities. The upshot is that critics of MAC focus on the actions of conventional militaries, due to their accessibility, at the expense of impartial and equally robust investigation and action against all parties to the conflict.

Johnson offers an old solution to issues raised under this heading: to judge irregular war as wrong 'so that persons engaged in such warfare could be proceeded against as persons without combatant rights.'[53] He qualifies that, even though moral warrant for it is available in Western and Islamic traditions, the challenge with this older approach is that 'it may slide into extreme measures involving the disregarding of all rights for persons identified with such warfare.'[54] He also acknowledges that while autocratic or despotic regimes would find it easy to enforce, democracies would face severe moral challenges. Other legal academics and ethicists, such as Derek Jinks and Tony Coady respectively, believe that making such actors to be illegal combatants, such that they can be prosecuted for merely participating, unlike those with combatant status who cannot, actually incentivises them to disrespect non-combatant immunity. Coady concludes that 'the best outlook is to treat all combatants equally with respect to status, permissions and rights.'[55] Coady wrote this in 2007, well before the rise of ISIL, an organisation where it is disputable that any form of dialogue or suggestion of moral parity, in terms of

[52] Ibid.
[53] Ibid.
[54] Ibid.
[55] Coady, 2008, p. 194.

combatant status, would incentivise them to 'fight fairly or to respect noncombatant immunity.'[56] MAC is evolving as a very different character or war.

To conclude, Johnson determines that different standards apply to the types of weapons used by each party in MAC, as well as decisions made concerning targeting. He emphasises the fundamental difference between the irregular force's direct, intended targeting of non-combatants or neglect of them when they are present in a target area, and the positive effort of conventional Western militaries to target only combatants, while seeking to minimise collateral damage. The culture, morality and intention of the two are profoundly different. Johnson also highlights the inequality of pursuit and investigation of the asymmetric parties, with the easier accessibility of troops from developed countries facilitating greater inquiry and scrutiny of them and their activities. Finally, Johnson is convincing in his argument that, although a potential solution to the imbalance is to revert to an older approach to just war – judging irregular war as immoral so that those engaged lose combatant rights – democracies are unlikely to accept the moral implications. It is, after all, a part-solution, insufficient for the challenge of formulating a moral guide to the task of discrimination in MAC.

3.4 Accountability. Throughout his essay, Johnson identifies that when conflict is asymmetric, it is not only the military capability and force that is asymmetric but all aspects of the confrontation. In terms of accountability, as an example, 'the potential for enforcement of the rules for right conduct is also asymmetric'.[57] While the accountability of those that commit offences should be identical or at least fair, as mentioned already, the accessibility of military personnel from developed countries to investigation is in stark contrast to the relative inaccessibility of irregular fighters. The ending of involvement in hostilities by coalitions from

[56] Ibid.
[57] Johnson, 2016, p. 316.

developed countries, in recent MAC, has not witnessed an end to hostilities – far from it in fact. For conventional armies that have ended their commitment, some of their soldiers have been hounded by ill-conceived, misplaced or disingenuous allegations against their conduct, often many years after the alleged events had taken place.

British forces are subject to routine, at least annual, education and training on morality in war, the laws of war, and the values and standards required of its personnel. Military allies and other developed countries have similar education and training regimes that make their troops aware that conduct must be lawful and morally unimpeachable. They will be scrutinised for any breaches of laws, rules of engagement and impropriety that brings disrepute, and made accountable for their actions, with justice prevailing. Irregular forces in MAC clearly do not recognise such moral codes and international legal practices – they will have their own vastly different morality, leading to and enforcing some of the malignant activities described above. Examples of jail sentences for Corporal Donald Payne, for his involvement in the death of an innocent civilian, Baha Mousa, in 2003, and the conviction of Royal Marine Sergeant Alexander Blackman, sentenced to life in 2013 for unlawfully killing an insurgent in Afghanistan, demonstrate that developed countries do hold their troops to account for breaches in the laws of war.[58] Contrast this with ISIL's justice system of its own fighters or President Assad's regime in Syria, not bringing to account those that deployed chemical weapons against their adversaries.

Johnson agrees that 'soldiers in the regular force can be held to a higher disciplinary and judicial standard for their conduct than those in the irregular force opposing them.' [59] He goes on to make the following assessment with respect to conventional troops:

> Their relative vulnerability on this count also opens the door for political motivations in singling out cases to investigate and/or prosecute. This puts the fairness of the law in

[58] Blackman's murder conviction was later downgraded to manslaughter by reason of diminished responsibility.
[59] Johnson, 2016, pp. 316–7.

> question and thus further undermines its protections as to be trusted. As a result, not only is noncombatant protection undermined, but military personnel on the side that is held to the rules are disadvantaged relative to those on the other side, who may fight unrestrainedly with no substantial fear of being judicially held to account for their actions.[60]

Following wars in Iraq and Afghanistan, the UK MOD funded and empowered the Iraq Historic Allegations Team (IHAT) and their equivalent for Afghanistan. They were to investigate potential breaches of international law by British soldiers; by early 2017 over 3,500 inquiries were being conducted. Hundreds of innocent soldiers were subjected to very intrusive investigations. Whereas the UN could be considered responsible for making all sides and individuals accountable for their actions, it is another attribute whereby for Johnson it 'lacks accountability to the people whose rights and dignities it professes to represent.'[61]

The combination of adherence to moral (and legal) norms and likelihood of scrutiny (and justice) over their actions, between the asymmetric forces in MAC, is a theme throughout Johnson's essay. An accompanying theme, developed throughout this thesis, has been how the actions of irregular forces have abetted to change the character of war. Combing these two themes deserves fresh moral consideration about how discrimination and collateral damage should be assessed. As already stated in Section 3.1 above, irregular forces purposely shape the battlespace to one that encourages the flouting of international moral and legal norms, including immoral actions against their perceived followers and supporters.

Irregular forces are deliberately indiscriminate and strive to exploit developed countries' proclivity for liberty, individual rights and the rule of law, by intentionally bringing more civilians to within the vicinity of fighting, thereby exposing them to even greater collateral damage. Neither do irregular forces need to rely solely on attacks by regular forces for creating

[60] Ibid. p. 317.
[61] Johnson, 2005.

collateral damage: irregular forces encourage intentional attacks by such as suicide bombers to achieve their objectives where necessary. Further, by their abhorrent acts, they seek to enrage conventional soldiers to act equally repugnantly through reprisals, taking the law into their own hands, and thereby losing the ideological ground, moral respectability and advantages that they seek in such as winning the hearts and minds of local people.

In conclusion, the inequitable accountability of the asymmetric parties involved in MAC necessitates a reformed way of thinking about and reviewing discrimination. The legal systems of developed states make their forces accountable for breaches in the laws of war, and rightly so, but violations made by irregular forces are less likely to be pursued and justice prevail. This situation is clearly unfair with the burden of scrutiny hanging over mainly one side in a two-sided MAC. Relying on the UN to enforce bringing to justice those irregular fighters that commit war crimes remains problematic; it will not change for the foreseeable future. Johnson's analysis is again most helpful in defining a problem and yet again a solution is necessary.

Conclusion

Johnson concludes his latest work as: 'a pessimistic review of the matter of noncombatant protection in contemporary warfare'; that 'efforts to provide such protection remain fragile'; and that it is 'especially endangered in irregular warfare'.[62] Analysis of his work covering discrimination in contemporary war led to six characteristics deserving further examination, to assist the development a moral guide to discrimination in MAC.

The first issue raised is the direct, intentional killing of non-combatants by irregular forces. Ramsey's analysis of subversion and terror by insurgents in Vietnam (Chapter 3) and Johnson's here are insufficient for MAC which, together with subversive guerrilla tactics, is characterised

[62] Johnson, 2016, p. 317.

by greater urbanisation, genocide, torture, rape of women and children, as well as exploitation of social media, videoed beheadings, worldwide terrorism, suicide bombings, high tempo use of IEDs, intentional attacks on their own civilians, flagrant disregard for any form of distinction etc. My analysis concludes that a reappraisal is needed to evaluate this form of indiscriminate targeting. Further, an examination of the transitory statuses, between combatants and non-combatants, of those involved in planning and executing these attacks is necessary, with greater granularity than is currently available, in order to distinguish their liabilities to lethal force.

Second, Johnson argues that certain developments in international law, intended to reinforce non-combatant immunity have actually had the opposite effect of allowing irregular fighters to dissuade attacks upon them by conventional forces. While international laws of war identify indiscriminate behaviours, which are clearly breached by irregular fighters in MAC, those same laws currently seem unenforceable: the international community seems powerless to end such behaviour. A revised moral thinking on discrimination in MAC is required, to address the shortfall in the application of the laws of war, with respect to discrimination by irregular forces. From Chapter 3, Ramsey's hypothesis for Vietnam that 'there can be a counter-*insurgency* that meets the tests of just conduct in war, while insurgency does not', needs to be updated for the application of discriminate force in MAC, upon an adversary that undermines most international moral codes and laws relating to conduct in war.

Third, Johnson highlights the significance of cultural differences in MAC and the challenges that result in not adhering to international conventions, protocols and norms. The threat of punishment by internationally appointed courts for those found guilty of indiscriminate attacks, seeking to dissuade all parties to a conflict from flouting them, has been largely unsuccessful in MAC. In fact, irregular forces purposely act indiscriminately and disproportionately, to such an extent that any form of compromise seems hopeless. Revised strategies by developed states and

their militaries that meet the tests of *jus in bello*, while the actions and activities of irregular forces do not, are necessary.

Fourth, Johnson recognises the practical difficulties of discerning combatant from non-combatant in MAC. He argues that a development of international law, intended to reinforce the identification of combatants and thereby distinguish them from non-combatants, has in fact introduced unnecessary ambiguity to the principle of discrimination. Both Ramsey and the USCCB's reflections highlight the challenge of identifying military targets and those which are not, who and who is not a combatant, and that terrorism is regarded as a new way to wage war. Being increasingly unable to distinguish combatant from non-combatant is likely to produce more collateral damage than intended and more than democracies will argue they can tolerate, notwithstanding any goodwill and more positive intention to discriminate by conventional forces. How we define a combatant in this new character of war, provide discrimination policies, directives and orders that are easily interpretable by soldiers, accept a higher than desirable or expected level of collateral damage, and consider them all permissible, is a considerable moral challenge that must be addressed.

Fifth, Johnson reflects on the different standards of moral decision-making with respect to weapons and targeting used in asymmetric conflict. He emphasises the profoundly different and asymmetric nature of irregular forces that intentionally target non-combatants and neglect the moral and lawful rights of non-combatants, versus regular forces that seek to demonstrate a positive intention to target only combatants and minimise collateral damage. He also stresses the inequality of pursuit and investigation of asymmetric parties to a conflict, and although he considers an old solution – irregular fighters losing any combatant rights – he acknowledges its moral shortcomings. It remains a solution but deficient for the challenge of formulating an

acceptable moral guide to discrimination in MAC. Intention, what is both wanted and chosen by an actor, remains fundamental to a Christian-based moral analysis of discrimination in MAC.

Finally, I analysed Johnson's account of the inequitable accountability of the asymmetric parties involved in MAC. The combination of adherence to moral (and legal) norms and likelihood of scrutiny (and justice) over their actions, between parties in irregular war, is a theme throughout Johnson's 2015 and 2016 essays but without proposed solutions. Johnson's analysis is again extremely helpful in defining the problem but there is a need to offer potential solutions.

Overall, it is noticeable from Johnson's work that MAC, and irregular war in general, greatly endangers the fundamental principle of non-combatant immunity – the rights of non-combatants not to be subjected to direct, deliberate and intentional attack. Irregular fighters in MAC do not share either the same underlying value system or a sufficient number of compatible morals with developed nations, in order for some form of agreeable and self-enforcing restraint to accompany the intrinsic horrors of conflict. The asymmetry is not only in military fighting power but all aspects of interaction: morality, intention, collateral damage, accountability, subjection to investigation, scrutiny and so on. Accountability of each side for their actions is inequitable and trying to apply discrimination that is morally coherent, in this new character of war, is a significant challenge.

Irregular forces perform direct, deliberate and intentional attacks against non-combatants yet, in the face of this immorality, Western nations continue to develop technologies, tactics and procedures that seek to reduce collateral damage. The intentions of adversaries in MAC are polar opposites with respect to collateral damage – they are morally incomparable. Societies need to appreciate such developments, perhaps comparing the collateral damage of today with previous technologies and tactics eg carpet bombing in Vietnam. Johnson is led to conclude that '[m]ore

attention needs to be given to the negative implications of this by all who are or may be in a position to affect future policy and action.'[63] In so doing, moral strategies should be developed that take account of modernity's understandable quest to reduce collateral damage but acknowledge that it is inevitable, and possibly greater than to be expected, due to the immoral activities of irregular fighters, as they purposely bring greater numbers of non-combatants into the battlespace. A moral guide to the task of discrimination in MAC is necessary and follows.

[63] Ibid.

Chapter 6
A CHRISTIAN JUST-WAR RESPONSE TO DISCRIMINATION IN MAC

British soldiers were placed in a very difficult situation where they were required, both legally and morally, to discriminate between combatants and noncombatants, usually based solely on unpredictable actions at a moment's notice… If he did something wrong the system would come down hard on him. Yet when politicians got it wrong (that is, by sending them there) nothing happened to them.[1]

Introduction

Chapter 1 concluded that the nature of war remains constant but its character changes, due to developments in cultures, international relations, how nations and forces organise for war, innovations in technologies, tactics, techniques, procedures and so on: war's character reflects the contemporary age and environment. Further, the latest change in the character of war is defined as MAC, identified by a stronger conventional force in conflict with an irregular adversary that is militarily much weaker but no less committed to fighting for its objectives. Conceding that defeat is likely if fighting conventionally, irregular forces in MAC exploit unconventional tactics, often repugnant and certainly do not feel constrained by state borders, the laws of war, universal human rights or recognisable moral codes that limit *jus in bello* suffering. In Chapter 2, I described the IED as an exemplar of the kinds of unconventional weapons and immoral tactics used and exploited by irregular forces in MAC, such that Western militaries need to rethink their methods of operating.

Paul Ramsey acknowledged a previous change in the character of war explicitly when he declared that nuclear stalemate had made the world safe for insurgency (see Chapter 3). Ramsey recognised the need to review and develop the moral doctrine of discrimination in the evolving character of revolutionary warfare and insurgency – combatant status and collateral damage needed re-examining in light of how insurgents organised themselves for conflict, in relation to surrounding communities. Likewise, the changing character of MAC determines the need for a

[1] Peter Lee, *Blair's Just War: Iraq and the Illusion of Morality* (Basingstoke: Palgrave Macmillan, 2012), pp. 166–7.

moral review of discrimination. Having analysed the work of Ramsey, the USCCB (Chapter 4) and Johnson (Chapter 5), powerful though they are as Christian resources for exploring the morality of war, they are insufficient for addressing the particular challenges of discrimination in MAC. This is unsurprising as non-combatant status is always subject to social revision. MAC's character necessitates revised strategies by developed countries, in order to defeat the new form of irregular forces, their activities, their methods of fighting and generally how they organise for war; strategies must meet the tests of *jus in bello* (discrimination), while the actions and activities of irregular forces do not. In this final chapter, I analyse and make recommendations on seven major issues that I have identified, from previous chapters, which lack sufficient Christian moral tools for guiding the overall task of discrimination in MAC. They are:

1. Developing the task of discrimination in MAC: the IED exemplar
2. Urbanisation, collateral damage and transforming the rule of double effect
3. Erosion of non-combatant immunity by irregular forces
4. Sovereignty of state borders
5. Enabling soldiers to act discriminately
6. Balancing the accountability of opposing forces
7. Military supererogation

Section 1: Developing the task of discrimination in MAC: the IED exemplar

The US veteran Marcus Luttrell's revealing cry that 'no one can tell who's a civilian and who's not', which introduced this thesis, is today's challenge facing conventional combatants involved in MAC. Due to the complex character of MAC, regular forces often find their rules of engagement impracticable, thwarting successful military engagements, endangering those soldiers charged with adhering to them, and creating fear of repercussions, many years after the events. Of the unconventional and indiscriminate weapons used by irregular forces, the IED is an

exemplar; its use can be extrapolated to many other immoral or illegal weapons and tactics used, or those untested such as cyber-attacks. Moreover, from witnessing recent conflicts in such as Iraq, Afghanistan and against ISIL, and the interconnectivity of people and activities, most irregular fighters have some form of association with the IED network.

Chapter 2 introduced the IED to illustrate how irregular forces in MAC seek to overcome the military advantage of conventional forces and, thereby, a conventional force's ability to bring security and stability to the battlespace. It concluded that once conflict is engaged, greater and speedier erosion, degradation or suppression of the whole IED network is necessary for the campaign to succeed: to prevent prolonging conflict and avoid war-weariness in developed countries. Such urgency is very challenging for conventional troops, trying to fulfil their moral and legal obligations to discriminate and minimise collateral damage. Within CJWT, however, success must never be sought by any form of immoral means and developed countries continue, virtuously, towards the elimination of collateral damage. Chapter 2 also proposed that an escalatory response is required to inhibit the IED network – from prevention through deterrence, warning, nullifying, restraining, capturing, and ultimately up to the last resort of lethal force.

Those involved in the IED network contribute to delivering the bomb to the target and its lethal effect, to a greater or lesser extent. IED attacks begin with plans and end in devices being deployed. In between is a complex and interconnecting web of actors, interactions and activities. The involvement of irregular fighters and supporters varies in degrees of time, commitment and responsibilities. According to Professor Sir Adam Roberts, the UK is unable to determine who is a combatant in MAC within the guidelines of the Geneva Convention. Similarly, The Honorable

John B. Bellinger III concludes that, following years of conflict post the attacks of 11 September 2001, the US are little further forward in clarifying legal rules to define combatant status.[2]

This first section analyses a CJWT-based moral response to those involved in the IED network, where they sit on a participation scale, their moral culpability and their liability to lethal force against them. I shall divide the IED network into groups that have comparable intention, application, involvement, commitment and practical consequence, in order to discover if their participation or contribution is sufficient to render them liable to lethal force. Chapter 2, Figure 2 lists seven personnel activities from financier to triggerman and I added others during my analysis. An additional challenge in determining culpability is that many involved in the IED network perform multiple activities as the following example shows.

> An Afghan and coalition security force arrested a Taliban facilitator and three other extremists during an operation in Zharay district, Kandahar province, today. The facilitator procures bomb-making material, constructs improvised explosive devices and emplaces completed IEDs in Zharay district, targeting Afghan and coalition forces. He also serves as a financier for local Taliban cells.[3]

For my analysis, I have chosen four distinct groups because together they consist of activities that encompass the whole IED network, newly ordered, and form the clearest boundaries in proportion to moral intent, practical involvement and consequence. They are:

(1) the attack regime – those that emplace or initiate IEDs;

(2) facilitation – facilities and people that provide practical support in the manufacture of components or assembly of IEDs, involvement in sustainment, storage, supply and distribution;

[2] These sentiments were made at a symposium sponsored by the University of Oxford's Changing Character of War Programme, entitled 'Morality and Modern War', at Christ Church, Oxford on 15 February 2017. Adam Roberts is Senior Research Fellow of the Centre for International Studies in Oxford University's Department of Politics and International Relations. John Bellinger is adjunct senior fellow for international and national security law at the Council on Foreign Relations. He was Legal Adviser to the Department of State from 2005 to 2009, under Secretary of State Condoleezza Rice and was Senior Associate Counsel to the President and Legal Adviser to the National Security Council at the White House from 2001 to 2005.

[3] ISAF, 'ISAF Joint Command Operational Update', in *IJC Public Affairs Office*, 2013-06-S-009, accessed 19 May 2019, https://www.dvidshub.net/news/printable/108075.

(3) training – trainers and those being trained; and

(4) leadership – planners of attacks, designers of devices and financiers: those with the strategy and vision across the whole IED network and those directing activities.

The degree of input, commitment and responsibility in delivering an IED to a target, should determine the liability of each group to lethal force. My Christian-based, morally developed proportioning mechanism assesses the gravity of the IED activity and assigns a liability to lethal force against it. Such liability of those involved must uphold the Christian Gospel command to love one's neighbour and the moral virtues espoused through an evolving CJWT, which is true to its foundation and heritage. For example, from Aquinas, recourse to the sword (lethal force) by God's minister (state military) is the Christian authority to defend the common weal (sovereign state) against enemies.

> And just as it is lawful for them to have recourse to the sword in defending that common weal against internal disturbances, when they punish evil-doers, according to the words of the Apostle (Rom. 13:4): "He beareth not the sword in vain: for he is God's minister, an avenger to execute wrath upon him that doth evil"; so too, it is their business to have recourse to the sword of war in defending the common weal against external enemies.[4]

CJWT determines that the essential good of the common weal demands justice. If justice is wholly or partly enabled through a successful military mission in MAC, then CJWT *jus in bello* determines that it is conditional on that success being morally achieved; the demands of justice are not meted out if the success of a mission is achieved by immoral ways. The soldier that has recourse to the sword, or any weapon, needs guidance on any possible enlargement of the target arena in this new character of war, which can be built on CJWT.

When considering counter-insurgency operations, following experience from the Vietnam War, Ramsey deduced that '[*t*]*he insurgents themselves* have enlarged the target it is legitimate for

[4] Aquinas, 2a 2ae, q. 40, a. 1, p. 3074.

counter-insurgents to attack, so far as the principle of discrimination is concerned; and it is therefore mainly a principle of proportion that limits what should be done to oppose them.'[5] Ramsey and other Christian sources do not, however, provide moral tools that are sufficient to determine the tasks of discrimination in new forms of war like MAC. Ramsey, suggesting that '(a) persons in command positions are "combatants" even though they wear tweed suits; [and] (b) closeness of material cooperation may define a civilian as a "combatant"[6], are helpful foundations to advance CJWT for MAC, but "command" and "material cooperation" need developing. Further, following recent conflicts in places such as Iraq, Afghanistan, Yemen, Libya and against ISIL, a similar moral review is prudent to determine any enlargement of the target in MAC, together with a refined proportioning mechanism, which is what I shall bring forward. It is a CJWT-based discriminating mechanism that assesses liability to lethal force, of the four categories of participation in the IED network, to which I now turn.

1.1 Attack regime. Irregular fighters emplacing or initiating IEDs are generally not discriminable from civilians. They wear no uniform, insignia or any form of identity. They make no effort to distinguish themselves as combatants, not even if only at the point of their warlike activity, as demanded by ICRC Customary IHL,[7] which recognises that the character of some hostilities prevents some combatants from identifying themselves, but that such a combatant retains his combatant status provided he carries his arms openly: '(a) during each military engagement, and (b) during such time as he is visible to the adversary while he is engaged in a military deployment preceding the launching of an attack in which he is to participate.'[8] Irregular

[5] Ramsey, 1968, p. 435. [Author's emphasis.] Ramsey continues that since the movement of people between combatant and non-combatant in insurgency is by the hour, guerrillas have already violated discrimination: it is not the business of moralists to determine that counter-insurgency operations cannot be achieved because there are no legitimate military targets. The counter-insurgents have not 'illicitly enlarged the target and chosen to fight the war indiscriminately'. Ibid.
[6] Ibid.
[7] As a Christian moral analysis, it is worth acknowledging the Christian roots of the historic founder of the International Red Cross, Henry Dunant, during any reference and reflection on ICRC Customary IHL.
[8] ICRC Treaties… Article 44, 'Combatants and Prisoners of War', accessed 19 May 2019, https://ihl-databases.icrc.org/ihl/WebART/470-750054?OpenDocument.

fighters in MAC rarely conform to either of these preconditions or ICRC Customary IHL, which is obligatory to all during conflict.[9]

MAC is international in character, with conventional forces frequently in support of a state-government seeking to exercise control over 'organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations'.[10] Those emplacing IEDs and irregular fighters generally, freely choose 'to participate directly in hostilities,' even if they act more like 'dissident armed forces and other organized armed groups' than like conventional troops.[11] ICRC Customary IHL, Rule 3, defines combatants as well as international and non-international conflicts, and describes the 'uncertainty about the qualification of members of armed opposition groups' in terms of their combatant or non-combatant status.[12] Referencing the US Field Manual (1976), ICRC Customary IHL states that 'the use of civilian clothing by troops to conceal their military character during battle is an act for which a combatant would lose his right to be treated as a prisoner of war'[13] – irregular fighters use civilian clothing to conceal their military character. The character of MAC is different to that which current international norms, rules and laws reflect, with nations now fighting non-state or global actors, in another state or multiple states, amid civil war, revolutions or internal insurgencies and where irregular fighters intentionally target civilians, including their own. From observations of irregular fighters in MAC, an initial recommendation for this new form of conflict is to make clothing or insignia an

[9] 'IHL consists of international treaty or customary rules (i.e. rules emerging from State practice and followed out of a sense of obligation) that are specifically meant to resolve humanitarian issues arising directly from armed conflict, whether of an international or a non-international character. See ICRC, 'International Humanitarian Law: answers to your questions', dated February 2015, p. 4, accessed 19 May 2019, https://shop.icrc.org/droit-international-humanitaire-reponses-a-vos-questions-2616.html. 'All parties to an armed conflict – whether States or organized non-State armed groups – are bound by treaty and customary rules of IHL. Rules of customary IHL apply at all times to all parties, irrespective of their ratification of IHL treaties.' Ibid., p. 31.
[10] ICRC Treaties… Article 1, 'Material field of application', accessed 19 May 2019, https://ihl-databases.icrc.org/ihl/WebART/475-760004?OpenDocument.
[11] ICRC Customary IHL, 'Rule 3. Definition of Combatants'.
[12] Ibid.
[13] ICRC Customary IHL, 'Practice Relating to Rule 65. Perfidy. Section I. Simulation of civilian status'.

outdated and obsolete method of discerning combatant status and accept that the idea of irregular forces identifying themselves in this way, ever, is implausible.

We must also distinguish MAC from counter-terrorism, particularly in internal security operations, such as the recent troubles in Northern Ireland. Since some IEDs do not deliver an *immediate* threat to life, and property is sacrificial, those that emplace these IEDs are not liable to lethal force on their approach to and withdrawal from the target, or later. In these circumstances the only legal option is to apprehend the perpetrator(s). The experience of countering the IED threat from terrorism, within internal state emergencies or similar types of operations, or during the early phases of the war in Afghanistan, where coalition forces applied a counter-terrorist response, must not unduly influence moral and practical responses to IED emplacement in MAC. As warfare, MAC does not allow for the type of follow-up operations possible in developed countries that are fighting internal terrorists. This is particularly important as the international community struggles with agreeing the type, condition and aims of MAC – has war been legally declared, is it national or international, does it have UN backing, what are the rules of engagement and so on.

A further complexity of MAC is the forms of diaspora that have developed, associated with irregular forces and epitomised by supporters of Al-Qaida and ISIL; their particularities are not recognisable within ICRC treaties and rules. In the case of ISIL's diaspora, it is predicted to grow following ISIL's defeat in Iraq and Syria. In 2016 alone, there were at least 28 attacks attributable to ISIL outside Iraq and Syria, in at least 15 different countries, killing over 700 and injuring over 2,500. Since some diaspora have direction and carry out sustained and concerted military operations, an update of war conventions seems necessary. In the meantime, they are not morally separate – by virtue of their beliefs, intentions and activities – from their existential cousins and are, therefore, equally morally responsible and, potentially, equally liable to lethal

attack against them. That said, the relatively small numbers witnessed means that developed countries will tend to adopt internal counter-terrorist operations against them – an escalatory response ending in lethal force if absolutely necessary.

So how should the combatant status of the IED attack regime be considered, in conflicts that develop asymmetrically, and where trying to limit its destructiveness by some form of regularising seems impossible? Let us first consider the intentions and actions of the attack regime to be sufficiently similar to the deployment of mines or booby-traps by conventional troops. IED attackers then have at least equal moral liability to lethal force, and at all times rather than constrained to when they are *active in hostilities* only. Biggar comments that at least by the seventeenth century, Christian reasoning suspended any right from bodily harm if the subject was 'culpably responsible for causing or threatening to cause grave harm such as the death of a person.'[14] Culpability has no dependency upon the subject's dress code and all deployed IED variants seriously cause or threaten grave harm.

Booby-traps are used by conventional forces in war. ICRC Customary IHL, Rule 80 refers to their use, including with respect to discrimination and collateral damage: 'The use of booby-traps which are in any way attached to or associated with objects or persons entitled to special protection under IHL or with objects that are likely to attract civilians is prohibited.'[15] It directs further that: 'All feasible precautions shall be taken to protect civilians from the effects of [booby-traps]'.[16] The UK's 'Manual of the Law of Armed Conflict', referring to appropriate protocols, determines that booby-traps 'must be directed against combatants and may not under any circumstances be directed against civilians', such that there is a 'reasonable prospect that

[14] Biggar, 2013, p. 182.
[15] ICRC Customary IHL, 'Rule 80. Booby-traps', Part 1, Rules, accessed 19 May 2019, http://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule80.
[16] ICRC Customary IHL, 'Practice Relating to Rule 80. Booby-Traps', accessed 19 May 2019, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v2_rul_rule80.

only combatants will become victims', and that all 'feasible precautions must be taken to protect civilians from their effects.'[17]

Likewise, the use of mines against aircraft, ships, vehicles and personnel was common throughout twentieth-century war, with their moral and lawful use developing alongside. Anti-personnel landmines were used extensively to cause combatant casualties, including by Argentinean forces during the Falkland's Campaign in 1982. In 1997, the international community adopted the Mine Ban Treaty, banning anti-personnel mines.[18] The post-conflict effects of anti-personnel mines, with their non-discriminatory nature causing significant civilian casualties and suffering, launched discussion on their prohibition. The resulting change in IHL was due to their post-conflict effects on civilians, rather than any immoral or unlawful military use against combatants. Anti-ship, tank and helicopter mines, as well as explosive devices that are remotely controlled, remain lawful and deployable within agreed international norms. As with booby-traps, ICRC Customary IHL directs that, 'all feasible precautions shall be taken to protect civilians from the effects of [mines].'[19] The principle behind IHL and CJWT are totally consistent here.

If IEDs, in principle, at least victim operated and time-initiated variants, share an asymmetric equivalence to conventional booby-traps or anti-personnel mines then they should also share moral and possibly legal equivalence. Further, if those within the IED attack regime share an asymmetric equivalence to regular combatants that deploy mines and booby-traps, then the

[17] UK. Joint Doctrine and Concepts Centre, *Manual of the law of armed conflict*, Joint Service Publication 383, 2004 Edition, ch. 6, para. 6.7, p. 105, accessed 19 May 2019, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/27874/JSP3832004Edition.pdf.
[18] The Oslo Diplomatic Conference, on a Total Global Ban on Anti-Personnel Mines, took place 1–18 September 1997. At the closing session 89, states solemnly adopted the 'Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction.' As at 26 August 2019, there were 164 state parties to the treaty and one state signatory. Notable exceptions are the USA, Russia, China, Iran, Syria, Egypt, Israel and North Korea.
[19] ICRC Customary IHL, 'Practice Relating to Rule 81. Restrictions on the Use of Landmines', accessed 19 May 2019, http://www.icrc.org/customary-ihl/eng/docs/v2_rul_rule81.

former should also be susceptible to lethal attack at all times during conflict. Command initiated IEDs, the third of the three types of IED initiation variants, have an equivalence to a conventional force's claymore-type device – a directional fragmentation mine used against enemy infantry, for example when used in the ambush (command) mode. The vehicle driver of the person(s) laying the command wire for an IED, immediate lookouts, guards etc all have conventional force equivalents that lay claymore devices. ICRC Customary IHL, Rule 6 states that civilians are protected against attack 'unless and for such time as they take a direct part in hostilities'.[20] The directive is problematic since a precise definition of the term 'direct participation in hostilities' does not exist but it is generally understood to mean 'acts which, by their nature or purpose, are intended to cause actual harm to enemy personnel and *matériel*.'[21] Rule 6's conditional time constraint, 'for such time', raises the following question: when does taking a direct part in hostilities begin and cease for such individuals and how is it recognised? Policing such a transitory form between combatant and non-combatant status is totally impractical.

Recognising the uncertainties described within ICRC Rules and acknowledging the changing character of MAC, it is reasonable to propose that the attack regime's activities that can be genuinely considered combatant in nature, has expanded. Those emplacing IEDs, and irregular fighters generally, intend and actively seek the destruction of their opponents but they do not distinguish themselves as being *active* or taking a *direct* part as combatants from when they are *inactive* or taking an *indirect* part as civilians. Conventional forces have not illicitly compelled irregular forces in MAC to withdraw from the just-war norms of distinction. In keeping with CJWT, therefore, once subjects enter the attack regime, they become active in hostilities as irregular combatants and subject to lethal force at all times. They are not to be considered

[20] ICRC Customary IHL, 'Rule 6. 'Civilians' Loss of Protection from Attack', accessed 19 May 2019, http://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule6#Fn_28_13.
[21] Ibid. [Author's emphasis.]

civilians, thereby protected against attack 'unless and for such time as they take a direct part in hostilities'. Notwithstanding their immoral and unlawful conduct, irregular fighters must be incentivised to cease fighting and return to civilian life and jurisdiction as early as possible – moral strategies must be designed. Their cessation from active involvement and reverting back truly to civilian status could be by a recognisable, agreed and verifiable affirmation of the transfer, maybe overseen by independent overseers or the UN, who are most likely to witness any future MAC.[22] The emphasis on submitting to such a protocol should be with the irregular force as they enter into battle, not only in an irregular mode, but also without distinguishing themselves as combatants during attacks or during the immediate preparation.

Protocol I Additional to the Geneva Conventions, states that 'in case of doubt whether a person is a civilian, that person shall be considered to be a civilian'. Assuming that irregular fighters will intentionally continue to hide their appearance in battle, then doubt will remain; as technology develops, information collection and processing speeds up, intelligence analysis and dissemination improves, along with tactics, techniques and procedures, some uncertainty may be mitigated. Actionable intelligence is necessary to attack the IED network and there are many examples where new technology should assist, but it remains challenging. Defence Analyst Michael Stumborg said of ongoing Counter-IED efforts over the years:

> We've had a very difficult time as a nation trying to connect the dots, and those were dots that were under our control. We're moving into an environment where we have to connect dots that we don't even have access to. They're out there in the open; we just have to get at them.[23]

[22] Conventional militaries discharge combatants in a recognisable process, removing their military identification cards, clothing, access to weapons, and transferring them to civilian status. An irregular adversary in MAC would need a similar process, witnessed by third party assistance and agreed by all sides. The default setting would be that having entered the attack regime, persons remain combatants and subject to lethal force at all times, until cessation of the conflict or they become *hors de combat*.
[23] Michael Stumborg, cited in Amber Corrin, 'When standardizing data is not enough' in *FCW*, 4 October 2013, accessed 19 May 2019, https://fcw.com/articles/2013/10/04/when-standardizing-data-not-enough.aspx.

Whatever the long-term improvements in intelligence, equipment and procedures, determining the legitimacy of targets will remain very challenging. Most conventional armies have developed some form of go/no-go operating procedure and a simple aide-memoire with rules of engagement to guide soldiers in determining if someone, by their actions, is believed to be planting an IED or performing some form of attack and is, therefore, a legitimate target. It is often dependent on the type of conflict and for operations short of war, whether the subject's actions are immediately life threatening. As the difficulty in determining target legitimacy in MAC continues, or at least further blurs, plus the tactics of irregular forces adjust to our developments in fighting power, then the upshot could be an over-burdening of well-intentioned regulations on soldiers that will become incomprehensible to them and impracticable to employ. With such potential for ambiguity, a CJWT view is to base these very difficult moral judgments on moral intention, immutable virtues and wisdom, leading to a culture of values and standards in warfare. This is a shift away from the limitations of developing evermore prescriptive rules, whether IHL or state practice, for conflicts such as MAC; current IHL is not fit for purpose.

Analysing the work of Alasdair McIntyre, Middleton and Walsh conclude that: 'Right and wrong can thus only be discerned from *within* a particular tradition. Ethical action is dependent on indwelling a socially embodied narrative, on membership in a concrete community oriented to a distinctive perspective, heritage and vision of life.'[24] Former Chaplain General to the British Army, Victor Dobbin, describes that 'moral behaviour is more than behaving according to certain procedures or rules… It has to do with character and virtue as well as with the social context of the community in which a person is living and working.'[25] Dobbin and others also stress an important Christian distinction between virtues and values, the latter being held by irregular forces too but with fundamentally different virtues – some of their values are similar to

[24] J Richard Middleton & Brian J Walsh, *Truth is Stranger Than It Used to Be* (Illinois: Intervarsity Press, 1995), p. 68. [Authors' emphasis.]
[25] Victor Dobbin, 'Ethics and the Military Community', in *Journal of Defense Resources Management*, No. 1 (1) / 2010, pp. 70–1, accessed 19 May 2019, http://journal.dresmara.ro/issues/volume1_issue1/10_dobbin.pdf.

ours and equally honourable to them. Forming and retaining a moral community from which moral decisions are made and exercised prudently, at every level during conflict, would be a distinct advantage. Our involvement in MAC is likely to be within a NATO-based coalition. Given the witness of McIntyre, Dobbin et al, a Christian virtue-ethics basis for war is not only faithful to the UK's culture and that of her closest allies, arguably it is likely to deliver more consistent, discriminatory and proportionate decisions by soldiers during conflict.

From my analysis of the IED attack regime, I make three proposals. First, the attack regime is actively, practically and directly involved at the forefront of the IED network's participation scale, in seeking to harm personnel, damage property and materiel. When compared to conventional military activities, it is combatant in nature, intention and action, although demonstrates little or no regard for collateral damage. Those involved should be liable to lethal force always, or until some form of agreed and verifiable transfer to non-combatant status occurs, with the onus being on irregular forces to commence the protocol of transfer. The liability to lethal force excludes those who are *hors de combat*, such as those surrendering or injured, where they become subject to the norms of international law, which themselves are in need of some revision, although not with respect to *hors de combat*.

Second, technological development, improved intelligence, better training and procedures will assist conventional forces in the task of discrimination but it will remain challenging. Artificial intelligence is the capability of computer-based systems to perform activities normally requiring human intelligence. As part of predictive analytics, it could be a game changer in providing more objective analysis to assist decision-making and I analyse it later. Soldiers determining the legitimacy of targeting an IED attack also need a foundation, as part of a moral community, to implement discrimination: simple and consistent, with values and standards that emanate from it, so that when interpreting rules is less than clear and decisions need to be made quickly,

sometimes instantly, the right moral choice is made. Rules of engagement differ in NATO countries fighting in coalitions, as witnessed recently in Afghanistan and against ISIL; with most of our NATO allies having a Judaeo-Christian heritage, God given virtues remain immutable and together with right intention, assist in making prudent and more consistent ethical choices.[26]

Third, thought needs to be given to the moral (and legal) status of MAC's irregular force diaspora – migrants, returnees or internally radicalised forces. Within developed countries they are likely to be regarded as terrorists and, therefore, subject to national criminal law. This acknowledges that, notwithstanding the abhorrence of their actions, their frequency and relative levels of damage are sufficiently containable for a sense of normality to continue within developed countries. This is not the case in the battlespace of MAC, however, as a conventional force task is likely to be the restoration of order using military force. For an identical action, an irregular fighter in a diaspora will be subject to lethal force commensurate with civil law – if their actions are likely to cause imminent human casualties – whereas in a conflict area, their liability to lethal force is subject to their status as combatants. A diaspora in a poorly governed or ungovernable nation, able to project IED attacks internally and externally creates further complications. In MAC, as identified in this thesis, all these irregular fighters are part of the irregular force and are *actively* involved in hostile activities. A Christian view is to ensure proportionality as well as discrimination in rendering the enemy inoperable. Therefore, an escalatory response is morally justified and preferable – from prevention through deterrence, warning, nullifying, restraining, capturing, and the last resort option of lethal force – noting that escalation can jump straight to the use of lethal force when conditions prevail. Policing actions, suitable in developed countries, are simply incompatible with MAC, as analysed below in Section 5.

[26] Aquinas considered prudence to be a cardinal virtue: 'a certain rectitude of discretion in any actions or matters whatever.' Aquinas, 1a 2ae, q. 61, a. 4, p. 1932.

Considering the remaining three groups of my newly ordered IED network – facilitators, trainers and leaders – a 'Time' magazine article from 2013, reflecting on Afghanistan, provides a helpful case study of individuals working within and across the IED network.

> A 35-year old, beefy commander, his beard trimmed short and his head half bald under his massive white turban, is in charge of a 10-member team just 70km outside Kandahar city. With training in Chaman two years ago, he leads the ten men in assembling the explosives—in oil cans, pressure cookers, and, most recently, in 1.5liter soda bottles, which are easier to transport. A Kandahar intelligence official swore he had even seen IEDs carved into large copies of the Quran. Then there are the facilitators, like the 38-year-old former member of the Taliban who helps by hiding IEDs at his home in Daman, and transports them on the back of his motorcycle. And, finally, there are people like the mustachioed 33-year-old from the lush Arghandab valley who has brought eight IEDs to the city in his truck, which he usually uses to deliver commercial fruits. "For transporting the explosives, we use cars, animals, and even some government officials," the bald commander says…[27]

Many actors within the IED network perform multiple roles across the four groups, often at times of their choosing and interspersed with normal civilian activities. While those directly involved or active in hostilities are always liable to lethal force, some may argue that those involved in the remaining three groups are only indirectly involved in hostilities, are not directly threatening life and, therefore, should retain non-combatant status, if not always then at least while inactive. By applying analysis from Chapters 3 to 5, and CJWT, I shall now argue for their moral liability to lethal force at all times.

1.2 Facilitation. Sustaining the IED attack regime requires facilitation, the second group within the IED network. Facilitation includes: facilities, such as factories, buildings, workshops, farms, homes, tools and vehicles; and facilitators, people involved in the procurement, provision, production and distribution of IEDs and components. Conventional forces must reduce the number of IED attacks sufficiently to succeed in their missions and campaigns. In attacking the whole IED network, strategies seek to reduce the sustainment of IEDs, which is achieved in part

[27] Mashal.

by preventing the use of facilities and interdicting facilitators. Chapter 2 showed that although the IED is not new in concept, its scale and tempo of use is revolutionary, together with irregular forces' speed of regenerating capability and capacity, both in personnel and resources.

This section analyses IED facilities, comparing them with their conventional war counterparts, in order to determine the moral susceptibility of IED facilities to destructive attack as military objectives. I also consider the liability of IED facilitators to lethal attack, comparing their intentions and activities against their conventional equivalents – permanent military facilitators (engineers, logisticians, administrators, paymasters etc) and civilians supporting military activities, such as those working in munitions factories and truck drivers transporting military ordnance and components. I analyse personnel involved, collateral damage, state practice, cooperation activities, permissible CJWT application of force, discrimination, proportionality and dual-use facilities to determine the combatant or non-combatant statuses of IED facilitators, which can be extended to most facilitation undertaken by irregular forces in MAC.

From the 'Time' example, the commander and his ten men assembling explosives in oil cans, pressure cookers and soda bottles, are fully aware of the purpose and effects of their IEDs, even if they do not emplace them. Forced labour and severe intimidation may be morally excusable because the assumption is that if the threat or intimidation was removed then IED assembly would cease. However, as is the case with human shields, those in such positions are susceptible to the incidental effects of legitimate attacks, if a facility is deemed a military objective and the military advantage of an attack against it outweighs foreseen collateral damage, including civilians forced to manufacture IEDs. Other reasons for civilian support to facilitation, such as poverty, which are socially challenging but freewill choices all the same, should similarly expect

the rule of proportionality to be enforced.[28] It is reasonable to expect that IED facilitators know the likely consequences of their activities: the laying of IEDs with the intention of killing and harming. If they are considered, as a result of their freewill intent, morally equal or sufficiently similar to their civilian conventional counterparts – facilitation of conventional mines or booby-traps – then they are equally or sufficiently culpable and liable to lethal attack. ICRC Customary IHL, Rule 6 acknowledges that with respect to civilians, those working within military objectives, for example munitions factories, are liable to attack for military advantage, as determined by state practice:

> injuries or death caused to such civilians are considered incidental to an attack upon a legitimate target which must be minimized by taking all feasible precautions in the choice of means and methods, for example, by attacking at night (see Rule 17). The theory that such persons must be considered quasi-combatants, liable to attack, finds no support in modern State practice.[29]

Culture, ideology, beliefs, history, parliamentary systems, freedoms, wealth and so on determine state practices: they change and evolve, often by reacting to new challenges and the changing character of war. Irregular forces in MAC use a small shed, workshop, garage, room or establishment, possibly in a dual-use role, to produce improvised materials that are necessary for IED manufacture: they are improvised munitions factories. Morally, such establishments are no longer civilian objects and become military objectives or dual-use facilities. They are, therefore, liable to attack, given that sufficient military advantage is foreseen. In conventional conflict 'civilians must assume the risks involved in an attack on that military objective.'[30] This should also be the case when improvised weapons and components are being produced inside an 'improvised' facility – similar considerations are necessary if either the facility or the components are dual-use. A conventional munitions factory remains a military objective if it is

[28] Launching an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated, is prohibited. ICRC Customary IHL, 'Rule 14. Proportionality in Attack', accessed 19 May 2019, http://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule14.
[29] ICRC Customary IHL, 'Rule 6. Civilians' Loss of Protection from Attack'.
[30] Ibid.

not producing over a period, for such as renovation or being overhauled for future increased production. A facility for manufacturing IEDs or components, even if intermittently, is the asymmetric equivalent of a munitions factory and should become a military objective and liable to a proportionate attack.

Along with manufacture or assembly and within the category of facilitation is sustainment, which covers the supply, storage, transport and distribution of IEDs, their sub-assemblies or constituent parts. From the 'Time' example it encompasses 'the 38-year-old former member of the Taliban who helps by hiding IEDs at his home in Daman…' Sustainment incorporates the use of improvised storage facilities and transport, including dual-use assets such as farms, homes, trucks, cars, motorcycles and even bicycles. Whether considered participating directly or indirectly, IEDs are contingent on these facilities and facilitators: morally and within the spirit of IHL, such dual-use sites and facilities become military objectives. They are, therefore, liable to attack, again given that sufficient military advantage is foreseeable. Targeting storage facilities used to hide IEDs and components, with civilians in the vicinity, should be subject to the CJWT and state practice of proportionality, reducing the likelihood of civilian casualties to a minimum with the military advantage of an attack being prudently measured.

Grotius argues that, 'he who supplies an enemy with things necessary for warfare is on the side of the enemy.'[31] While this Christian view alone does not provide moral authority for using lethal force against all facilitators, in all conditions, Grotius provides boundaries: 'If, now, the enforcement of my right shall be hindered by the supplying of these things, and if he who supplied them has been in a position to know this… then he will be liable to me for injury culpably inflicted.'[32] Grotius further refines the conditions with respect to dual-use or dual-

[31] Grotius, bk. 3, ch. 1, sect. V, para. 2, p. 602.
[32] Ibid., para. 3, p. 602. The country within which military equipment is being manufactured does not change the moral reasoning. For example, a NATO nation not in conflict but manufacturing mines for export to the UK for its

purpose items: 'Regarding things of the third sort, useful in both war and peace, we must take account the conditions of the war…'[33] During operations in Iraq and Afghanistan, many insurgents were found to be multi-rolled, being attackers, trainers, facilitators, furnishers, and all actively involved in hostilities – morally they were combatants and as such liable to lethal force. Those objects used for the supply, storage, distribution and transportation of IEDs are akin to military objectives in conventional war and thus should become military objectives themselves, albeit improvised versions, and assume the risks involved in attacks upon them. CJWT, again, seems consistent with IHL; recalling from above, IHL binds all parties to an armed conflict to its treaty and customary rules.

To defeat the IED network morally, and thereby achieve successful campaigns and the good of the common weal, I recommend that once an improvised facility (related to IEDs or otherwise) is determined a military objective, then it remains a military objective, unless or until there is some agreed, recognisable and verifiable means of the facility ceasing its warlike activity. Only then should it revert to a civilian object again. In conventional conflict, a munitions factory that transfers its production line from making shell cartridges to food tins becomes a civilian object and no longer liable to attack. An improvised facility used by irregular forces could transfer to a civilian object with the cessation of its warlike activities. I propose that it would require an independent overseer such as the UN, who are most likely to be present or witness future MACs. My recommendation is novel as it challenges the interpretation of Rule 6 for legalists and some ethicists, with such facilitators being considered to provide *indirect* support to hostilities, but it is not inconsistent with punitive CJWT: the permissibility to wage and conduct war in order to punish wrongdoers but only sufficient for reconciliation, justice and peace, rather than say only for self-defence. Here, CJWT and IHL diverge. Moreover, for those not persuaded, who fear

use during a conflict, would not escape its moral liability to an attack on the establishment manufacturing the mines as a military objective.

[33] Ibid.

departure from hard fought and well-reasoned, self-limiting practice by Western forces to ensure *jus in bello* proportionality, a Christian view must begin with God's Greatest Commandment: to love one's neighbour (Matthew 22:37–40). It is this love of neighbours, even abhorrently immoral neighbours in the form of irregular fighters in MAC that, as Grotius states, prevents us 'pressing our right to the utmost limit.'[34] Christians desire self-limitation and proportionality in conflict while still ensuring the right outcome.

Without self-limiting force and proportionality, Tony Coady is surely right to suggest that a 'casual attitude toward the destruction of infrastructure needs careful scrutiny', and it is clearly possible that the 'doctrine of dual-purpose targets can easily be adapted to the aim of demoralising enemy populations so that their pain or protest will weaken the leadership's will to continue resistance.'[35] However, Coady is surely wrong to argue that US attacks on dual-purpose targets during the Iraq invasion in 2003, 'in the broad context of including "shock and awe" … crushing the enemy's will to resist', reflects 'a dual-intention strategy in the [US] attackers' such that 'the military justification for the targeting is spurious and incidental. *The primary purpose is to harm civilians*.'[36] No strategic level planning suggested that Saddam Hussein's leadership could 'weaken' by 'the pain or protest' of a demoralised Iraqi population. In fact, such a military intention, strategy or objective would have seemed preposterous at the time given the relationship between Saddam's defiant, violent and despotic leadership over the fearful Iraqi people. Section 3 below, however, analyses evidence of some nations purposely and wantonly harming civilians as a military strategy in MAC.

Section 3 of Chapter 4 concluded that contrary to the USCCB's view (and Coady's above), the doctrine of "overwhelming force" or "decisive force" and achieving "shock and awe" are

[34] Ibid, sect. IV, para. 2, p. 601.
[35] Coady, 2008, p. 147.
[36] Ibid. [My emphasis.]

compatible with CJWT-based principles of discrimination and proportionality. Also, that as a doctrine, it is morally justifiable because its fundamental aim is to defeat an enemy's military capability, crush its will to resist, shatter its desire to continue the fight, and hopefully bring quicker conflict resolution. There are other examples from recent conflicts which similarly demonstrate that the US and its coalition partners actively sought not to harm civilians:

> During the bombing campaign, NATO aircraft flew 38,400 sorties, including 10,484 strike sorties. During these sorties, 23,614 air munitions were released (figures from NATO). As indicated in the preceding paragraph, it appears that approximately 500 civilians were killed during the campaign. *These figures do not indicate that NATO may have conducted a campaign aimed at causing substantial civilian casualties either directly or incidentally*.[37]

The moral objective is to minimise collateral damage; targeting the '38-year-old former member of the Taliban who helps by hiding IEDs at his home in Daman', together with Rule 6, obligates certain practices such as night raids. Following the surge in coalition forces in Afghanistan around 2010, militarily night raids became extremely effective in removing key insurgents, including bomb-makers, from the battlespace. They were also effective at both disabling enemy facilities and minimising civilian casualties, since sleeping civilians were not caught in any crossfire. Unfortunately, night raids were very unpopular with local civilians who culturally considered them frightening, offensive and disproportionate. Prudent judgment had to be made as to whether the military successes of night raids were of greater benefit overall to the ISAF campaign plan, when balanced against the strategic centre of gravity, which was the people, and the need to gather and retain their trust and support over any allegiance to irregular forces. The alternative, daytime raids, increased the risks to ISAF troops, acceptable to a limit within CJWT,[38] but it simultaneously increased the likelihood of civilian casualties.

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[37] UN. International Criminal Tribunal for the former Yugoslavia, 'Final Report to the Prosecutor by the Committee Established to Review the NATO Bombing Campaign Against the Federal Republic of Yugoslavia', 13 June 2000, accessed 19 May 2019, http://www.icty.org/x/file/Press/nato061300.pdf. [My Emphasis.]

[38] 'And yet God Himself, lord of men in His own right, is wont to spare a community of evil men, however large, for the sake of a very few good men...' Grotius, bk. 3, ch. 1, sect. V, para. 3, p. 601. Suarez had previously written that, 'such circumstances [combatant self-sacrifice] must be considered in the light of the order of charity; that is to say, one must consider whether the good at stake in the case is to such an extent the common good, that there is an obligation to expose oneself in its defence to a peril so great.' Francisco de Suarez, 'On Charity: Disp. XIII', *A Work*

Minimising collateral damage was incompatible with performing day-time raids in Afghanistan. Using only ANSF in night raids, wherever possible, was a concession to the civilian community, in order to seek and maintain their confidence and backing while pursuing minimal collateral damage. Unfortunately, too few suitably trained Afghan Special Forces were initially available, as training was demanding and took a considerable time to complete. In this example, Rule 6 (night raids) was unsatisfactory, but not unexpected since it arose from the character of conventional war. Decisions on whether and when IED facilitators should be targeted with lethal force 'must be left to a prudent judgement, but in such a way that when in doubt we should favour that course, as the more safe, which has regard for the interest of another rather than our own.'[39] Such prudence, as shown with the example above by employing Afghan Special Forces in night raids, is a Christian virtue: the principal one according to Aquinas, with the results being interpreted objectively as minimising collateral damage.

It is also a Christian view that the scale of civilian casualties, no matter how large, without being absurd, does not make an attack against a military objective unjust or immoral. Some commentators opine that civilian casualty figures during the last war in Iraq support evidence for the invasion being unjust. Biggar's analysis discredits that opinion by comparing figures from Iraq with those of at least similar magnitude from Germany and France during World War Two, with the latter being judged a just war. Biggar also acknowledges that in asymmetric conflict such as Iraq, many more civilian deaths are caused by insurgent actions and not simply through their negligence, even less a trace of moral thinking on collateral damage, but by actually targeting civilians as well: 'the vast majority of Iraqi civilian deaths are directly attributable to

on the Three Theological Virtues Faith, Hope and Charity (1621), in Francisco Suarez, SJ, *Selections from Three Works*, 2 vols, vol. II: 'The Translation', ed. Gwladys L Williams et al, The Classics of International law (Oxford: Clarendon Press, 1944), sect. VII, para. 19, p. 849.

[39] Grotius, bk. 3, ch. 1, sect. IV, para. 2, p. 601. Grotius concludes that indiscriminate killing and vengeance are unacceptable – restraint and proportionality remain, therefore, virtuous principles of CJWT.

foreign or native insurgents… insurgents also had a moral obligation not to send suicide bombers into crowded marketplaces'.[40] From Augustine onwards, it has been the Christian 'desire for peace that wars are waged'[41], with proportionality prudently judged in both *jus ad bellum* and *jus in bello*, and ensuring civilian casualties are minimised.

Recent conflicts show that IED facilities are very often dual-use or dual-purpose, as in the 'Time' case of the 'mustachioed 33-year-old from the lush Arghandab valley who has brought eight IEDs to the city in his truck, which he usually uses to deliver commercial fruits.' While transporting only IEDs or components, or if mixed with commercial goods (perfidy), his vehicle should be considered a military objective. He incurs the risk of lethal attack, similar to the truck laden with military ordnance or components thereof and driven by a civilian in conventional war. In the need to degrade the IED network sufficient for military success, and while there is no CJWT-based justification for destroying his vehicle while he transports commercial fruits only, it may be prudent to destroy his vehicle once it is designated dual-use – if it is foreseen that it is likely to be used for further IED facilitation. Thus, dual-use IED facilities should be made inoperable for the facilitation of IEDs, by destruction if necessary and within the norms of proportionality, prudently assessed. However, just as a civilian vehicle that moves from distributing warlike materiel to non-warlike materiel is no longer targetable while transporting non-warlike materiel, likewise the irregular facilitator's vehicle is no longer a legitimate target if it is transporting non-warlike materiel.

During conventional war, civilians working in a military objective eg munitions factory, are facilitating the war effort and although not participating directly in hostilities, they must assume the risks involved in an attack on that military objective. Military facilitators, however, such as

[40] Nigel Biggar, 'Regime Change in Iraq: A Christian Reading of the Morals of the Story', in *The Authority of the Gospel*, ed. Robert Song and Brent Waters (Cambridge: Eerdmans, 2015), p. 62.
[41] Augustine, *The City of God*, trans. Marcus Dods (Massachusetts: Hendrickson, 2009), bk. 19, ch. 12, p. 621.

engineers, logisticians, paymasters and administrators, are subject to lethal force at all times. Irregular forces in MAC offer no such recognisable distinction, even in principle, between a combatant facilitator and a civilian's indirect facilitation – it is a characteristic of MAC. Therefore, in order to discern liability to lethal force, we must consider whether the ununiformed, irregular IED facilitator is morally equivalent to a civilian working in a military objective at certain periods or a military facilitator, which includes a reservist or territorial, or somewhere in between. This is an important distinction to wrestle with since it must not be governed by our overriding necessity to erode the IED network – moral ends never justify immoral ways and means. What is clear is that within the context of irregular forces, there is no recognisable division between these dichotomous conventional force actors, as traditionally defined by IHL. There is no sense of military facilitators, liable to lethal force at all times, and civilians facilitating, who lose their protection from attack, under certain circumstances (Rule 6 above).

In developed countries the civilian contractor or facilitator in support of conventional forces is distinguished from military facilitators. The former does not perform the closest facilitator support: that is alongside the frontline fighting force, being armed in order to fight offensively to deliver combat service support,[42] and defend locations, equipment and stores using lethal force if necessary. These roles are for combatants only. Although a civilian facilitator may be armed in an operational theatre, it is for self-defence only. The IED facilitator supplies distinct items, only useful in war and according to Grotius' interpretation is a distinct enemy, 'liable… for injury culpably inflicted'. He may perform his facilitator roles sporadically, sometimes seasonally, maybe at times only when supplies are available but he loses any moral equality with a conventional force civilian working in a military objective – who is liable to the incidental

[42] Combat Service Support (CSS) is the essential capabilities, functions, activities, and tasks necessary to sustain all elements of operating forces.

effects of an attack – by refusing to have any distinction protocol (military or civilian facilitator) that is observable or agreed. Experience from conflicts in Iraq and Afghanistan suggests that insurgents and irregular facilitators seek no such distinction in part-time or full-time combat supporting activities, combatant or non-combatant classification, either driven by their leadership or self-imposed. Irregular force facilitators, freely acting at times and availabilities of their choosing, with some prepared to fight, and unprepared to distinguish themselves, are morally analogous to the volunteering military engineer, logistician or paymaster. They are, therefore, morally liable to lethal force at all times during conflict, unless they are *hors de combat*.

Ramsey's moral investigation of counter-insurgency is helpful here too, where he writes: 'Counter-insurgency as a military operation can and should make the insurgent forces the primary object of attack,' [43] and that:

> "combatant" means anyone who is an actual bearer of the force one seeks to repress by resorting to arms. While in conventional warfare this seems easily determined by whether or not a man is in military uniform, it is still the case that… closeness of material cooperation *may* define a civilian as a "combatant"…[44]

He further states that 'cooperators' are 'technically combatants' also, whether their support is all or some of the time.[45] Using this Christian analysis as foundational to the novel situation of MAC, conventional military operations in MAC should make irregular forces the primary object of attack. The IED being contingent on material cooperation or facilitation may and arguably should define IED facilitators technically as combatants.

In analysing irregular force facilitation and facilitators, I propose the following. First, ICRC Customary IHL, which is legally binding on all states or organised non-state armed groups, and state practice determine that civilians working within military objectives, eg munitions factories,

[43] Ramsey, 1968, p. 434.
[44] Ibid., p. 435. [My emphasis.]
[45] 'In contemporary insurgency, the fact is that a peasant is often a civilian by day and a combatant by night.' Ibid.

are liable to the effects of lethal attack, including incidental collateral damage, only when military advantage is foreseeable. In MAC, a small workshop, garage, shed, room or other establishment, possibly in a dual-use role, used to store and produce components that are necessary for IED manufacture, establishes them morally as military objectives. Facilitation includes manufacture, assembly and sustainment – the supply, storage, transportation and distribution of IEDs, their sub-assemblies and constituent parts. Once an improvised military objective related to IEDs is discovered then it should remain a military objective – since the irregular force has not distinguished their combatant status – unless there is some recognisable and agreed means of confirming that the facility or capability (eg truck) has been withdrawn from its warlike activity. Only then should it revert to a civilian object. The military necessity to destroy an asymmetric military objective must, however, outweigh the foreseen but unintended collateral damage. Prudence determines whether a truck, used previously to deliver IEDs, remains targetable when its contents or parts thereof are possibly for IED use. Improvements in predictive analytics, analysed in the following section, will assist the task of discrimination.

Second, a Christian view is that lethal force is morally permissible against those who furnish IED supplies to irregular asymmetric enemies – those that furnish (or facilitate) become distinct enemies, liable for injuries culpably inflicted. While still ensuring right outcome, part of which is the destruction of IED facilities, Christian love seeks the elimination of death, pain and suffering, and Christian virtue craves self-limitation and proportionality in conflict. It is at these most demanding and stressful times that prudence, a Christian espoused and cardinal virtue, is fully exposed and is of greatest benefit. Asymmetric military objectives linked to IED facilitation must be incapacitated to achieve successful military campaigns, with the principles of discrimination and proportionality enshrined. Dual-use facilities used to sustain IED production should also be made inoperable and any other enemy military capability, by destruction if necessary, and with identical norms of discrimination and proportionality, prudently enforced.

Third, irregular force facilitators seek no distinction in part-time or full-time combat supporting activities, military or civilian classification, combatant or non-combatant status, either driven by their commanders or self-imposed. Developing Ramsey's ethical analysis of revolutionary wars, irregular forces (and not conventional forces) enlarge the target for conventional forces to attack as combatants, with respect to the principle of discrimination. Irregular force facilitators are morally identical to military personnel delivering conventional combat support or combat service support and, therefore, morally liable to lethal force at all times during conflict, rather than how Rule 6 constrains, unless or until they become *hors de combat*. This proposition is within the CJWT so long as the principle of proportionality is preserved.

1.3 Training. Training, whether one-to-one or collective and centralised, even in relatively small groups, sustains an irregular force's capability and capacity. The abundance and ease of access to information, via the internet, describing how to mix homemade explosives, manufacture IEDs, and deploy them for best effect aides training and knowledge. The training group within the IED network involves: those that teach IED manufacture and assembly, including component parts; those willingly volunteering to be trained; specific training camps, likely to be used for multiple asymmetric warfare activities; facilities being exploited for training such as workshops, garages and sheds; and dual-use establishments such as farms, homes and businesses where training takes place, eg teaching the mixing of homemade explosives on a farm or in a laboratory or workshop where the chemicals are legitimately held.

Although facilitation and training have many similar enabling characteristics within the IED network, there are discernible differences that make them worthy of discrete analyses. For example, until trained, trainees have intent but no capability and thereby pose no actual threat – they will become a threat once sufficiently trained. In parallel, unlike assembling complete IEDs

for lethal use, training may involve inert materials and if so, there is no immediate explosive threat available for use if IED training is compromised by conventional forces. Some may question, therefore, their immediate combatant status against whether they are *actively* involved in hostilities. The following section analyses the position of training camps and facilities as military objectives, and the liability to lethal attack of those involved in IED-related training. Comparisons are made between the training intent, activities and facilities of irregular forces with those of conventionally organised militaries, where ethics, rules and practices are mature.

In developed countries, volunteer military recruits accept their future roles and responsibilities, for which they will be trained, through some form of agreement, covenant or contract. They accept loyalty to the state and compliance to military regulations, the laws of war and the lawful orders of their superiors. Recruits become and remain combatants until a similar discharge procedure from service. A military training establishment is a military objective in war, with military trainers and those in training having combatant status, less the normal caveat for those who are *hors de combat* – an incapacitated or hospitalised recruit is not a legitimate target. Conscription does not change the combatant status of the trainer or trainee, nor does the use of inert or simulated components, since most begin with them for their personal safety and only when competent progress to live ordnance. Territorial forces, reservists, national guards and other forms of part-time warfighters become combatants once activated by a recognised state procedure eg state order to report for active duty; they return to civilian status by a correspondingly formal sign-off procedure. During their recruit training and any specialist or, when activated, pre-deployment training, they hold combatant status. Identity and combatant status are, therefore, relatively clear in conventional military training regimes: it is not so for irregular forces in MAC.

Following the terrorist attacks against the US on 11 September 2011, intelligence established that there existed insurgent and terrorist training camps in Afghanistan, where volunteer and radicalised recruits were taught basic soldiering skills, shooting and patrolling, as well as the manufacture and deployment of IEDs. In the 'Time' example, the '35-year old, beefy commander, leading his ten men in assembling the explosives—in oil cans, pressure cookers...' demonstrates the efficacy of such training in delivering an unconventional but extremely effective military capability. The beefy commander's incapacitation during his training and those with him would have removed their ability to oversee and manage the manufacture of IEDs: their earliest removal, by lethal force if necessary, would lower casualties and assist in achieving a successful campaign.

When irregular fighters are being trained in the art and science of war, in order to wage MAC and sustain it, they hold a morally equivalent combatant status to their conventional counterparts by their intent and action, irrespective of lacking distinguishable clothing, contract or covenant. Should they withdraw from such training or follow-on activities, it is their moral responsibility to make known their permanent withdrawal and not that of their opponents. Irregular fighters knowingly join an organisation without the state practices described above (which are recognised by the international community), and without distinguishing themselves as trainee combatants. Therefore, they should transfer from non-combatant to combatant status and, again, an independent body or the UN could help to oversee and verify their withdrawal from training.

Morally, training camps or establishments used for training by irregular forces are military objectives and thus liable to lethal attack, constrained by the normal practice of prudently determining military advantage and proportionality. Collateral damage levels of acceptability should be judged identically to the case of facilitation described above. A CJWT view remains that: if the unintentional and proportionate killing of innocents is essential for victory, then it is

not intrinsically evil, given 'public authority and a just cause.'[46] The issue of attacking training camps and establishments, however, becomes more complex, legally, when they are established in third-party states. In the 'Time' example, the commander was trained in Chaman, Pakistan. During the recent war in Afghanistan, US attacks took place against training camps in Pakistan, a morally permissible action but legally controversial at best and at worst unlawful. 'While we should be very loath to break the letter of international law, there may be cases where we are morally obliged to do so'[47] is Biggar's Christian view; US attacks in Pakistan were such a case in my Christian view.

So, attacking training camps, irrespective of their location, which may challenge the sovereignty of national borders under international law, prevents the commander trained in Chaman from developing into a leader of a 10-member IED manufacturing team with its destructive outputs. Attacking the IED training group, degrading it sufficiently, is another part of attacking the whole IED network, in order to achieve military success. A historic Christian moral view of attacking training camps and establishments in third-party states can be taken from Grotius' instruction:

> From what has been said we can understand how it is permissible for one who is waging a just war to take possession of a place situated in a country free from hostilities. Such procedure, of course, implies these conditions, that there is not an imaginary but a real danger that the enemy will seize the place and cause irreparable damage; further, that nothing be taken except what is necessary for protection… [48]

If lethal attack, by armed drones or Special Forces in the case of Pakistan, is the only option to prevent the 'irreparable damage' caused by trained IED activists then it is consistent with CJWT. Minimising collateral damage is essential as is returning the location back to normality soonest[49]

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[46] Suarez, sect. VII, para. 15, p. 845. Suarez stated of 'innocent persons… incidentally they may be slain, when such an act is necessary in order to secure victory', but 'such a plea must be rejected when the slaughter is not necessary for victory'. Ibid.

[47] Nigel Biggar, 'The invasion of Iraq: what are the morals of the story?', in *International Affairs*, vol. 87, no. 1, January 2011, p. 35, accessed 19 May 2019, http://www.jstor.org/stable/20869609. Biggar also states: 'As an ethicist I cannot regard positive law as the final word; for in the end positive law lies subject to judgement by moral law.' Ibid. p. 33.

[48] Grotius, bk. 2, ch. 2, sect. X, p. 195.

[49] '…possession be had with the intention of restoring the place as soon as the necessity has ceased.' Ibid.

– US financial aid to Pakistan is concordant reparation with the latter. Genuine trust between the US and Pakistan would have been the optimal position in this coalition case, with both nations being fully involved in planning and executing operations to paralyse training camps within Pakistan. For US forces, however, the covert nature was due to a lack of trust with Pakistan's internal security and intelligence services, which, during the years surrounding 2010, persistently undermined security in Afghanistan. The US view remains extant: 'Pakistan often gives safe haven to agents of chaos, violence, and terror.'[50] In such circumstances, the US' deception – neither perfidious nor treacherous – achieved its military objectives. Grotius' moral perspective is that '[i]n a negative action, deceit is not in itself unpermissible.'[51] He further states: 'For since you are not required to reveal to others all that you know or desire, it follows that it is right to dissimulate, that is to conceal and hide some things from some persons.'[52] CJWT permits deceit in seeking to bring down the IED network and for the good of the common weal: at times deceit is essential, even with partners.

Campaign considerations of the outcomes of attacks on a third-party state, particularly with respect to collateral damage, must be rigorously assessed. Prudence and a visible expression of intention are again critical to retain localised civilian support, minimise the potential for radicalisation and deter political support for irregular forces; this was the HQ ISAF intention in the case of Pakistan. Ultimately, those being trained in IED use, component manufacture, assembly and sustainment, are morally liable to lethal force, in a third-party state, as would any British soldiers being trained in a conventional military activity within another coalition country. Civilians cross a threshold of intent and active involvement, once they enter an IED training regime, whether they are encamped for a period, visit a training camp daily and then return home, or train at home. Both trainees and the trainers are liable to lethal attack, whether

[50] The White House, *Remarks by President Trump…*
[51] Grotius, bk. 3, ch. 1, sect. VII, p. 607.
[52] Ibid.

instruction is in IED assembly or a supporting speciality, such as mixing explosives or teaching soldering techniques for the manufacture of circuit boards to be used in radio controlled IEDs.

In conclusion, those involved in training irregular fighters in activities associated with the manufacture, assembly, supportability, delivery and placement of IEDs, together with trainees, are morally liable to lethal force against them and their facilities. They should be considered combatants until they proactively seek a verifiable means that determines, unequivocally, their cessation as trainers or trainees. Clearly, if they stopped attending training then it is unlikely that they would ever be targeted again. The training camp or improvised establishment used for IED training should be considered a military objective. Improvised training venues should also remain military objectives until IED training activities cease. Dual-use sites similarly become military objectives once engaged in training activities, liable to destruction within a CJWT of proportionality, prudently enforced. Training facilities and locations established in third-party states, even partners, does not remove their CJWT-based liability to lethal force. All should remain military objectives until verifiably ceasing training: then and only then should they revert to a civilian object, free from targeting.

1.4 Leadership. The leadership group of the IED network contains the strategic, operational and tactical level thinkers, planners, orchestrators and those that organise the multitude of activities necessary to maintain the tempo of IED use. Some may never practice actual combat or seem closely involved with warlike activities. Others will have a range of experiences and all are party to the irregular force's hostile actions. The challenge is to determine whether these leadership activities are sufficient, in the sense of fighting effect, to make individuals liable to lethal force, aside the lexicons of active versus passive involvement, or direct versus indirect attribution. Leaders plan operations, direct action, arrange finances (including extortion, racketeering, trafficking drugs, people etc), design new IEDs, determine how best to deploy them

to cause maximum casualties, and develop countermeasures to defeat the equipment and tactics of conventional forces. Removing leaders from an organisation has a much greater contribution to its demise than most, if not all other groupings. No analysis is made on the morality of assassination, extrajudicial or targeted killings and whether such strategies or tactics are morally justifiable and strategically successful or not – much is already written.[53] This section analyses whether IED network leaders are morally liable to lethal force for their participation.

Although they may have multiple command and influence roles, across the asymmetric spectrum of warlike activities, IED leadership is defined as those with command and authority over subordinates in the IED network. Other forms of support to irregular forces such as campaigning, contributing to collections, and not informing the conventional forces of known enemy activities, could not determine them liable to lethal attack. Passive leadership, however, defined as a combination of passive management by exception and laissez-faire leadership, allowing subordinates to lead themselves and their own subordinates is not analogous. It is simply a different style of leadership, retaining identical authority and responsibility as active leaders who are directly engaged with subordinates and operations. IED network leadership could be considered to have some characteristics similar to the Western military philosophy of "mission command", whereby subordinates understand and have a clear responsibility to fulfil a superior commander's intent; commanders may be active or passive in their leadership style.

[53] My own view is that targeted killing is effective in certain circumstances, prudently judged, and can have an advantageous tactical effect as part of a wider strategy. Keith Patrick Dear's analysis of the war in Afghanistan leads him to 'reject the notion that targeted killing is an effective strategy on its own.' See Keith Patrick Dear, 'Beheading the Hydra? Does Killing Terrorist or Insurgent Leaders Work?', in *Defence Studies*, 13:3, 293-337, 2013, p. 295, accessed 19 Mar 2019, http://dx.doi.org/10.1080/14702436.2013.845383. I have sympathy with Dear's assessment and with some of his sentiment that an 'unrelenting strategy of killing leadership figures and effective facilitators' is 'hopeless'. Ibid. p. 325. My argument about attrition of the IED network is based on the application of a comprehensive approach, part of which is military action, with options to escalate from negotiation to lethal force, depending on each situation and driven by Christian-based morality and prudent judgment.

The ‘Time’ example of the ‘35-year old, beefy commander… in charge of a 10-member team just 70 km outside Kandahar city,’ clearly suggests that he is a leader within the IED network. Even if he no longer partakes in practical facilitation, his collective group is directly engaged in furnishing distinct items only useful in war, which effectively could not be produced without the beefy commander’s contribution. Leaders of conventional forces with similar responsibilities and authorities are designated combatants, liable to lethal force at all times; IED network leaders should have identical liability to lethal force, even if they are within a third-party state. With similar discourse to that above, mainly using Grotius’ magnum opus, a Christian perspective of the beefy commander’s situation is that he is liable to lethal force within his current locality, Afghanistan or when leading in Pakistan. Ramsey’s more recent Christian analysis from Chapter 3 concluded that leaders of revolutionary wars and insurgencies should have combatant status: ‘persons in command positions are “combatants” even though they wear tweed suits’.[54] Whilst an escalatory approach to removing leaders from the battlespace, as early as possible, is preferable – preventing their ability to command somehow or apprehending them – the last resort option available must be lethal action.

During the war in Afghanistan, an ISAF strategy was enacted to attack the bomb-maker – not simply assemblers but preferably those with design and planning talents too. ISAF also sought to capture or kill those leaders that directed assassinations, organised suicide attacks, coordinated the distribution of IED base materials and weapons, and provided technical intelligence to the Taliban’s senior leadership. These were key leaders and commanders, assessed as having the skills and talents necessary to sustain the war effort, including the high number of IEDs, and thereby preventing ISAF’s operational successes and prolonging the conflict. The removal of sufficient numbers of such leaders from the battlespace became an operational level campaign: to

[54] Ramsey, 1968, p. 435.

reduce the amount, tempo and tactical quality of IED attacks over time, thereby supporting the strategic campaign plan.[55]

In conclusion, IED network leaders are party to hostile activities against regular forces in MAC. They are active or passive leaders, command with authority, and are intimately involved in enabling the irregular force's operational capability. At the tactical level they plan IED attacks, organise suicide strikes, oversee and coordinate the manufacture, assembly, supply and distribution of IEDs and base materials, and provide technical intelligence to senior leaders. Others design new IEDs and develop countermeasures to defeat conventional forces' equipment and tactics. All are key personnel whose activities must be stopped if conventional forces are to be successful. It is necessary to remove them from the battlespace in the fight against the IED network; morally, they are combatants, liable to lethal force at all times unless *hors de combat*.

Conclusion

Personnel involved in the IED network contribute to the delivery of the bomb to the target and the desired lethal effect in different ways. They all participate, albeit with varying degrees of activity, but with the same unifying purpose, which causes death, injury and carnage. I divided the participation scale into four distinct groups based on a mix of the actors' similar functions, capabilities, capacities, intents, and degrees of influence, while also recognising that some perform multiple roles across the groups – introducing this new paradigm is necessitated by how irregular forces organise for MAC.

[55] The number of annual coalition force fatalities caused by hostile action reduced significantly: 630 in 2010, 492 in 2011, 312 in 2012 and 118 in 2013. Those caused by IEDs show an identical trend: 368 in 2010, 252 in 2011, 132 in 2012 and 52 in 2013. Source: iCasualties website. Wounded coalition force figures show similar reductions from 2011. Results are skewed, however, running into 2013 as coalition force numbers and patrolling began to reduce, compensated by ANSF augmentation but with increases in attacks against the latter. The number of IEDs recorded being emplaced shows a similar downward trend but much less stark, down 8% from 2011 to 2012.

The attack regime, emplacers, triggermen and initiators of IEDs, participate directly in hostile activities; they kill and harm personnel, damage property and materiel, and with little or no regard for collateral damage. Those involved are injurious and combatant in nature, intent and action. They are culpable for causing or threatening to cause grave harm and should be designated as combatants, liable to lethal force at all times during MAC, or until some form of agreed and verifiable transfer to non-combatant status is performed. This could be similar, in principle, to a conventional discharge, withdrawing from the battlespace; the onus is on the irregular fighter to commence the protocol of transfer from combatant to civilian. The liability to lethal force excludes those who are *hors de combat*, where the IED attacker or irregular fighter more generally, becomes subject to the norms of international law.

In conventional conflict a military objective and civilian object are well-defined, and the liability to lethal attack of either a military or civilian facilitator is reasonably clear. Comparing improvised facilities used by irregular forces in MAC, with their counterparts in conventional forces, helps to assess anew the moral status of improvised facilities. Current IHL and state practice determine that civilians working within a military objective are liable to the incidental effects of an attack but only when military advantage is foreseen. Therefore, in MAC, a small workshop, garage, shed, room or other establishment, possibly in a dual-use role, used to produce or store materials or component parts necessary for IED manufacture, presents them likewise as military objectives. Once such an improvised military objective is discovered, then it should remain liable to attack, identical in principle to its conventional counterpart, until there is clear and verifiable evidence that the establishment or facility has ceased its warlike activities. Any attack on such an objective must be subject to the essential CJWT of military necessity and proportionality, both prudently discerned.

As for IED facilitators, builders, suppliers etc, a view from CJWT is that lethal force is morally permissible against those who furnish IED supplies to irregular forces, including targets within third-party states.[56] Irregular force facilitators become distinct enemies, liable for injuries culpably inflicted. They seek no distinction in their commitment to part or full-time combat support activities, military or civilian classification, combatant or non-combatant status, either hierarchically directed or self-imposed. They, and not conventional forces, have enlarged the target it is legitimate for conventional forces to attack with respect to the principle of discrimination, based on Ramsey's hypothesis – more civilians become liable to incidental but justified killing. These facilitators act as combatants, identical in disposition to military personnel delivering combat support and combat service support to conventional forces. Morally, they justify combatant status, liable to lethal force at all times during conflict, unless or until they cease altogether or become *hors de combat*. Some may baulk at such a proposition but, as shown, it is not unchristian. Resort to lethal force against irregular force facilitators must retain the norm of proportionality, prudently enforced.

Training facilities and camps where training in the manufacture, assembly, supportability and delivery of IEDs takes place, were likened morally to the training facilities of conventional forces, used to instruct on conventional weapons, skills and tactics. Training camps used for IED training should hold the status of military objectives, as should improvised training venues, including dual-use variants, until they cease IED training activities. Training facilities in third-party states, even partners, does not remove their CJWT-based liability to lethal attack. All should remain military objectives, enabling the erosion of the IED network so that a successful campaign is more likely and for the good of the common weal. Liability must be commensurate with the CJWT of proportionality, prudently enforced, and facilities should remain military

[56] The issue of border sovereignty is further analysed in Section 4.

objectives until verifiably ceasing further training; then and only then should they revert to civilian objects, free from targeting.

Conventional military instructors and recruits are designated combatants. Civilians, however, training or being trained to assemble munitions would attract incidental damage only, as a consequence of a proportionate attack on their training establishment – it being considered a military objective. Trainers or trainees of irregular forces in MAC, for the same reasons as their facilitator comrades, in not seeking to distinguish themselves objectively as civilian equivalents, should default to the status of combatant. Those involved in IED training such as instructors, trainees and any direct support staff, should be considered to hold combatant status until they proactively seek an agreed and verifiable means that determines, unequivocally, their cessation in training or training support.

IED network leaders are party to hostile activities and the endgame of IED lethality, whether considered passive or active leaders. They command with authority and are directly involved in the war effort through the delivery of capability and distinct items, only useful in conflict. Altogether they are responsible for the following: planning IED attacks and organising suicide strikes; designing new IEDs, their tactical uses and deployments; financing, overseeing and coordinating the manufacture, assembly, supply and distribution of IEDs and base materials; providing technical intelligence to senior leaders; and designing and developing countermeasures to defeat conventional force equipment and tactics. According to Ramsey's ethical analysis, persons in command positions are combatants. They are certainly key personnel to remove from the battlespace in the fight against the IED network. They are morally combatants, identical to conventional commanders, at all levels, that have leadership positions during operations and in combat support, logistic supply, maintenance, pay etc and, thereby, liable to lethal force at all times, except when they are *hors de combat*.

Proposing that the use of victim, time or command initiated IEDs share an asymmetric equivalence to conventional munitions such as booby-traps, mines, and claymore-type devices, allows legitimate comparisons within IHL (which legally binds all parties to an armed conflict) and CJWT to assess the liability to lethal force of irregular forces. Those within the IED network, attackers, facilitators, trainers and leaders, are morally liable to comparable justice with conventional forces – frontline troops, engineers, logisticians, paymasters, trainers, commanders and those manufacturing, storing and supplying booby-traps, mines and claymore devices for use in conflict. Morally, those within the IED network embody combatant status, whatever lexicon of war is used to define them. An off-duty conventional soldier is no less a capable soldier and will presumably return to active duties. Similarly, there is no moral reason why an irregular fighter should be considered any less always a combatant, even when he is tilling the land or working legitimately in a factory, as they have no commitment to abide by the state practices of distinguishing themselves as reservists. What seems clear is that clothing or insignia, contract or covenant, are not distinguishable conditions of combatant status for irregular fighters in MAC, and hence the need for novel but discernible designations as I propose.

Technological developments, improved intelligence, training and procedures, will all assist militaries to discriminate better but it will remain challenging for the conventional warfighter; irregular forces will obfuscate their status. Therefore, prudence remains paramount as a virtue. Acceptance and employment of ICRC Customary IHL by irregular forces is most unlikely. The evidence is that they deploy mass, hazardous IEDs, have no compunction, seek minimal if any compromise, care little for civilian casualties, and certainly have no desire to follow any spirit of IHL[57] – they have little, if any, deferential moral code. Conventional forces deploy fail-safe

[57] Marking areas containing victim operated IEDs for example. The IRA, during its most recent campaign sought to avoid civilian casualties and would often, in Republican areas, warn locals sufficient to keep them away from a target area, where a terrorist operation involving an IED was planned. The number of civilian casualties caused by

mines in marked or at least recorded minefields; they seek to cause enemy casualties, canalise them and prevent their freedom of manoeuvre. Irregular forces deploy victim operated IEDs, constructed without quality assurance, self-destruct capability, or formal recording, with precarious switching mechanisms, and often in civilian occupied areas for broader intentions – including to intimidate, coerce, terrorise and even intentionally kill civilians. The latter is significantly more indiscriminate, both during and post conflict. It is, in fact, *malum in se*.

In the end, improvised weapons are still weapons – IEDs are lethal, often indiscriminate and kill proportionally more people in MAC than other weapons – and improvised combatants are still combatants, not some form of improvised innocent undeserving of punitive justice. Those within the IED network, as described, are party to MAC and recognise that, notwithstanding its frequently immoral use, the IED is a force multiplier. By deliberately not distinguishing themselves, they act perfidiously in accordance with Article 44(3) of the 1977 Additional Protocol I, which seeks to promote 'the protection of the civilian population from the effects of hostilities' by obliging combatants 'to distinguish themselves from the civilian population while they are engaged in an attack or in a military operation preparatory to an attack.' Irregular forces perform acts of moral turpitude and conventional forces must defeat them morally and lawfully, including discriminately; a developed moral guide such as this one is necessary.

Section 2: Urbanisation, collateral damage and transforming the rule of double effect

Urbanisation is the proportional increase of people living in towns and cities compared to rural areas; it is a socio-economic phenomenon. People move to urban areas to improve opportunities in such as work, education and healthcare. Urbanisation is more apparent in lower economically developed countries, where MAC is more likely. By 2050, '66 per cent of the world's population

IEDs in MACs, across the Greater Middle East, overwhelmingly contradicts any proposal that such irregular fighters take any feasible precautions to protect civilians from their effects.

is projected to be urban' compared with '30 per cent' in 1950 and '54 per cent… in 2014'.[58] Irregular forces in MAC will continue to move conflict purposely into more built-up areas, urbanising warfare, to exploit their own fighting power and offset the conventional military advantage of regular forces.

This section examines urbanisation in MAC and analyses its impact on moral thought relating to discrimination, including: the likely increase in civilian casualties from urbanisation; a lack of desire for intervention by developed countries because of the impact of their own casualties and collateral damage on national and international politics; a CJWT response to wage war morally whilst an enemy does not; how the doctrine of double effect needs a modern revision, a recognition that intention needs to be more morally robust with demonstrative evidence; and that improved technologies in surveillance, targeting, stealth and particularly predictive analytics have the potential to enhance the task of discrimination and reduce collateral damage.

From Section 1, the IED is an exemplar of the irregular force's physical component of fighting power. Evidence from Action on Armed Violence shows a rise in the numbers of IED incidents occurring in urban areas.

- In 2013, 62% of all IED incidents took place in populated areas, like markets and cafes. This is compared to 51% in 2011.
- Civilians are at much greater risk from IEDs in populated areas. 91% of casualties from IEDs in populated areas were civilians, compared to 42% in other areas.[59]

Developed countries must address the problem of greater urbanisation in MAC as it inevitably increases the potential for collateral damage, caused by all forms of violence, not just IEDs. The challenge is exacerbated by the ever-growing intolerance, morally understandable, of civilian

[58] UN. Department of Economic and Social Affairs, 'World Urbanization Prospects: the 2014 Revision', New York: UN Publishing, 2014, p. 1, accessed 19 Mar 2019, https://esa.un.org/unpd/wup/publications/files/wup2014-highlights.Pdf.
[59] Action on Armed Violence, 'The Impact of IEDs: three years of data, 2011-2013', 1 December 2014, accessed 19 Mar 2019, https://aoav.org.uk/2014/three-years-ieds/.

casualties by developed nations. Some expectation-management is required; a compromise is necessary between these two dichotomous positions.

Irregular forces purposely exploit urbanisation to reduce the likelihood of direct attacks against them by conventional forces. Irregular forces take advantage of efforts that developed countries make to uphold moral obligations, international law, conventions and humanitarian concerns in restraining the use of force. These codes of conduct and agreements, to a large extent reflecting the prudence and reverential wisdom of our Christian forbears, aspire us to state practices that withhold the worst excesses of war, including the killing of non-combatants. Further, collateral damage brought about by the character of MAC, intentionally designed, established and exploited by irregular forces, is holding an unhealthy sway in shaping political thinking, having more sanctity assigned to it than is valuable or constructive. In MAC, as in world politics generally, if the good do not shape for good outcomes, then they will be shaped by alternatives that can be particularly bad, and in the case of Syria since the 'Arab Spring' of 2010, tragic.

A mix of questionable legality of intervention, UK troop casualties, collateral damage and discomfort in not witnessing a conclusive success following recent wars in Iraq and Afghanistan, particularly Iraq, swayed the UK Parliament to reject supporting US intervention in Syria, notwithstanding the Syrian regime's use of chemical weapons against its own people. US Secretary of State, John Kerry, stated that 'Barack Obama's plan for military intervention in Syria was abruptly derailed by David Cameron and British members of parliament'.[60] In turn, the US President decided not to continue with his intervention strategy, even after witnessing a most abhorrent war crime. Later, representing Prime Minister Cameron's personal view, George Osborne's assessment of the political decision not to support military action in Syria was that it

[60] David Smith, 'John Kerry links Britain to derailing of Obama's plan for intervention in Syria' in *theguardian*, 5 January 2017, accessed 19 Mar 2019, https://www.theguardian.com/world/2017/jan/05/john-kerry-us-syria-intervention-plan-britain-obama.

was a moral failure. In parliament he stated: 'We have come to a point where it is impossible to intervene anywhere, that we lack the political will as a West to intervene. But I have some hope out of this terrible tragedy in Syria, which is we are beginning to learn the price of not intervening.'[61]

Similarly, reflecting on the year 2016 being the first one without the death of a UK serviceperson on operations since 1968, and before that since World War Two, former First Sea Lord and security minister, Lord West, said 'I'm absolutely delighted that not a single member of our Armed Forces has been killed on operations.'[62] He went on to say, however, that 'I hope it isn't because in this very, very dangerous world that our nation is not willing to use our military for the security of our country' and 'I fear there's a nervousness in our nation about using the Armed Forces and that worries me.'[63] The view is echoed by Gen Sir Nick Carter, now Chief of the Defence Staff UK, who fears that following wars in Iraq and Afghanistan, deploying ground troops 'has become difficult for people to comprehend'.[64]

For those remaining convinced that Western intervention would have been too costly, in terms of collateral damage, and swayed by experience of recent interventions in Iraq and Afghanistan, as at December 2018 the Syrian conflict had witnessed up to '560,000 killed in seven yrs of war… some 104,000 were tortured to death in Syrian government jails'[65] – a consequence of civil war

[61] David Singleton, 'George Osborne delivers 'speech of the parliament' on tragedy in Aleppo' in *Total Politics*, 13 December 2016, accessed 19 Mar 2019, https://www.totalpolitics.com/articles/news/george-osborne-delivers-%E2%80%98speech-parliament%E2%80%99-tragedy-aleppo. Following the alleged use of chemical weapons again by the Syrian Regime on 4 April 2017, Foreign Secretary Boris Johnson stated that 'the people of Syria are today paying a price for our collective inaction over the last 5 years and the decisions we took.' Boris Johnson, 'Foreign Secretary Statement at Syria Conference in Brussels' in *GOV.UK*, 5 April 2017, accessed 19 Mar 2019, https://www.gov.uk/government/speeches/foreign-secretary-statement-at-syria-conference-in-brussels.
[62] Ben Farmer, 'Forces have first year since 1968 with no one killed on operations' in *The Telegraph*, 1 January 2017, accessed 19 Mar 2019, http://www.telegraph.co.uk/news/2017/01/01/forces-have-first-year-since-1968-no-one-killed-operations/.
[63] Ibid.
[64] Ben Farmer, 'Public viewing soldiers as victims risks damaging Army, says Chief of the General Staff' in *The Telegraph*, 8 July 2017, accessed 19 Mar 2019, http://www.telegraph.co.uk/news/2017/07/08/public-viewing-soldiers-victims-risks-damaging-army-says-chief/.
[65] Syrian Observatory for Human Rights, 'Syria: 560,000 killed in seven yrs of war, SOHR', 12 December 2018, accessed 19 May 2019, http://www.syriahr.com/en/?p=108829.

involving the Russian-backed Syrian regime, rebel groups and ISIL. Realities of our own casualties, the potential for collateral damage, the features and measures of success in interventions, and our moral responsibilities to our fellow citizens must be clearly explained, in order for the general public and their elected representatives to understand and appreciate the consequences of MAC.

Civilians caught in the crossfire of war have demonstrated their preparedness to endure considerable collateral damage, including the deaths of thousands of innocents, and much more than some humanists or ethicists would have us consider acceptable or possible. For example, according to Emeritus Professor of History at Reading University, Andrew Knapp, Allied bombings over France during World War Two killed around 57,000 civilians, a number similar to British civilian victims of German air raids (60,500).[66] There is no suggestion that Allied bombings were not controversial, or that the events did not physically and emotionally scar many French and Allied people involved. Knapp acknowledges that for these similar casualty numbers of French and British civilians, the Allies released more than seven times the tonnage of bombs on France in comparison to the Nazis on Britain.[67] One deduction not made by Knapp is that the proportionally lower casualty rate per tonnage of ordnance, caused by the Allies, is likely to have been due to a genuine intention to minimise civilian casualties.

Knapp analyses in detail the Allied bombing of Le Havre in preparation of the town's and France's liberation in September 1944. He states that the preceding 'week of air raids which, though militarily quite ineffective, destroyed most of the city and killed between 1500 and 2000 French civilians' and concludes that the event 'has continued to define local memory over six

[66] John Laurenson, 'D-Day anniversary: France's forgotten Blitz', in *BBC News*, 5 June 2014, accessed 19 May 2019, http://www.bbc.co.uk/news/world-europe-27703724.
[67] '"It is also true that France took seven times the tonnage of [Allied] bombs that the UK took [from Nazi Germany]," says Knapp. "Roughly 75,000 tonnes of bombs were dropped on the UK [including Hitler's V missiles]. In France, it's in the order of 518,000 tonnes," he says.' Ibid.

decades.'[68] At the 70th anniversary of the Normandy Landings, where similar numbers of Allied soldiers and French civilians were killed (around 2,500), President M. François Hollande stated at the international commemoration ceremony: 'Normandy's civilians who suffered under the bombs, who suffered considerable losses and no longer knew whether to share their grief or their joy – their grief at losing loved ones or their joy at regaining their freedom.'[69] He also said of D–Day veterans that 'they were heroes, all those men who advanced and went on advancing for our freedom… Yet freedom is always a struggle. It can never be taken for granted.'[70] I infer that, overall, French civilian sacrifice for freedom was indeed great but that it remains worth the cost ultimately to them; the traumas left are indisputable, as are how much greater they would have been had the Nazis succeeded.

Care must be taken to ensure that the moral and cultural demands of developed countries – fearing any collateral damage and believing that intervention is acceptable if and only if casualties are inconceivably low – do not overburden the ability of their forces to deliver the security component in MAC. It is, after all, an essential enabler for political and socio-economic post-conflict regeneration. The hope is to convince the civilian population that a prosperous future is more likely by rejecting the irregular force and supporting the regular force. Recalling Ramsey's argument from Chapter 3, if the strategic hamlet programme, a moral and practical attempt to impose controls on a situation created by insurgents, did not entice the 'non-combatant to become separated from the combatant' then attacks on discriminate military targets in areas controlled by insurgents, which included non-combatants, were to be 'determined by the principle of proportionately lesser evil'.[71] Notwithstanding greater urbanisation, civilians in

[68] Andrew Knapp, 'The Destruction and Liberation of Le Havre in Modern Memory', in *War in History*, 2007 14 (4) 476–498, p. 476, accessed 19 May 2019, http://journals.sagepub.com/doi/pdf/10.1177/0968344507081551.
[69] M. François Hollande, 'President Hollande pays tribute to D-Day heroes on 70th anniversary' in *Embassy of France in London*, 6 Jun 2014, accessed 19 May 2019, http://www.ambafrance-uk.org/President-Hollande-pays-tribute-to-23524.
[70] Ibid.
[71] Ramsey, 1968, p. 438.

MAC must likewise be given the best opportunity to separate themselves from an irregular force's control and influence, by conventional force strategies.

So, what is a Christian moral response to battlespace urbanisation, given that revised strategies by developed countries and their militaries are necessary, and which meet the tests of *jus in bello*, while the actions and activities of irregular forces do not? The question arises of how intention and the rule of double effect are to be interpreted in this new character of conflict – it being the principal mechanism for considering collateral damage – when growth in urbanisation is likely to generate levels of collateral damage that developed countries will find increasingly intolerable. Analysing the significance placed on the actual numbers of civilian casualties, and the mistrust between militaries and agencies in the veracity of casualty figures, Chapter 3 concluded that suspicions raised by intention and the rule of double effect must be overcome. To do so requires a review of how right intention can be expressed, made sufficiently visible or recognisable, and witnessed in MAC.

How developed countries discriminate, accept a higher level of collateral damage than they may consider necessary on first review, and determine its permissibility, is the considerable moral challenge of MAC. As states seek to introduce ways and means to reduce collateral damage, the rate of reduction may be less than envisioned because of the way that the enemy influences, shapes and exploits the battlespace – this must be articulated to political leaders, ethicists, humanitarians and the general public, as previously stated. Comprehending the freedoms and constraints available to deliver a necessary military effect is required: the art of the possible needs to be understood. In earlier chapters, I contested John Ford's Christian view that the rule of double effect permits wantonly indiscriminate action, because a genuinely discriminating intention will take objective steps to avoid or minimise casualties. The USCCB similarly challenged the developed thoughts on the rules of intention and double effect, and Ramsey

acknowledged that people's intentions will always be suspicious 'unless they are also controlled by some more objective determination of right *action*.' In seeking a good effect by right action, while ensuring his doctrine of double effect, Ramsey writes:

> The modern improvements of the rule make it clear that the good effect must not only be the formal object of the intention but also the immediate material object of the physical act. More simply, the good must be not only willed directly but also done directly, if the agent is not to be held directly accountable also for the foreknown evil consequence of his action.[72]

Walzer's development of the doctrine of double intention allows developed countries to reinforce more visibly their moral obligation to minimise civilian casualties: 'What we look for in such cases is some sign of a positive commitment to save civilian lives… if saving civilian lives means risking soldier's lives, the risk must be accepted… [and] civilians have a right that "due care" be taken.'[73] Technological advances in guidance and smart munitions are examples of an intention, positive commitment and conviction to improve accuracy and discrimination, reduce collateral damage, and therefore save civilian lives; likewise the recording of decision-making processes leading to military attacks and recording the attacks themselves. The responsibilities to protect civilians while fighting in MAC and the morality of soldiers taking additional personal risks, in order to reduce civilian casualties, are analysed in Section 7 below. However, the right that civilians have 'due care' – sufficient care taken, so far as the circumstances demand it – is too vague for MAC and urbanisation. Other recent ethical views such as, '[p]roducing a frame of mind that will limit collateral damage...',[74] are wise but, again, lack the practical application necessary for armies. I can testify that the British army promotes ethical conduct, including due care for civilians and producing a frame of mind to limit collateral damage, and my experience of serving with NATO nations is similar. Understandably, such testimony is not sufficient evidence to many who seek more visibility and accountability. As

[72] Ramsey, 1961, p. 55.
[73] Walzer, 1977, pp. 155–6.
[74] C A J Coady, 'Collateral immunity in War and Terrorism', in *Civilian Immunity in War* ed. Igor Primoratz (Oxford: OUP, 2007), p. 157.

shown in Chapter 2 and Section 1 above, distinguishing combatant from non-combatant in MAC is problematic; urbanising war is an active enemy strategy, seeking to increase collateral damage from any attack by conventional forces.

No doubt influenced by prolonged internal and external conflict and terrorism in Israel, Michael Gross' view of discrimination at first seems not dissimilar to that arising from my analysis.

> Many civilians take a direct or indirect role in the fighting. As such, some civilians are vulnerable to lethal harm while others remain subject to nonlethal harm. Asymmetric war expands the range of permissible civilian targets that each side may attack without incurring charges of terrorism or disproportionate harm.[75]

Proposing that asymmetric war permits any, never mind expands permissible and intentional targeting of civilians is inconsistent with CJWT. If civilians choose to participate actively in a warlike role then, as this thesis suggests, they obtain a reclassification of combatant status – civilians must remain a component of non-combatants and subject to incidental harm only. Rather than asymmetric war expanding the range of permissible civilian targets, blame should lie with the irregular force, not the conventional force, because the former deliberately enlarges the area of civilian death and damage that is legitimately collateral by their intentional shaping of the battlespace.

Some modern ethicists of war, including Coady, consider the principle of discrimination to be absolute. Coady refutes Gross' view that contemporary warfare is so different that many traditional moral and legal prohibitions are no longer applicable, with his own view that 'noncombatants remain immune whether or not their immunity obstructs someone's supposed right to a fighting chance.'[76] Without a fighting chance, however, and the likelihood of a positive

[75] Michael L Gross, 'Asymmetric war, symmetrical intentions: killing civilians in modern armed conflict' in *Global Crime*, vol. 10, no. 4, pp. 320–336, 2009, p. 320, accessed 19 May 2019, http://dx.doi.org/10.1080/17440570903248262.
[76] C A J Coady, Book Review of Michael L. Gross, *Moral Dilemmas of Modern War: Torture, Assassination, and Blackmail in an Age of Asymmetric Conflict* (Cambridge: CUP, 2009) in *Ethics & International Affairs*, vol. 25.1

outcome, war should not be engaged under *jus ad bellum*. The 'immunity' of non-combatants that Coady proposes is the language of rights: although novel to just-war theory, it should be resisted, in my view, in favour of the language that I am developing in this thesis – that of intention, virtue and duty. Coady describes that 'ethics should form a vital part of the body of knowledge we have and continue to seek about the most sensible and sustainable answers to the question "How should we live?"' [77] Perhaps Coady's view would soften if he had lived surrounded by the experiences of Gross' Israel, rather than his own conflict-free country of Australia. Certainly, the experience of nuclear stalemate, making the world safe for insurgency, and the Vietnam War, compelled Ramsey to reform his view on discrimination. Most ethicists reconcile the real horrors of war by invoking a version of the rule of double effect as described. Some, like Catholic William V. O'Brien 'contend that the principle of discrimination, while extremely important is not absolute. Rather, it is a principle that requires that civilian damage be proportionate to the military advantage gained by a military measure.'[78] However subtle the application and in whatever a developed form to the issue of collateral damage, the character of MAC necessitates a further transformational review of the rule of double effect.

The basic premise that military advantage must outweigh foreknown but unintended collateral damage remains extant. As already referenced above, it cannot be determined by any calculable devastation or casualty numbers but only, reasonably, by what is willed and done: in other words, the deliberate intention and direct action. CJWT does not ask if the legitimate killing of combatants is successfully completed then how many non-combatant casualties are justifiable. Considering civilian immunity and rhetorically questioning whether 'imposing a one-in-ten

(March 2011), on 6 April 2011, accessed 19 May 2019, https://www.carnegiecouncil.org/publications/journal/25_1/reviews/003.html/:pf_printable.

[77] C A J Coady, 'The Ethics of Armed Humanitarian Intervention,' in *Peaceworks No. 45*, United States Institute of Peace, July 2002, p. 14, accessed 19 May 2019, http://www.usip.org/files/resources/pwks45.pdf.

[78] William V. O'Brien, 'Just War Doctrine's Complementary Role in the International Law of War', in *International Law Studies 1995: Legal & Moral Constraints on Low-Intensity Conflict*, vol. 67, ed. Alberto R. Coll, James S. Ord, & Stephen A. Rose, p. 193, accessed 19 May 2019, https://archive.org/stream/legalmoralconstr67rose/legalmoralconstr67rose_djvu.txt.

chance of death on them is justified, while imposing a three-in-ten chance is unjustified'[79], Walzer agrees that the degree of proportionate risk of non-combatants becoming casualties is variable and situation dependent.

A Christian view of how intention and direct action outweigh collateral damage begins with the Christ-based virtue of prudence, the principal one for Aquinas. It balances the foreseeable consequences of not meeting the military objective, which is then a measure of acceptable losses projected of one's military resources and time, against the foreseeable or foreknown collateral damage. So, the targeting force of a military objective must identify the most likely and worst cases of collateral damage, judge that the military advantage is in favour of attacking proportionately and with due care, to uphold the current form of double effect/intention. Beyond this, driven by the contemporary need to demonstrate that intention is more morally robust, the targeting force must also assess and record the most likely and worst-case consequences of halting the military action, using modern analytical and supporting tools where time, facilities and locations permit.

Predictive analytics, particularly the development of artificial intelligence, in support of operational analysis and decision-making, has the potential to assist substantially the veracity and validity in modelling potential outcomes. Militaries are experienced in modelling courses of action from operational analysis – the systematic examination of a military activity by statistical analysis to determine efficiency with a view to optimising or improving results. Military judgment provides the real-time effectiveness to operational analysis and the subsequent plans and conduct of troops. Artificial intelligence has the potential to provide a step-change in analysing and predicting multiple situations and options simultaneously, in order to make more effective, efficient, legally and morally supportable decisions. The desire from artificial

[79] Walzer, 1977, p. 156.

intelligence is to establish that irregular force activities are the primary causal link to collateral damage, and that regular force targeting is verifiably seeking to minimise it. In so doing we begin to overcome Ford's discrediting of the doctrine of double effect: 'we drop our bombs but say we withhold our intention to harm innocents,' by now providing stronger evidence of objective determination.

Artificial intelligence is developing, releasing humans from executing tasks or performing them quicker, and from an immense source of data. For a simple example, a few talented individuals with good mental agility can take a word and make anagrams in a short time. However, anyone able to use a computer search engine (Google, MSN, Yahoo etc) can perform the same task quicker and achieve all options almost instantaneously, constrained only by the words contained in the dictionaries used. The strength of artificial intelligence is the ability to analyse quickly and systematically from mass data, in order to assist with such as visual and noise (voice) recognition, options analysis and decision-making. However, while data sources are insensitive, the algorithms that interrogate, predict and offer solutions are of human design and, therefore, need to be ethically programmed; my emphasis on CJWT and 'intention' over 'rights' aligns me to such programming being based on virtue ethics.

Artificial intelligence could be used to analyse multiple ethical conditions or situations from multiple moral and legal baselines, but it is vital that the ethical basis of its algorithms is open to scrutiny, even if not all agree. For example, internet comparison websites for insurance, hotel rooms etc use data mining techniques to collect data on companies/hotels, compare them and offer priorities against price, distance from a location, quality (star-rating) etc. However, some funding for these websites is provided by companies or hotel chains, which steers the websites to promote these companies or hotel chains above others. Therefore, the results are not genuinely impartial. Another example is with respect to decision-making. If our self-drive car interprets

that an accident is about to occur but that automatic brake application will still cause our car to crash into the vehicle in front, then unless all vehicles are within a system that can override the whole fleet, our car will crash into the car in front or be veered into oncoming traffic. Our car's artificial intelligence may be able to compute the energy transfers of each of those options, but not the number of young children in other vehicles, any not strapped in or any liable to increased harm due to ailments. Moreover, how would our car's artificial intelligence be morally programmed to manage the following situation: our car crashing is likely to cause our death but veering and potentially hitting a pedestrian may save our life? What is possible is that the decision-making process is open to subsequent interrogation. Given time, artificial intelligence can add great value by offering multiple options quickly, scrutinising them and allowing better informed decision-making. It provides the potential to be the next step in enhancing the application of the rule of double effect – greater recognition and demonstrative evidence that our intention to minimise collateral damage is, morally, more robust.

The situation remains fluid, however, as does assessing discrimination and proportionality, and revising decisions, where new innovations like artificial intelligence may or may not be of assistance eg if there is insufficient time. A legitimate target in an urban area may attract a direct attack. Prudence may suggest an attack mid-morning, when most people are working, mothers and babies are concentrated together in communities, and children are at school. Prioritising assets to execute the attack at this stage demonstrates the deliberate intention and direct action to minimise civilian casualties – it is recognisable to an impartial observer. For the same target the moral situation would change for a night-time attack, if it is almost guaranteed that surrounding dwellings are inhabited,[80] and even more so if it is discovered that a community of mothers and children, escaping maltreatment by irregular forces, are holed up in an adjacent building. In this

[80] Unless the ordnance used is sufficiently accurate and surgical in its effect, thereby most unlikely to cause other casualties.

latter example, it is almost inconceivable of military advantage ever being sufficient for an attack. If a target is assessed to be so critical, for example if their removal from the battlespace is very likely to prevent the deployment of hundreds of new IEDs, but the target is fleeting (available only for a short duration), then prudence must again confirm that target neutralisation outweighs collateral damage, with the latter assessed and weighted from possible, through probable to certain and considered within the judgment. The key is that the outcome forecasted by objective modelling of not neutralising the target, exploiting artificial intelligence, and subjective human understanding, is the best attainable.

In MAC, morally, an attack may at first seem sufficiently discriminate and proportionate within a current interpretation of the rule of double effect. Like counter-insurgency, people become the centre of gravity in MAC, but unlike a counter-insurgency, where insurgents intimidate and selectively terrorise people to follow their will, irregular forces in MAC urbanise conflict, create involuntary human shields by preventing displacement, intentionally kill civilians considered their own, and export terrorism. Compared to previous irregular conflicts, conventional forces must overcome these additional characteristics; countering the effects of urbanisation is described in this section, whereas overcoming human shields, protecting civilians from intentional attacks by irregular forces, and stalling the export of terrorism, are analysed later.

Targeted attacks that would be legally discriminate and proportionate in other forms of conflict may still be irresponsible if, even unintentionally, people become disaffected with conventional forces. This is particularly the case if an irregular force's immoral treatment of the people has provided conditions for the conventional force to begin garnering support for their intervention. Growing such support is essential for a successful campaign in MAC. What have been described as "unintentionally irresponsible" attacks can jeopardise support and ultimately lead to a campaign failing. People are often very careful of outwardly displaying support for either side,

so as not to be subjected to possible reprisals later by the ‘victors’; any hard-earned locals’ support is a vital measure of success in MAC. Interventions that are seen to be morally or practically failing, like Vietnam, are likely to lose the support of locals, home support, and activate a quicker withdrawal of home troops, leading to unsuccessful campaigns.

Just counter-insurgents should not be held responsible for the unintended deaths of civilians where insurgents are culpable in making more civilians liable to justified killing. However, the contemporary media do hold them responsible (eg in Yemen), which renders otherwise justified killing imprudent and, therefore, unjustified. It is necessary to persuade the media to make their moral examination and discourse more sophisticated. Analysis from Chapter 3 demonstrates that, irrespective of the validity of Ramsey’s ethic on greater collateral damage being a symptom of fighting an enemy with immoral tactics, the morally supportable strategy never garnered sufficient Vietnamese civilian support and lost the will of the US public. A lesson is that it is wrong to fight in a moral war, even if fighting morally, when the strategy is knowingly not working. The moral killing of civilians unintentionally in such cases is politically imprudent and, therefore, unjust; for our moral intentions to be objective, it requires objective moral virtues as found in Christianity, which can be used to base our objective analysis and prudent decisions.

Again, artificial intelligence should be a game changer. My analyses of recent MACs in Iraq and Afghanistan show some evidence of sub-optimal strategies, driven in part by a desire to constantly demonstrate discriminate actions and reduce collateral damage to levels that could never satisfy a growingly sceptical international community. The consequence was that military objectives, necessary for an overall successful campaign, were unachievable without accepting incidental civilian casualties. As artificial intelligence matures, and societies become convinced of its value in assisting decision-making – by analysing vast data to deliver better legal investigative support and correct medical diagnoses – then similar planning and forecasting tools

could be used in military preparation, which is interrogatable and provides evidence of a higher moral desire to improve discrimination and minimise collateral damage.

Conclusion

If developed countries are to engage in MAC, then a new interpretation of the rule of double effect must allow for campaign strategies that overcome the seduction to reduce civilian casualties to levels that are unachievable. The issue of collateral damage within this new character of war requires public understanding; those complicit (facilitation, training and leadership roles) and not blameless in their support to irregular forces are liable to potential harm, and the blameless liable to unintended collateral damage, given that a reasonable attempt has been made to enable their separation from the irregular force. This attempted separation must not be at all cost and prudence must prevail, otherwise irregular forces will exploit delay and prolong conflict for their benefit. My analysis, from Sections 1 and 2, determines that combatant status must be redefined for irregular forces in MAC. Civilians will remain highly vulnerable to collateral damage because of the way that irregular forces purposely shape and exploit the battlespace. All non-combatants should, however, remain invulnerable to intentional attack. Collateral damage will probably be higher than anticipated in future MAC, necessitating discourse and a programme of expectation-management across politicians, ethicists, media, humanitarians and the general public; that discourse can begin with reference to the outcomes of Western democracies not intervening in Syria, following the bloody crushing of pro-democracy demonstrations in 2011.

Unlike the counter-insurgency in Vietnam, which although morally supportable lacked campaign success, MAC has exposure to exponential levels of technology growth; for example, in surveillance, guidance and stealth today, and emerging predictive analytics, which all aid the task of discrimination. The threshold for conventional troops to determine a combatant from a

non-combatant is to reasonably believe this to be the case; moral reasoning will be better informed in future by technological advances, particularly artificial intelligence. Also, unlike previous insurgencies, civilians have been able to show in the most austere and threatening environments, like besieged Aleppo and Mosul, that through global communications, they have worldwide access to the internet and all forms of communications: media, telecommunication, radio and TV stations, and social media outlets. In the case of Aleppo, civilians were fully aware of their exploitation as human shields, the ruthless nature of ISIL if they demonstrated any disloyalty, and the Russian-backed Syrian regime's betrayal of the laws of war, using chemical weapons and deliberately targeting non-combatants. As shown by the French during World War Two, civilians can endure significant collateral damage if they believe in the intention of intervening forces. Conventional forces in MAC can now present their strategic intent to all in a way never previously possible and, therefore, with the potential to positively shape the narrative – the integrity of that message will be measured by the visible witness and subsequent reflection of their intentions and actions on discrimination.

Section 3: Erosion of non-combatant immunity by irregular forces

Johnson is one of many that describe how irregular forces in MAC increasingly attack civilian targets intentionally, including their own communities and without contrition. This section illustrates the types of activities carried out by irregular forces, reviews the immorality of such actions, and examines some moral and immoral responses witnessed during the recent conflict involving ISIL in Syria and Iraq. In comparing these responses and focusing on the military-strategic objectives, the aim is to discern a Christian response to the erosion of non-combatant immunity by irregular forces in MAC.

Conflicts this millennium, involving coalition forces in Iraq and Afghanistan, witnessed the frequent use of suicide bombers where no security forces were present, at market stalls and the

likes, indicating that civilians were intentionally targeted. Record numbers of civilians continued to die in Afghanistan, years after coalition forces departed from combat operations in 2014, with the UN concerned with 'the increasing direct targeting of civilians, including ethnic and religious minorities'.[81] By succeeding with suicide attacks and using violence arbitrarily, irregular forces demonstrate the inability of conventional forces to protect civilians. ISIL exemplifies such sickening and repugnant actions by directly, deliberately and intentionally targeting non-combatants in areas of their control. They indirectly target civilians too by, for example, positioning themselves near civilian habitats in the hope of discouraging conventional force attacks against their fighters; they also locate some equipment and explosive stores near civilian habitats to encourage collateral damage from any attack. Further, having urbanised conflict, they enforce human shields by preventing civilian displacement, in order to defend strongholds against counter-attacks by conventional forces: like Mosul from the Iraqi army supported by coalition air strikes and Aleppo from Russian-backed Syrian offensives.

'The use of human shields is prohibited' in IHL, which classifies the activity as a 'war crime'.[82] Morally, forces may attack military objectives where enemies make use of human shields, while simultaneously being obligated to ensure proportionality – the projected military advantage must be greater than the foreseen but unintended loss of civilian life. This is irrespective of whether human shields are forced, coerced or volunteer. Using family, friends or local communities as quasi-human shields in MAC, whether intentional, unintended or unbeknown to them, does not prevent the moral right to target military objectives, including elements of the IED network, within the constraint of proportionality, prudently assessed. Irregular fighters, facilitators, trainers and leaders live among the people, siting themselves and their activities near to civilians. They cynically exploit any genuine desire by conventional forces to ensure discrimination and

[81] Fraidoon Poya, 'Afghanistan: Civilians continue to die in record numbers, new UN report shows' in *UN News*, 10 October 2018, accessed 20 May 2019, https://news.un.org/en/story/2018/10/1022742.
[82] ICRC Customary IHL, 'Rule 97. Human Shields', accessed 20 May 2019, http://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule97#Fn_91_2.

proportionality; irregular forces anticipate less aggressive and less than lethal counters against them when they are within civilian surrounds.

ISIL's forcible retention of civilians in its strongholds throughout northern Syria and Iraq was clearly immoral: massacring some in Mosul and hanging their bodies at intersections, for 'leaking information' by cell phones to Iraqi security forces; stockpiling chemicals such as sulphur and ammonia in civilian centres, either to deter attacks from coalition forces that could release them as collateral damage or to use them deliberately on civilians; deploying teenagers and even children as suicide bombers; and displacing 'tens of thousands of residents for use as human shields as it came under increasing military pressure.'[83] UN reporting of these activities demonstrates a vileness that developed countries find challenging to contend with but which their military forces have to overcome. Similarly, UN records describe that in late 2015, ISIL in Syria 'continues to murder, torture, rape, and forcibly displace civilians'[84] and a year later that ISIL 'has committed the crime of genocide as well as multiple crimes against humanity and war crimes against the Yazidis'.[85] In October 2016, Russian-backed Syrian forces, trying to retake the city of Aleppo from ISIL, opened what they claimed to be safe corridors for civilians to evacuate from the west of the city. ISIL militants prevented civilians from fleeing and, according to the UN, were killing 'civilians in western Aleppo city with their indiscriminate barrage of mortars, oftentimes homemade' including children '[b]ut even with - or perhaps despite - this knowledge, armed groups continue to fire these mortars into civilian-inhabited areas.'[86]

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[83] Ravina Shamdasani, 'Isis executing scores and stockpiling chemicals in Mosul, says UN – video' in *theguardian*, 11 November 2016, accessed 20 May 2019, https://www.theguardian.com/world/video/2016/nov/11/isis-executing-scores-stockpiling-chemicals-mosul-un-video.

[84] Paulo Sérgio Pinheiro, 'Civilians in Syria suffering 'a living tragedy' with no end in sight, UN human rights expert warns' in *UN News Centre*, 3 September 2015, accessed 20 May 2019, http://www.un.org/apps/news/story.asp?NewsID=51788#.WCcyJY_XLIU.

[85] Human Rights Council, '"They came to destroy": ISIS Crimes Against the Yazidis', Reference A/HRC/32/CRP.2, dated 15 June 2016, accessed 20 May 2019, http://www.ohchr.org/Documents/HRBodies/HRCouncil/CoISyria/A_HRC_32_CRP.2_en.pdf.

[86] UNHR, 'Statement by Mr. Paulo Sérgio Pinheiro, Chair of the Independent International Commission of Inquiry on the Syrian Arab Republic at the 25th Special Session of the UN Human Rights Council' dated 21 October 2016, accessed 20 May 2019, http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20726&LangID=E.

Against such truly abhorrent activities, forces of developed countries remain morally compelled to plan campaigns that shape the battlespace, where possible, to enable civilians an escape from the clutches of any abuse by irregular forces. An example of an immoral strategic response, by a coalition of nations, is that alleged of the Russian-backed Syrian regime against ISIL, within Syria. In 2016 a UN panel 'found what it describes as "sufficient evidence" of three cases of chemical weapons use – two chlorine gas attacks on civilians by the Syrian air force… in Syria between 2014 and 2015.'[87] Chemical weapons are prohibited in international and non-international conflict, in accordance with ICRC Customary IHL, Rule 74 and the Chemical Weapons Convention, Article I. Syria agreed to destroy its chemical weapons in 2013, following a deal brokered by the US and Russia but there is mounting evidence that Syria did not destroy all of its chemical weapons or its manufacturing capability.[88]

That Syrian actions are war crimes, with those responsible potentially facing future trials, has been no deterrence. In fact, UN reporting records a 'dramatic escalation of violence' by the Syrian regime in late 2016 that saw 'the use of heavy weapons, including bunker-buster bombs, which have levelled much of Eastern Aleppo city with intolerable consequences for ordinary civilians.'[89] Moreover, the same Russian-backed Syrian forces, claiming to have opened safe corridors for civilians to evacuate from the west of the city, simultaneously prevented essential

[87] Virginia Gamba, 'INTERVIEW: The Syrian forces and ISIL used toxic chemicals as weapons – report', in *UN News Centre*, 30 August 2016, accessed 20 May 2019, http://www.un.org/apps/news/story.asp?NewsID=54795#.WCiwx4_XLIU.

[88] 'Chemical weapons inspectors have for the first time linked the sarin gas used in an attack in Damascus in 2013 to President Assad's stockpiles.' See Hannah Lucinda Smith, 'Sarin gas that killed thousands in Damascus is from Assad's stockpiles' in *The Sunday Times*, 31 January 2018, accessed 20 May 2019, https://www.thetimes.co.uk/article/sarin-gas-that-killed-thousands-in-damascus-is-from-assad-s-stockpiles-blf8vkwxr.

[89] Pinheiro, 2016. A later UN report states: 'From September [2016] onwards, the number of incidents involving prohibited weapons rose to new levels, with allegations of the use of chlorine, cluster munitions and incendiary munitions the most widely reported. Coinciding with bombardments of hospitals, the increased use of these weapons disproportionately affected civilians by compounding the suffering of victims prevented from obtaining adequate treatment.' See Human Rights Council, 'Report of the Independent International Commission of Inquiry on the Syrian Arab Republic', A/HRC/34/64, 2 February 2017, accessed 20 May 2019, http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/a_hrc_34_64.pdf.

humanitarian aid getting through to the city. The Syrian regime provided insufficient time for civilians to depart Aleppo, even if there had been no repression and prevention by ISIL. Some Syrian actions, backed by states like Russia, China and Iran, are indiscriminate and disproportionate; some, like deliberately targeting civilians in Aleppo, are *malum in se*. Attacks using such as chemical weapons could be considered reprisals against rebel use of chemical weapons – a permissible doctrine of Walzer.[90] An alternate Christian view is that 'the doing of such evil by one side can never justify the doing of the same evil by the other side in return.'[91]

Another immoral response occurred on 19 September 2016. Following a truce brokered by the UN – involving the US and its allies, together with Russia and other parties in and around the city of Aleppo – two Russian aircraft are believed to have attacked a Syrian Arab Red Crescent warehouse, as well as a humanitarian aid convoy near the city, killing 20 civilians, including an aid worker. Russia denies involvement but if it is true that the attack was intentional then it amounts again to a war crime. A day later, a medical facility was deliberately attacked from the air killing five people, including nurses. Physicians for Human Rights report that between March 2011 and December 2018, there have been '550 attacks on 348 separate facilities', killing '890 medical personnel… 494 attacks have allegedly been committed by Syrian government and allied forces';[92] not all these attacks can be considered foreknown but unintended collateral damage. During an aid convoy move into Ghouta in March 2018, '[a] World Health Organization official said the [Syrian] government had ordered 70 percent of medical supplies to be stripped out of the convoy' to prevent their use by rebels.[93] The intentional prevention of aid

[90] Walzer establishes the principle of non-combatant immunity in deontological terms but allows two possible exceptions. The first is supreme emergency and the second is reprisals. Walzer argues that belligerents may sometimes legitimately conduct reprisals if doing so persuades one's foes to cease committing the unjust acts that prompted the reprisals. See Walzer, 1977, ch. 13. 'It is the explicit purpose of reprisals… to stop the wrongdoing *here*, with this final act.' Ibid., p. 207 [Author's emphasis.]
[91] Ramsey, 1968, p. 434.
[92] Physicians for Human Rights, 'Anatomy of a Crisis, A Map of Attacks on Health Care in Syria', December 2018, accessed 20 May 2019, http://syriamap.phr.org/#/en/findings.
[93] Angus McDowall, Stephanie Nebehay, 'Aid reaches Ghouta but retreats after shelling; Syria presses assault' in *Reuters*, 5 March 2018, accessed 20 May 2019, https://www.reuters.com/article/us-mideast-crisis-syria/aid-reaches-ghouta-but-retreats-after-shelling-syria-presses-assault-idUSKBN1GH1HN?feedType=RSS&.

to civilians and medical support to injured combatants and non-combatants is immoral and illegal.

Irrespective of mutually agreed truces to allow humanitarian aid, some developed countries are prosecuting, or at least facilitating, intentional attacks on humanitarian aid agencies, medical facilities, medical staff and their patients. Along with intentionally attacking one's own civilians, it is a game changer and evidence of how MAC is still transforming in character as concluded in Chapter 1. Tirana Hassan, Crisis Response Director at Amnesty International, accuses Syrian and Russian forces of 'deliberately attacking health facilities [as] part of their military strategy.'[94] Such a claim resonates with that of Coady above in Section 1 that 'the primary purpose is to harm civilians.' Sadly, it is unlikely that the Russian pilots or the personnel that ordered the attacks will ever face trial for these war crimes. With Syria not having accepted the International Criminal Court's jurisdiction and Russia's permanent seat on the Security Council, Syrian war criminals are unlikely to be punished. Even if it is accepted that the Russian-backed Syrian Regime's goal of defeating ISIL, including in Aleppo, is morally supportable, its ways and means are clearly indiscriminate; with over 11 million of the 18.5 million population of Syria displaced, it is also grossly disproportionate.

Ramsey's argument was that counter-insurgency could still be fought justly when an insurgency does not. Insurgents intimidate, subvert, supress and kill civilians in order to impose their will on populations but MAC inflicts even greater tests on conventional forces, with the addition of random suicide bombings, intentionally killing humanitarian and medical staff, proliferating use of IEDs and hobby drones, cyber-war and inter-communal and ethnic conflicts within the main conflict, to name a few. Ramsey's ethic is not sufficient for MAC, therefore, and acknowledging

[94] Amnesty International, 'Syrian and Russian Forces Targeting Hospitals as a Strategy of War', 3 March 2016, accessed 20 May 2019, https://www.amnesty.org/en/press-releases/2016/03/syrian-and-russian-forces-targeting-hospitals-as-a-strategy-of-war/.

these added complexities, developed countries must still fight justly and discriminately – a reappraisal is needed. As analysed above, civilians can endure significant collateral damage if they believe that the intention of the intervening forces is morally good and for their genuine benefit. Tortuously inflicted by irregular forces in MAC, civilians could be persuaded that a level of collateral damage is a necessary side-effect, if it is believed to be genuinely minimised, by morally and lawfully dutiful conventional troops, in order to defeat the irregular force.

So, what could be a developed country or coalition's Christian-based response to a situation like that of ISIL in Syria, which is both discriminate and proportionate? Some lessons may be taken from the comparable situation in Iraq, with the Iraqi forces' offensive, backed by a US-led coalition, to retake the city of Mosul from ISIL control. Following Mosul's seizure by ISIL in 2014, a coalition offensive to retake the city began in October 2016. Concerns by human rights organisations that the use of heavy weaponry would result in large civilian casualties resonate with the USCCB's moral concerns of heavy weapons and large civilian casualties expressed in their pastoral letters; concerns were well-founded, particularly as residents would be used as human shields, fearful of leaving because of IEDs and ISIL snipers deliberately targeting civilians. In response, the Iraq-led coalition 'developed a plan… intended to reduce the possibility of civilian casualties and collateral damage' with the Iraqi government ordering 'residents to stay inside, fearing a mass exodus from the city' and the potential for greater civilian casualties.[95]

For some Iraqi troops, however, such as Captain Naqib Jaff, the strategy meant that air support 'hasn't been enough' and that they have 'never been in such a situation before. We would be fighting and there would be a family right next to us'.[96] Jaff's Iraqi and coalition troops were put

[95] Susannah George and Qassim Abdul-Zahra, 'Human Shields, Barricades Slow Iraqi Advance Into Mosul', in *Bloomberg*, 5 November 2016, accessed 20 May 2019, https://www.bloomberg.com/news/articles/2016-11-05/iraqi-units-clear-mosul-buildings-after-advances-is-attacks.
[96] Ibid.

at additional risk from coalition forces limiting military air support. This requirement to prevent the enemy targeting its own civilians, directly and indirectly, and simultaneously curbing the protection of one's own troops, is another characteristic new to MAC, which combines with urbanisation, analysed in Section 2; it is a moral challenge that must be overcome if *jus in bello* limits are not to be forsaken, as they have been by Syria and its supporters. Furthermore, the potentially good work done by the Iraqi-led coalition, in stark contrast to the Syrian regime, will be totally undermined if reports of 'men in Iraqi security force uniforms carrying out beatings and summary executions on the streets of Mosul'[97] are true and not isolated incidents.

The final topic of this section is potentially another game changer in how conventional forces react to the ever-growing rejection of moral conduct by irregular forces. As described above, irregular forces illegally use of human shields and quasi-human shields often, to deter conventional force attacks that potentially result in collateral damage. Irregular forces such as ISIL seem to have now demonstrated another repugnant act of herding civilians into areas that they predict conventional forces will attack legitimately, but preventing, where possible, any knowledge of civilian presence until after the attack, the propaganda from which they then exploit. Further, they also prepare such conventional force targets to have greater destructive impact by, for example, placing their own explosives around potential target areas so that they sympathetically detonate. This causes much more damage on impact than intended by the detonating warhead, which has been designed to minimise collateral damage. An irregular force's primary purpose is, therefore, to dupe conventional forces into causing large-scale and disproportionate civilian casualties, with severe repercussions on winning hearts and minds. On 17 March 2017, up to 200 civilians were killed by a US air strike on an identified ISIL position in Mosul. The US Commander in Iraq made an 'initial assessment that we probably had a role in

[97] Emma Graham-Harrison and Fazel Hawramy, 'Iraqi PM announces west Mosul attack as images of security forces' brutality emerge' in *theguardian*, 19 February 2017, accessed 20 May 2019, https://www.theguardian.com/world/2017/feb/19/violent-videos-threaten-iraqi-campaign-mosul.

these casualties', adding that he 'believe[d] that the Islamic State had a role in the casualties, either by herding civilians into the building or helping bring the building down through their own explosives.'[98] He went further stating that 'there were people that you really can't account for in any other way why they would all be there unless they were forced there.'[99] This may be a form of *indirect* killing of civilians but it is a deliberate and intentional act by ISIL, and a real challenge for conventional forces to contend with in an age of growing intolerance for civilian casualties.

Conclusion

CJWT compels all parties to a conflict to protect non-combatants from intentional attack, while allowing incidental damage, foreseen but unintended. Already proposed is that such allowance must be prudently enforced and that a programme of expectation-management across politicians, ethicists, media, humanitarians and the general public is necessary: to synthesise what is ethical, practicable and militarily achievable into new standards of contemporary culture and state practice, and where law is insufficiently clear or determinable. The historic context of just war presumes that the protection of civilians is from attacks originating from enemy forces. Now that asymmetric enemy forces are intentionally attacking their own civilians, conventional forces that enter MAC become morally obliged to protect those same civilians. This is a new criterion to CJWT: to *actively* seek to protect 'enemy' civilians to a moral degree comparable to 'friendly' civilians, while acknowledging its viability.

However, no matter how much desire, effort and resources are committed to preventing the irregular force's killing of its own civilians, abusing them as human shields, or attacking medical and humanitarian agencies, such prevention is achievable only by delivering sufficient security,

[98] Paul McLeary, 'As U.S. Airstrikes Rise, So Do Allegations of Civilian Deaths', in *Foreign Policy*, 27 March 2017, accessed 20 May 2019, http://foreignpolicy.com/2017/03/27/as-u-s-airstrikes-rise-so-do-allegations-of-civilian-deaths/.
[99] Ibid.

through military action and success, that enable socio-politico-economic leverage for nation-building. A novel concept is required by conventional forces and morally I propose that these civilian deaths be considered a form of incidental collateral damage: they are foreseen by conventional forces but are not intended by them, as they are clearly perpetrated by irregular forces. Conventional forces should seek to disengage these civilians from the irregular forces by morally and practically attempting to protect them, and where necessary imposing controls on a situation such as pacification projects. Conventional forces must not, however, self-impose constraints that see primacy of such civilian protection trump a higher moral obligation and duty, within CJWT, to serve justice and restore an ordered peace, which is achieved by defeating the irregular force and, thereby, inhibiting its ability to target its own civilians.

While military engagement endures in a MAC, irregular forces will continue to prosecute immoral acts such as intentionally targeting civilians, which is why conventional force strategies must remain primarily fixed on defeating the irregular force. Ultimately, this is more likely to bring justice, an ordered peace and an end to conflict quicker than if primacy is given to protecting civilians, which commits scarce military resources to the largely unsolvable problem of preventing direct and indirect attacks against them, by irregular forces that are living among them. A modern adaptation to the application of another of Aquinas' cardinal virtues is required – that of fortitude. Politicians, the general public and soldiers must confront the abhorrent actions presented by irregular forces in MAC, overcome their distressing and demoralising effects by reason, remaining steadfast in their will, and have the moral courage to do the right thing – deliver justice by defeating the enemy – rather than being adversely swayed by a growing reluctance to accept the realities of MAC. Striving for justice as a Christian virtue is through another Christian virtue, prudence, from which we derive what to do, and by yet another, fortitude, we attain the physical and moral courage to do it.

Section 4: Sovereignty of state borders

The legal position of state sovereignty with respect to war, defined as supreme authority within a territory, is that no country is to interfere in the internal mechanisms of a sovereign state. War or military intervention is only permissible against another state in self-defence, when invited to assist or when authorised by the UN. In an increasingly globalised world, irregular forces in MAC operate across state boundaries, holding no respect for border integrity or that of the international system. Rather, they exploit them to hide, plan, resource and regroup in safe areas eg Afghan Taliban fighters establishing safe havens in Pakistan. They may also establish diaspora with the intention of mounting operations from them. The following section establishes a CJWT-based moral position on targeting irregular forces in MAC across state boundaries, including when not invited by an external state. It also examines the challenges of an external state being unwilling or unable to defeat irregular forces within its boundaries, or exercise sufficient control over them to satisfy the needs of those developed countries involved and the international community.

From analysis in both Chapter 3 and Section 1 above, received criteria on what is permissible against those who furnish supplies to our enemies comes from Grotius when he writes: (a) 'he who supplies an enemy with things necessary for warfare is on the side of the enemy'[100]; (b) '[i]f, now, the enforcement of my right shall be hindered by the supplying of these things, and if he who supplied them has been in a position to know this… then he will be liable to me for injury culpably inflicted'[101]; and that (c) 'we must make distinctions with reference to the things supplied. There are some things, such as weapons, which are useful only in war; other things which are of no use in war...'[102] If Grotius' example of 'weapons, which are useful only in war'

[100] Grotius, bk. 3, ch. 1, sect. V, para. 2, p. 602.
[101] Ibid., para. 3, p. 602.
[102] Ibid., para. 2, p. 602.

transcends time then his ethic suggests that both internal and transnational facilitators are furnishing ‘distinct’ items, useful only in war; the IED, for example, is useful only in conflict.

My analysis in Section 2.5 of Chapter 3, titled ‘inviolability of state borders’, establishes a modern day assigning of greater sanctity to legal borders. In the case of the Vietnam War, this was notwithstanding insurgents violating borders. While insurgency war in Vietnam was primarily a national exercise, although some activities crossed international borders, MAC can be global. Often it is not affixed to states and their territories or bounded or constrained by national borders. Added complications to statecraft and the just application of force result. Ramsey’s view of Vietnam was that with the sanctity of international borders, trying to identify and fight insurgents in populated areas, with almost everyone within range of justifiable collateral damage, was a flawed strategy. For him, strategically and morally, the lesser of two evils was to strike legitimate and more easily discriminable sources of command and resupply centres north of the border. In Vietnam, collateral damage brought about by the shape and order of insurgency, held too much sway in shaping political thinking. It is probably even more influential today.

A lesson from Ramsey’s Christian moral analysis and his strategic assessment of Vietnam is that if more focused and discriminate attacks against the communist leadership, headquarters, supplies and facilities in North Vietnam had prevailed, then the chances of success could have improved – national borders should not be available as hideaways to unjust or immoral insurgencies. Similarly, national borders should not be available as hideaways for asymmetric enemies or any externally based actors for the safe and secure command, control, support and facilitation of irregular forces. And if the hideaway state is insufficiently capable of preventing such exploitation by irregular forces in MAC, then the forces of developed countries are *morally* empowered to intervene, using force as a last resort.

A Christian moral argument for the territorial integrity of sovereign states is that their autonomy parallels the integrity of the individual and his/her God-given freedom and liberty; states and individuals have the moral right not to be interfered with unless they seek to harm others or themselves. Grotius' ethics on external support to enemies (land and facilities), during the run-up to the Treaty of Westphalia, and Ramsey, clearly well after the Treaty, map comfortably to the transnational character of MAC; including the liabilities to harm of those transnational facilitators, manufacturers, suppliers etc. According to Johnson 'an older conception of sovereignty', since Augustine, is one 'not in terms of the state and its territorial inviolability but in terms of the moral responsibility of the ruler for the common good of the people governed.'[103] A consistent Christian view is, therefore, that lethal force is morally permissible against those who establish bases for command, training and facilitation in neutral states. The legal permissibility, however, remains highly contestable and there are international socio-political issues that may be detrimental to such campaign strategies and objectives.

For example, as described in Section 1 above, during the war in Afghanistan, US drones and Special Forces were sometimes used to target insurgents and their facilities in Pakistan. The actions were controversial because of the attacks being on a sovereign ally of the NATO-led security mission in Afghanistan (ISAF). The US considered these actions to be effective and militarily advantageous because Pakistani security forces could not halt sufficient attacks emanating from their country. The US' lack of trust in the integrity of the Pakistani security services prevented them sharing intelligence for particular strikes. Pakistan considered drone use and Special Forces raids inside its territory a violation of sovereignty and publicly criticised drone strikes as counterproductive. Amnesty International also considered them unlawful in one

[103] James Turner Johnson, *Sovereignty: Moral and Historical Perspectives*, (Washington: Georgetown University Press, 2014), pp. 1–2.

of its reports, while the UN was undecided, suggesting that they may have violated international law.[104] Whether legal or not, such attacks could be considered immoral if imprudent or counter-productive but attacking legitimate targets, within external states, remains morally defendable within CJWT.

Further moral, legal and social complexities in attacking across national borders in MAC are highlighted when analysing ISIL's involvement in northern areas of Syria and Iraq. Some members of the US-led coalition force supporting the Iraqi government have been prepared to attack ISIL targets in both Iraq and Syria. Other partner nations, including the UK and Australia, initially supported coalition attacks against ISIL targets only within the boundary of Iraq and not extending into Syria, because the Iraqi government requested external assistance from the coalition whereas Syria did not. In accordance with international law, as stated above, in such situations states are only permitted to use force within another state if invited; this is consistent with Ramsey's Christian moral view of invitation analysed in Chapter 3, Section 2.5. However, countries attacking ISIL targets in Syria argue that they do not recognise the Bashar al-Assad government as legitimate and, therefore, do not need its invitation.

Later in the conflict the UK overtly agreed to train 'Syrian moderate opposition forces' and despatched military personnel to Turkey to deliver the training. These newly trained forces were to defend their communities and ultimately defeat ISIL. The UK provided material cooperation to force elements, therefore, while those force elements were physically situated outside Syria, but due to fight inside Syria. Legally, a UK aircraft can attack an ISIL tank operating inside Iraqi territory until the point that it transits across the border into Syria. Morally the attack remains

[104] The UNHR Office of the High Commissioner began an investigation in January 2013. See Ben Emmerson, 'UN Special Rapporteur on Counter-Terrorism and Human Rights concerning the launch of an inquiry into the civilian impact, and human rights implications of the use drones and other forms of targeted killing for the purpose of counter-terrorism and counter-insurgency', in *UNHR News Release*, 24 Jan 13, accessed 20 May 2019, http://www.ohchr.org/Documents/Issues/Terrorism/SRCTBenEmmersonQC.24January12.pdf.

legitimate but international law is less accommodating. The same tank, however, could be attacked by Syrian moderate opposition forces, directly trained by UK forces. In 2015, a case at the Old Bailey against the Swedish national, Bherlin Gildo, for receiving weapons training between 2012 and 2013, and possessing information likely to be useful to terrorists collapsed. 'His lawyers argued that British intelligence agencies were supporting the same Syrian opposition groups as he was… including the Free Syrian Army.'[105] The UK could have never prosecuted Gildo, morally, whilst knowing that they had covertly trained people like him. These examples show how morality and law sometimes misalign. As highlighted by Ramsey's example above, the fact that an ISIL tank attack may occur from an external sovereign territory or be supported by externally based actors, does not change the moral argument that given justified military targets, discriminate attacks against them are morally and legitimately permissible, even if not legal, particularly if by not doing so and being tactically constrained by borders, increases the potential for collateral damage or prolongs conflict.

As discerned within CJWT, the targeting of external military objectives is not reliant on the willingness or ability of external sovereign states – from which attacks, command or facilitation may be occurring – to achieve just military objectives by their own ways and means. Although not party to the conflict, they are indirectly facilitating or furnishing supplies and not preventing them, for which they are responsible as a sovereign state. Again, however, prudence and patience with fortitude are essential, where possible, to allow external states to achieve those objectives if they are willing and able to prevent such furnishings. Where these external states have the will but not sufficient means, then conventional support should be afforded, where reasonably practicable, to assist with targeting irregular forces that use external states for cover. Trust is essential for any such partnering.

[105] Richard Norton-Taylor, 'Terror trial collapses after fears of deep embarrassment to security services', in *theguardian*, 1 June 2015, accessed 20 May 2019, https://www.theguardian.com/uk-news/2015/jun/01/trial-swedish-man-accused-terrorism-offences-collapse-bherlin-gildo.

Conclusion

The inviolability of sovereign borders is a vexed topic. MAC is a global phenomenon where radical fighters are not necessarily fixed to securing self-rule within historically imposed state boundaries eg ISIL. Their objectives can be ill-defined, indeterminable and irrational, which they seek to achieve through immoral and frenzied means, with seemingly no room for compromise, no compunction and no opprobrium. The Christian moral discourses from Augustine, through Grotius to Ramsey map helpfully to the transnational character of MAC including, potentially, the moral liabilities of those transnational facilitators, manufacturers, suppliers and leaders to lethal force against them, wherever they reside.

Within CJWT and given a justified military target, discriminate attacks against irregular forces in MAC are morally permissible outside national sovereignties technically engaged in conflict – that is against people and sites in external states. This is particularly so if, by constraining military attacks to within state borders, an increase in the potential for collateral damage occurs, as proposed by some for wars in Vietnam and Afghanistan. An additional condition may be that a sovereign state is proven unable to prevent such actors and activities, emanating from within its territory or is able but unwilling to achieve a just military objective itself. This is not, however, a necessary moral precondition but it is prudent to facilitate a collective response where possible.

The lack of recognition and respect for sovereign borders, by irregular forces, determines the need for developed countries to re-evaluate the morality (and legality) of targeting them in external states. The different approaches to the application of military force against ISIL by, for example, the US and the UK in the US-led coalition of over 60 partners, with the UK initially terminating the targeting of military objectives once they crossed into Syrian territory, but training moderate opposition forces in an ally's state, is a legal practice that is morally

incoherent. Irregular force activities beyond IEDs, including the expanding use of cheap and readily available drones and the exploitation of cyber-attacks across international boundaries, will lead to growing equivocality in the responses of developed countries, unless action is taken. A Christian response is that national borders should not be available as a hideaway to an unjust or immoral irregular asymmetric force, for the safe and secure command, control, support and facilitation of their activities. Attacks against military objects in countries external to the conflict are morally permissible, given that they are discriminate, proportionate and prudent.

Section 5: Enabling soldiers to act discriminately

The military forces of developed countries foster and are expected to abide by a set of values and standards, during peace and war. For example, those of the British army are: respect for others, integrity, courage, discipline, loyalty and selfless commitment. They are compatible with CJWT and the laws of war. Soldiers that do not demonstrate such values and standards are generally unsuccessful in developing their careers, either removing themselves or being removed from service, if necessary, by lawful discharge following an offence or behaviour that brings the army's reputation into disrepute. Referring to these values and standards, the head of the British army stated that the role of the army 'is to close with and kill the Queen's enemies, and we have to have that at the forefront of our mind, but equally we cannot accept unacceptable behaviour.'[106]

Indiscriminate targeting is clearly unacceptable behaviour, as is not minimising collateral damage but, as already stressed, discrimination in MAC is much more demanding and obfuscating than in conventional and counter-insurgency conflicts. This section continues the theme of the inadequacy of current moral discourse and doctrines on discrimination in MAC,

[106] UK. BBC News, 'Army head launches 'crackdown' on bullying and harassment', 4 September 2015, accessed 20 May 2019, http://www.bbc.co.uk/news/uk-34148307.

analyses some of the effects that incidental killing has on professional soldiers, critiques some proposed solutions, and concludes by reinforcing the benefits of a CJWT-based moral guide to the task of discrimination.

Historic conventions and the laws of war have not kept pace with the changing character of war. The prohibition of chemical weapons, for example, was not ratified for over 80 years after their first introduction during World War One. Roberts, referenced above, concluded that the UK is unable to determine who is a combatant within the guidelines of the Geneva Convention and Bellinger likewise, with respect to the US (footnote 2). The UK's latest publication covering the law of armed conflict, Joint Service Publication 383, goes back to 2004, and while amendments have been made, they are insufficient in clarifying rules for distinguishing combatant from non-combatant in MAC, which I also concluded in Chapter 5. In Chapters 3 and 4 respectively, I showed how Ramsey developed a moral analysis for counter-insurgency, from experiencing the Vietnam War, and how the USCCB likewise for the nuclear threat, which made the world susceptible to revolutionary conflicts; neither is sufficient for MAC. Moral revision, updating laws and conventions are essential because the military doctrines of developed states are based on and directed by adherence to them, which in turn guide ethical tactics, techniques and procedures for fighting troops. States have a moral obligation and responsibility to prepare their soldiers for the potential horrors of conflict and provide them with the physical, conceptual and moral tools to perform their tasks – that is to optimise their fighting power according to the laws of war – including discriminate targeting and minimising collateral damage.

The consequences of dated or inadequate legislation, conventions, doctrines etc are that troops are not properly equipped with some of the essential moral and conceptual components of fighting power; laws of war have been insufficient to operate as desired in contemporary MAC. During recent conflicts in Iraq and Afghanistan, coalition forces recognised their shortcomings in

the physical component of fighting power. Main battle tanks, for example, provided excellence firepower and protection against Iraq's forces during initial engagements of the conventional campaign in 2003, but were of limited use during the insurgency that followed, as they were similarly during the whole Afghanistan campaign. The UK's modified patrol vehicle in Iraq, the SNATCH Land Rover, colloquially known as the "mobile coffin" by troops because of its limited protection against IEDs and other insurgent weapons, was totally inadequate for this new character of war. Quickly, new ranges of patrol and troop-carrying vehicles were developed, with greater ground clearance and v-shaped hulls to reduce and deflect the blast from IEDs. Bar, slat or stand-off armour, which looks like grills or metal meshes, were attached to vehicles at a stand-off distance, designed to initiate rocket propelled grenades prematurely. The result is that the shaped-charge warhead, focusing explosive energy into a thin penetrating "jet", degrades sufficiently before reaching the intrinsic armour of the vehicle, thereby preventing total penetration of the armour.

Likewise, as described in Chapter 2, a conceptual component for defeating the IED network holistically was developed, based on tackling three lines of operation simultaneously: (1) defeat the device, (2) train the force, and (3) attack the network. There remains, however, between the moral and conceptual components, a shortfall in morality, law, conventions and doctrines that adequately enable combatants to be distinguished from non-combatants in MAC, and that are readily interpretable by soldiers. Greater clarity is necessary to minimise: first, innocent deaths and maintain the support of local civilians; second, the effects of trauma and disorder caused by troops witnessing their own initiated collateral damage; and third, the likelihood of soldiers being hounded and traumatised by inquiries years, if not decades, after their occurrence.[107]

[107] The UK MOD established IHAT to review and investigate allegations of abuse by UK armed forces personnel in Iraq, consistent with its obligations for compliance with the European Convention on Human Rights. Following a 10-month parliamentary inquiry, IHAT was condemned and the MOD blamed for facilitating spurious cases against British troops. The Inquiry chairman concluded that 'there has been an almost total disregard of the welfare of soldiers and their families. The MoD must take responsibility for allowing this to happen.' Robert Mendick, 'Iraq abuse inquiry to shut after MPs find it has 'directly harmed defence of our nation'', in *The Telegraph*, 10 February

Conventional soldiers can be severely traumatised by unwittingly killing civilians or witnessing incidental deaths. They are aware that unintended incidents occur in conflicts, which can be accepted as a feature of its unchanging nature. Similarly, the foreseen but unintended killing of civilians as collateral damage is an event that most soldiers deal with as a reality of war. However, no matter how unintended a civilian's death, a soldier's trauma, suffering and speed of recovery following such an event will depend largely on their reflection: clear observance to lawful orders, the inevitability of civilian casualties as a consequence of achieving a military objective (unintended, whether foreseeable or not), and the "fog of war" that surrounds such activities. What is clear is that the levels of post-traumatic stress disorder (PTSD) and suicides, in serving military personnel and veterans, have increased during and following recent conflicts in Iraq and Afghanistan; while the reasons are complex and multiple, one component is soldiers reflecting on collateral damage.

I have referenced veteran Marcus Luttrell, expressing the hopelessness of distinguishing enemy from civilian in MAC. As a US Special Forces operator, Luttrell would be a much more capable soldier than average in the application and limitation of force, and in understanding the complexities of discrimination; what chances, therefore, the average conventional soldier in such circumstances? A consequence of failing to provide clarity to the task of discrimination is to add to the increasing number of serving soldiers and veterans suffering PTSD and stress related illnesses that can lead to suicide. The figures are truly horrifying. A detailed study by the Millennium Cohort Study Team, based on over 50,000 US troops reviewed between 2001 and

2017, accessed 20 May 2019, http://www.telegraph.co.uk/news/2017/02/10/iraq-abuse-inquiry-has-directly-harmed-defence-nation-andmust/. The Police and Public Prosecution Service (PPS) in Northern Ireland is to investigate soldiers involved in deaths during that campaign, with some incidents dating back over 40 years. Former soldiers feel betrayed and unfairly treated. Some Conservative MPs have called for new legislation to prevent further prosecutions. Sadly, trust in the military covenant between the MOD as a department of state and its military arm is being lost; serving soldiers will have even less confidence if their procedures lack clarity, possibly avoiding essential military tasks through fear of future repercussions, including prosecutions.

2006, indicates 'a threefold increase in new onset self reported post-traumatic stress disorder symptoms or diagnosis among deployed military personnel who reported combat exposures.'[108] The threefold increase is compared to those military personnel that did not deploy or deployed but 'did not report combat exposures'.[109] The suicide rate for the US Army in 2012, its worst year since 2001, 'was nearly 30 suicides per 100,000 soldiers, well above the national rate of 12.5 per 100,000'.[110] Similarly, from the most comprehensive study of suicides by the US Department of Veterans Affairs, the number of veterans that committed suicide every day between 2001 and 2014, fluctuated between 18 and 21; in 2014, 20 veterans committed suicide daily, more than double the civilian rate.[111] Suicide has caused significantly more US military casualties than both wars in Iraq and Afghanistan. According to the Department of Defense's own statistics, between 7 October 2001 and 20 May 2019, 5429 US military personnel have been killed in action, less than any single year of suicides over the same period.[112]

UK experience is similar: '71 serving military personnel and veterans… took their own lives in 2018 following mental health struggles…The death toll exceeds the number of battlefield fatalities in 11 of the 13 years that British troops were in Afghanistan'.[113] Furthermore, investigations into violent offending by veterans of the Iraq and Afghanistan conflicts conclude that PTSD 'is also a risk factor for violence.'[114]

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[108] Tyler C. Smith et al.
[109] Ibid.
[110] Greg Zoroya, 'U.S. military suicides remain high for 7th year', in *USA Today*, 4 May 2016, accessed 20 May 2019, http://www.usatoday.com/story/news/nation/2016/04/01/us-military-suicides-remain-stubbornly-high/82518278/. 'The number of suicides among troops was 145 in 2001 and began a steady increase until more than doubling to 321 in 2012, the worst year in recent history for service members killing themselves.' Ibid.
[111] 'In 2014, Veterans accounted for 18 percent of all deaths by suicide among U.S. adults and constituted 8.5 percent of the U.S. adult population (ages 18+).' See US. Department of Veterans Affairs, Office of Suicide Prevention, 'Suicide Among Veterans and Other Americans 2001–2014', dated 3 August 2016, p. 4, accessed 20 May 2019, https://www.mentalhealth.va.gov/docs/2016suicidedatareport.pdf.
[112] Data source, US. Department of Defense, 'Casualty Status as of 10 a.m. EDT May 20, 2019', accessed 20 May 2019, https://dod.defense.gov/News/Casualty-Status/.
[113] Paul Davies, '71 military personnel and veterans have taken their lives in 2018, ITV News understands' in *ITV News*, 21 December 2018, accessed 20 May 2019, https://www.itv.com/news/2018-12-21/military-personnel-veterans-suicides-mental-health-ptsd/.
[114] Deirdre MacManus et al, 'Violent offending by UK military personnel deployed to Iraq and Afghanistan: a data linkage cohort study' in *The Lancet*, vol. 381, issue 9870, p. 907, 16 March 2013, accessed 20 May 2019, http://thelancet.com/pdfs/journals/lancet/PIIS0140-6736(13)60354-2.pdf.

> More than 2,500 former members of the armed forces entered the prison system last year [2016], with experts [eg The Howard League for Penal Reform] warning a disproportionate number were being jailed for serious violence and sexual offences. According to the Ministry of Justice, veterans represent between 4% and 5% of the UK prison population, raising concerns about the impact of the Afghanistan and Iraq campaigns on mental health issues in the armed forces.[115]

Research shows remarkable resilience within UK military personnel, despite considerable exposure to multiple traumatic events in recent conflicts. However, for some there is serious alcohol misuse on return, which can lead to a mix of violence, sexual offending, family breakdown, homelessness and gaol. In both the US and UK, compared with regular forces, 'Reservists have an increased prevalence of mental illness post-deployment.'[116]

As awareness of stress-related illnesses grows, states seek to identify and mitigate causes and address effects. William Nash, a retired US Navy psychiatrist who directed the US Marine Corps' combat stress control programme, working with colleagues in military psychiatry, developed a concept of "moral injury" to assist with understanding the self-harm phenomenon. Nash defines moral injury as 'damage to your deeply held beliefs about right and wrong. It might be caused by something that you do or fail to do, or by something that is done to you – but either way it breaks that sense of moral certainty.'[117] Therefore, I deduce that the greater the moral certainty, the less likelihood of soldiers suffering psychological damage from exposure to the worst excesses of conflict, leading to self-harm and even suicide.

[115] Holly Watt, 'More than 2,500 former soldiers jailed last year' in *theguardian*, 18 March 2017, accessed 20 May 2019, https://www.theguardian.com/uk-news/2017/mar/18/uk-armed-forces-veterans-prison-population-mental-health-issues.
[116] Deirdre MacManus, et al, 'The mental health of the UK Armed Forces in the 21st century: resilience in the face of adversity', in *J R Army Med Corps*, published online 26 February 2014, p. 4, accessed 20 May 2019, https://www.kcl.ac.uk/kcmhr/publications/assetfiles/2014/resilience-paper.pdf.
[117] Ed Pilkington, 'US military struggling to stop suicide epidemic among war veterans', in *theguardian*, 1 February 2013, accessed 20 May 2019, https://www.theguardian.com/world/2013/feb/01/us-military-suicide-epidemic-veteran.

Establishing a greater moral certainty during peacetime enables a continued application on operations. CJWT is a mature moral foundation and a developed form for MAC has the potential to assist in establishing greater moral certainty which, accompanied by values and standards that are consistent with it, empowers moral decisions when they need to be made quickly, sometimes instantly, and rules of engagement are less than clear. In turn, as the foundation for a developed form of *jus in bello* for MAC, a developed form of CJWT can deliver greater moral certainty and clearer moral decision-making surrounding discrimination and collateral damage. Nash also notes that rather than reflecting on fear associated with death in battle, it is the feelings of shame and guilt, related to the moral injuries that cause psychiatric problems in MAC: after the deaths of colleagues as the primary source, another cause of mental trauma 'is the guilt that follows the knowledge that a military action has led to the deaths of civilians, particularly women and children.'[118] If we acknowledge the gravity that incidentally killing civilians has on conventional forces, then we should also acknowledge the seriousness, integrity and intention with which these forces seek to discriminate, reduce collateral damage and apply honestly the rule of double effect. Such evidence further counters Ford's view that the rule of double effect permits wantonly indiscriminate action, provided that the attacker performs an entirely inward mental act of withholding their intention; withholding intention does not prevent collateral damage and the potential development of moral injury and mental illnesses.

This example of strategic intent – with collateral damage directly related to moral injury and stress-related illnesses – also refutes Coady's premise quoted above that 'in many cases it is hard to resist the conclusion that the military justification for targeting is spurious and incidental' and that '[t]he primary purpose is to harm civilians.'[119] As well as being morally moribund, it is militarily and practically counterproductive to harm civilians, not only as a 'primary purpose'

[118] Ibid.
[119] Coady, 2008, p. 147.

but at all, because soldiers lost through stress-related injuries, caused even partially by witnessing collateral damage, are no longer available for combat. After sentencing the first British soldier ever to be convicted of a war crime in 2007, Mr Justice McKinnon, said that not only was the reputation of British troops harmed but also that it 'could put the lives of other British service personnel at risk and hamper future operations.'[120] With external bodies being aware that harming civilians is militarily counterproductive, in winning the hearts and minds of the people and preventing future trauma for military witnesses to civilian casualties, the need for greater moral certainty grows. The negative impact on the lives of veterans, suffering stress-related illnesses from experiencing collateral damage, counters further the suggestion that Western forces do not sincerely seek to discriminate and minimise collateral damage.

Soldiers, therefore, need revised physical, conceptual and moral components, skills and tools to achieve some developing military objectives in MAC, including the task of discrimination; a moral foundation, education, training and direction that is more clearly defined, easily interpretable, minimises collateral damage, and prevents moral injuries and the consequences of stress-related illnesses. Writing in 2008, Michael Mazarr summarised the inadequacy of applying traditional US military forces to asymmetric conflict as follows:

> As smart, adaptable, and courageous as U.S. military officers and men and women clearly are and will be, asymmetric challenges demand asymmetric responses—political, economic, cultural, informational, and psychological tools, tactics, and techniques allowed to work organically over time, not retrained military forces whose true purpose is to fight and win wars, which are different enterprises. The strategic trap is obvious: Furnished with a vast, expensive, skillful military tool, policymakers will use it again and again, as they have been doing, without confronting the tougher challenge of shifting resources into nonmilitary tools of statecraft.[121]

[120] Steven Morris, 'First British soldier to be convicted of a war crime is jailed for ill-treatment of Iraqi civilians' in *theguardian*, 1 May 2007, accessed 20 May 2019, https://www.theguardian.com/uk/2007/may/01/military.iraq.
[121] Michael J. Mazarr, 'The Folly of 'Asymmetric War'', in *The Washington Quarterly*, Summer 2008, vol. 31, no. 3, p. 38, accessed 20 May 2019, https://csis-prod.s3.amazonaws.com/s3fs-public/legacy_files/files/publication/twq08summermazarr.pdf.

Mazarr is surely right in appreciating that the challenges of asymmetric war require targeted responses, which try to capture and address all the components that create and fuel it. He is right to concede that conventional military personnel are not ideally prepared to achieve some of the 'political, economic, cultural, informational, and psychological tools, tactics, and techniques' necessary to overcome the challenges of MAC; after all, they prepare and train for conventional conflict. He is, however, naïve to withhold military force from his list of asymmetric responses. The asymmetric challenges that he identifies exclude a significant fighting component, otherwise it is not war; recent conflicts in Iraq, Afghanistan and against ISIL demonstrate this abundantly. Irregular forces in MAC bring asymmetric components of fighting power to the battle, including IEDs, drones, suicide bombers, intentionally killing civilians and so on; offensive enforcement of security is essential to defeat them and a particular skill of conventional militaries. While irregular forces continue to pose a warfighting capacity, conventional forces will need to defeat them, by targeting discriminately and establishing a secure setting, in order to enable 'nonmilitary tools of statecraft.'

In her book, *A Fearful Symmetry,* Rumu Sarkar acknowledges a similar need to apply a much broader set of skills in the asymmetric fight. Rather than removing the military skill completely (or significantly) as Mazarr does, Sarkar proposes the need for a new type of soldier in the age of asymmetric conflict: soldiers that must demonstrate the highly subjective qualities of empathy and intuition, with a heightened perception of their surrounds, enabling them to move fearlessly in different cultural, linguistic, and emotional domains. 'Thus, different cultural values (within the military and more broadly in Western-based societies) will need to be cultivated in order to create this new kind of soldier.'[122] Sarkar recommends that a 'new soldier' is required for MAC requiring a paradigm shift in militaries 'that are being equally strained by the demands of

[122] Rumu Sarkar, *A Fearful Symmetry* (Oxford: OUP, 2012), p. 126.

insurgencies and global terrorism.'[123] She makes it clear that this concept of the new soldier must be adopted by all ranks.

Unfortunately, the reality is that the attributes proposed by Sarkar are well beyond those of people recruited primarily to infantry roles. While the officer and senior rating cohort are possibly 'smart, adaptable, and courageous' enough to develop many of these softer skills, the nature of rank and file, their aptitude and abilities are unlikely to match the developmental capacities for such competencies. That is not to say that military thinkers do not seek to achieve many of the outcomes shared by Mazarr and Sarkar, by developing some of these attributes in their soldiers – they do but is not possible to establish Sarkar's notion of the new soldier without radically different recruits, with different traits and talents to be developed. It is questionable whether these new soldiers could ever be established in sufficient quantities with skills more akin to civil police, with the required resources to perform their duties, and at acceptable costs.[124]

What is also not certain is that these 'new soldiers' could retain a disposition to deliver the high-intensity, controlled violence necessary for conventional war as well: to close with and kill the enemy. If not, then a new force altogether is necessary and implausible in the same measure: states will not hold an independent asymmetric response force to deploy in wars of choice. In fact, the future is likely to be smaller armies, with multiplying roles, in complex hostile environments and with evermore scrutiny. It is likely that soldiers will continue to deploy across the full spectrum of conflict, from high-intensity conventional war to peace keeping and everything in between, including the new, continually developing and particularly exigent

[123] Ibid., p. xviii.
[124] For comparative purposes (2018/19 pay scales), a UK soldier's annual basic pay scale is £19,025, rising to £26,265 for a Lance Corporal with seven years of experience. A UK police constable's basic pay is £23,586, rising to £39,150 after approximately seven years. For the British Army to be transformed into a force with the attributes similar to such as the police and closer to those proposed by Mazarr and Sarkar, the basic salary bill alone for the British army (82,000 soldiers) would increase by between £0.37bn and £1.1bn per year. Both forces have many higher paid personnel implying that the actual cost of salaries would be substantially higher.

demands and stresses of MAC. If modern soldiers must perform duties commensurate with MAC and implement right actions, with limited preparation and laws that are suboptimal, then a morally sound base on which to deliver virtue ethics is a suitable toolkit. Soldiers deserve moral preparation, belief in the integrity of the law, clear orders that are easily intelligible for the level of their competencies, and trust that they will not be hounded in future years for their moral, legitimate and lawful actions at the time.

Conclusion

To achieve military objectives effectively and efficiently in MAC, and to prevent ambiguity in thought and action, soldiers need clear orders, responsibilities and boundaries. Trauma and stress-related disorders, caused in part by witnessing collateral damage, are less likely if rules of engagement are clearer and more interpretable, and soldiers are morally robust and attuned to their values and standards. The sound moral baseline of CJWT leads to appropriate developments in the laws of war and conventions, and in turn the formulation of military doctrines, reflective of those morals in the contemporary age. Discrimination in MAC needs to be developed and interpreted so that it enables and even compels compliance from conventional forces. The task of discrimination must be easily interpretable, more clearly recognisable and verifiable as right intention; some tools, such as predictive analytics as suggested in Section 2, will help but there will be times when soldiers will have only their morals and training to rely on.

Soldiers sent to apply military force, in accordance with *jus in bello* norms, need to believe and have the confidence to know that, should their discriminatory actions lead to foreseen but unintended collateral damage, those same actions were morally and legally supportable, and are not open to future scrutiny. When there are shortcomings in the laws of war, as there are for MAC, and soldiers are fighting, then there must be a moral foundation to guide decisions. Soldiers cannot be made accountable when acting morally, now or anytime in the future, if laws

are unavailable or ambiguous in the contemporary context that they find themselves. For Aquinas: 'And yet even those who make sinful use of the sword are not always slain with the sword, yet they always perish with their own sword, because, unless they repent, they are punished eternally for their sinful use of the sword.'[125] Hence, professional soldiers need to 'use the sword' without sinning.

Soldiers that target indiscriminately should always face the full weight of the law. It must be clear to them, however, exactly who is a combatant in MAC and who is not, as well as the thresholds required to determine combatant status. As concluded above, a development of CJWT is that those involved in the attack, facilitation, training and leadership of irregular forces are combatants, liable to lethal force against them until they recognisably cease their warlike activities for good – likewise improvised facilities etc. Conventional forces must reasonably believe, rather than suspect, that targets are intentionally engaged in their destruction or the destruction of non-combatants. More broadly, if a warlike activity contributes to defeating conventional forces then that activity and those involved are targetable. I propose that the British army's Christian-aligned values and standards, truly upheld and grounded in virtue ethics, are more likely to yield the necessary task of discrimination, with any innocent death being genuinely collateral.

Section 6: Balancing the accountability of opposing forces

In MAC, the asymmetry in military firepower, capability and capacity, is matched by an equally asymmetric accountability and likelihood of bringing those that break the laws of war to justice. In Chapter 5, I analysed Johnson's work covering the inequitable accountability of asymmetric parties involved in MAC, and concluded that his analysis was extremely helpful in defining the problem generally, but that there was a need to analyse the consequences and offer potential

[125] Aquinas, 2a 2ae, q. 40, a. 1, reply to objection 1, p. 3075.

solutions. With no state-like control, irregular fighters cannot be made to give an account of their actions unless captured by the international community. The following section describes developments in bringing war criminals to justice, the international community's intent to subject all actors to the laws of war on discrimination, and the evidence that suggests irregular forces in MAC are not deterred by punishments for war crimes. Further, an analysis is made of a worrying new practice of veterans facing daunting accusations of unlawful killing, together with prolonged and extremely intrusive investigations, long after the events, which could endanger operational effectiveness as today's soldiers reflect on the past: frontline forces could well be apprehensive and consider abandoning tactical engagements through fear of future investigations and a lack of trust in covenantal support. Such an inequality of accountability is morally wrong, biased against soldiers from developed countries and troublesome when developing guidance for discrimination in this new character of war. The section concludes that troops from developed countries that maintain a moral code, when law is not sufficiently forthcoming, should be confident of national and international backing, and without fear of unjust scrutiny post-conflict.

The Nuremburg trials of November 1945 brought some of the most notorious Nazis to justice for crimes against humanity and war crimes. Although their collective actions and many individual Nazis were clearly immoral, the international community lacked agreed, sufficiently detailed and mature laws of war. Some were developed during the trials, therefore, and others soon after as the UN evolved as an international organisation to prevent future conflict and promote international cooperation. Those committing war crimes and disregarding the laws of war would be made accountable for their actions and brought to justice, in an international court if the national court was deemed unsuitable in delivering honest and impartial justice. For example, as late as 2016 and at the age of 94 years, Reinhold Hanning, a former Auschwitz guard was sentenced to five years imprisonment at a German court – a developed democracy, deemed suitable by the international community. Compare that to those indicted for war crimes in the

Former Republic of Yugoslavia (FRY), by the International Criminal Tribunal for Yugoslavia (ICTY), located at The Hague, Holland where convicted war criminals often serve their sentences outside FRY.

The UN established the ICTY in 1993, following evidence of war crimes and genocide during conflicts across FRY. Its aim was to bring to justice those responsible for IHL violations. The sentencing of such as Radovan Karadzic, the former Bosnian Serb leader, to 40 years in prison for genocide, war crimes and crimes against humanity, 21 years after he was indicted, demonstrates the desire of the international community to bring war criminals to justice. At the opposite end of the rank or prominence spectrum, Drago Josipovic, a member of the Croatian Defence Council (HVO) was sentenced to 15 years imprisonment, reduced to 12 years on appeal, for his active 'involvement in the persecution of the Bosnian Muslim villages… participation in an attack on Ahmici-Santici on 16 April 1993… [and] house-to-house attacking Bosnian Muslim civilians'.[126] Josipovic was charged with 'Violations of the laws or customs of war'[127] and served his sentence in Spain, one of the countries to enter the Enforcement of Sentences Agreement with the ICTY.

Notably, one outcome sought by the ICTY is to deter future leaders and combatants in international armed conflicts from committing unlawful acts and war crimes, which includes the serious violation of 'making the civilian population or individual civilians, not taking a direct part in hostilities, the object of attack'.[128] The intention of the international community, through the UN, is clear: all are governed by the laws of war, including the expected enforcement of discrimination, and violators will be subjected to international law and justice during or post

[126] UN. ICTY Press Release, 'Drago Josipovic transferred to Spain to serve prison sentence', 9 April 2002, accessed 20 May 2019, http://www.icty.org/en/press/drago-josipovic-transferred-spain-serve-prison-sentence.
[127] Ibid.
[128] ICRC Customary IHL, 'Rule 156. Definition of War Crimes', accessed 20 May 2019, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule156.

conflict, in their own state as is suitable, otherwise internationally, as in the case of FRY. The integrity of such a guiding principle is maintained when all sides to a conflict abide by serving justice on violators, irrespective of victory or defeat.[129] Unlike war crimes perpetrated by allies during World War Two, which were acknowledged but where violators were not processed, modern coalitions of developed countries do prosecute their soldiers for war crimes during wars of choice, thereby upholding the morality of war and the integrity of the laws of war.

For example, in the US, William Calley was convicted of indiscriminate murder of innocent civilians during the infamous My Lai massacre in Vietnam. More recently, from the war in Afghanistan, US soldiers Private Andrew Holmes, Staff Sergeants Calvin Gibbs and Robert Bales, were convicted of indiscriminately killing civilians at separate events, with the latter two given life sentences. In 2016, Israeli soldier, Elor Azaria, received an 18-month sentence for killing an injured Palestinian who no longer posed a threat, following the Palestinian's attempts to stab Israeli soldiers in the occupied West Bank. Notwithstanding senior politicians, including Prime Minister Benjamin Netanyahu, demanding a pardon for the soldier, an appeal court upheld his conviction for manslaughter. In the UK, Corporal Donald Payne became the country's first ever war criminal for his involvement in the appallingly gratuitous violence meted out on innocent civilians in British detention, including Baha Mousa (2003). At Payne's trial the judge concluded that there was a 'serious failing in the chain of command all the way up to brigade and beyond.'[130] This case and that of Royal Marine Sergeant Alexander Blackman, sentenced to life in prison by a court martial in 2013 for a war crime, demonstrate that developed countries do hold their troops to account for breaching the laws of war, and also apportion blame to

[129] States parties to the Rome Statute of the International Criminal Court are not universal. For example, Syria has not ratified the statute and its current war criminals are, therefore, unlikely to be brought to justice. The International Criminal Court has no independent authority to investigate or prosecute war crimes that occur in Syria.
[130] Steven Morris, 2007.

commanders for their lack of oversight if there is evidence.[131] These actions clearly deserved the investigations and justice.

It is self-evident that the number of war crimes committed by coalition forces in recent MACs is significantly lower than those of irregular forces, who do not adhere to the laws of war and demonstrate little fear of any post-conflict accountability. Moral equality of accountability determines that if war crimes are committed then justice should be served on any and all parties to the conflict, during or following its cessation. However, notwithstanding the justice served on war criminals from campaigns in the Balkans and those following, the threat of being brought to justice for war crimes has not deterred irregular asymmetric fighters from committing them. In fact, they seem totally undeterred. Moreover, as analysed in sections above, not only do the divergent actions carried out by belligerents in MAC necessitate a reformed way of thinking about and reviewing discrimination, so too the iniquitous accountability of the asymmetric parties. The legal systems of developed countries make their forces accountable for breaches in the laws of war as described, and rightly so but those made by irregular forces are likely to go unpunished. The burden of scrutiny hangs unfairly over one side in a two-sided MAC. In other words, the laws of war apply identically to both sides but, with one side much less likely to be brought to justice for war crimes, it is biased – it is a moral inequality of accountability.

This inequality is exacerbated by the modern phenomenon in the UK of post-war legal harassment of soldiers described briefly in Chapter 5. European Commission on Human Rights legislation, with a criminal law basis, has been used to investigate events that took place in recent MAC, which because of its nature and character, requires soldiers to follow orders that act within the laws of war and not a form of criminal legislation. UK forces were being emasculated:

[131] Blackman's murder conviction was reduced to manslaughter on the ground of diminished responsibility following appeal in March 2017. The hearing appeal was told that at the time of the shooting in September 2011, Blackman had a recognised mental illness.

soldiers believed that they were performing their duties diligently, adhering to their responsibilities to fight within the laws of war and Geneva Conventions as trained. Until early in 2017, when one of the principal human rights lawyers, Phil Shiner, was struck off for misconduct, and the accusations of mistreatment were exposed as false, there were over 3,500 ongoing investigations by the MOD funded and empowered IHAT and its equivalent for Afghanistan. The investigations were into events that occurred in the two wars, often years after the soldiers involved had returned. Thousands of innocent soldiers were investigated for cases that lacked credible evidence, which left them feeling demeaned and undermined by the lack of support for their actions, in wars that they undertook on behalf of what became a lacklustre Government, MOD and representative senior officers.

Notwithstanding what the Defence Commons Select Committee considered to be most telling failure of IHAT being 'the absence of a single prosecution against the UK military', the most revealing failure for soldiers is that 'those under investigation have suffered unacceptable stress, have had their lives put on hold and their careers damaged. They have been, and in some cases continue to be, treated in an unacceptable manner as a result of serving the United Kingdom.'[132] One example, Brian Wood, decorated with the military cross for bravery, epitomises the effects that such a policy can have. He told a reporter: 'To be questioned for the brave actions … and our integrity… it's just a little bit heart-breaking to be honest' and that 'it did sort of push me back into a darkish hole that I was in.'[133] After being told that he would face his eighth probe

[132] UK Parliament, Defence Commons Select Committee, 'Who guards the guardians? MoD support for former and serving personnel Contents', dated 9 February 2017, accessed 20 May 2019, https://www.publications.parliament.uk/pa/cm201617/cmselect/cmdfence/109/10903.htm.
[133] Carl Dinnen, 'MoD to shut down multi-million Iraq War veterans inquiry after damning MPs report', in *ITN News*, 10 February 2017, accessed 20 May 2019, http://www.itv.com/news/2017-02-10/60-million-government-probe-into-allegations-against-iraq-war-veterans-must-be-shut-down/.

over the death of an Iraqi teenager in 2003, Major Robert Campbell returned his service medals stating 'I was disowned by the military and so I sent them back in disgust.'[134]

Such probes are not restricted to conflicts during this millennium. Octogenarian and former soldier 'Sam Bedwell reportedly received a letter asking whether he had witnessed "anything untoward" during his service in the Cyprus uprising' and responded that 'he had not… and slammed the "nonsense" of compensation claims against former British soldiers'.[135] Similarly, although relating to counter-terrorism, the Police Service of Northern Ireland's Historical Enquiries Team, established in 2005 to examine 3,260 Troubles-related deaths, has raised inequality of accountability concerns with veterans and serving soldiers. Whilst the late and former IRA activist, Martin McGuiness, was being praised by some politicians as courageous for transferring from terrorist to politician, former British soldier and pensioner Dennis Hutchings was being informed that he will face trial, charged with grievous bodily harm rather than murder, for shooting a terrorist suspect in 1974, despite no fresh evidence, no new witnesses and no new forensic evidence. Another veteran faces murder charges over the killing of two people on what has become known as 'Bloody Sunday' in Londonderry, on 30 January 1972. For soldiers, such inequality of accountability is morally repugnant and for those serving potentially detrimental to operational effectiveness, as they reflect on possible future repercussions of what they believe, at the time, to be moral, legitimate and lawful actions.

As stated in Section 5, soldiers need clarity in their military objectives if they are to reduce the likelihood of collateral damage causing stress-related disorders. They should have confidence in

[134] Larisa Brown, 'Army Major who is facing his EIGHTH probe over death of Iraqi teen in 2003 hands back his medals', in *MailOnline*, 24 February 2018, accessed 20 May 2019, www.dailymail.co.uk/news/article-5428927/Army-Major-facing-new-probe-Iraqi-death-hands-medals.html.
[135] Tim Stickings, 'Fury as Government lawyers probe 'allegations of wrongdoing' by Britain in Cyprus during the 1950s and veteran in his 80s is asked for his 'recollection' of bloody conflict', in *MailOnline*, 11 August 2018, accessed 20 May 2019, http://www.dailymail.co.uk/news/article-6049345/Fury-Government-lawyers-probe-allegations-wrongdoing-Britain-Cyprus-1950s.html.

their moral code, values and standards, as well as trust that their orders are lawful and moral; soldiers acting within their boundaries should be assured that there will be no subsequent investigations, long after events. There is a possibility that soldiers could adopt risk-averse postures, to the detriment of operational effectiveness, if they lose faith in the support and backing for their actions from the military chain-of-command. Soldiers are more likely to abandon tactical engagements if worried by daunting accusations of unlawful killing, together with prolonged investigations long after their contributions have ceased. Such accountability concerns are a significant factor when trying to develop or revise a moral code of conduct for discrimination in MAC. The combination of adherence to moral (and legal) norms and likelihood of scrutiny (and justice) over their actions, between parties in MAC, are inequalities of accountability: they must be rebalanced by giving conventional troops confidence in their moral baseline from which they conceive their actions. In the UK, legislation is required to uphold the integrity of the military covenant that protects its personnel from improper investigations.

Conclusion

In MAC, not only is military capability and capacity asymmetric but so too is accountability – subjection to investigation, scrutiny and justice. Holding to the rules of engagement, laws of war, military values and standards, and yet still feeling disadvantaged relative to opposing forces that adhere to few laws of war and are unlikely ever to answer for their actions, is an inequality of accountability that requires attention. It is one thing to be held to rules in war but soldiers of developed countries, fearing their actions could be investigated in future years, are being failed when the current laws and practices for MAC are insufficient. A conclusion from Section 5 is that soldiers that inadvertently cause civilian deaths can lead to stress-related disorders, PTSD and even suicide. Pursuing soldiers in developed countries for events long past, which soldiers collectively interpret as a dereliction of any military covenant between government and themselves, is an exacerbation.

A CJWT response to discrimination in MAC seeks justice, which requires equitability of accountability; it must focus on a conviction by the international community to bring all war criminals to justice, but not to pursue unfairly through ease, financial or political gain, the well-intended actions of professional soldiers that cause unintended civilian casualties. Otherwise, if this modern phenomenon continues to advance then frontline forces are more likely to consider abandoning tactical engagements: veterans' worries of facing daunting accusations of ill-treatment or unlawful killing, together with prolonged and intrusive investigations long after their contribution has ceased, could cause serving soldiers to be more apprehensive and risk-averse in conflicts, even when believing their plans and actions to be lawful and noble. Rules of engagement, clear and concise enough for conventional troops, cannot cover the complexities that soldiers find themselves in during MAC. If we accept that capturing the war criminals of irregular forces is problematic, then to start to rebalance the inequality of accountability, a moral code is necessary that gives conventional soldiers the confidence and assurance that as long as they adhere to it, there will be no demands for subsequent investigations; a new covenant is essential based on a solid moral foundation, such as a developed CJWT that is not capricious. While lowering expectations of the conduct of conventional troops is an immoral option, to actively improve the protection of regular soldiers from intrusion, post conflict, is a moral way of seeking greater equality of accountability.

Section 7: Military supererogation

In the context of MAC, supererogation is to act more than military duty requires; it is the degree to which soldiers accept higher risks to themselves individually and collectively, in order to further reduce civilian casualties, collateral damage and civilian suffering. Troops that feel obliged to go beyond what is strictly demanded to minimise collateral damage, with supererogatory acts, bring danger to themselves, are courageous and praiseworthy – they mimic

Christ's sacrificial example, beyond the parable of the Good Samaritan. This final section begins by describing the natural instinct and national obligation to reduce the risk of harm to one's own forces, before providing some historical examples of how troops are prepared to perform supererogatory acts. How operational effectiveness can be negatively impacted by withholding force is then analysed, with examples, before reviewing some secular observations of Walzer and Rodin. With the challenge to balance minimising risks to oneself with supererogation – being courageous in restraining the application of lethal force with the need to achieve tactical to strategic objectives – the remainder of the section analyses the levels of supererogation that are morally compelling and necessary in MAC, novel and consistent with a CJWT.

The desire of nations to minimise their own military casualties in war is natural: an obligation of doctrine writers and tacticians, the quest of weapon designers, and a moral responsibility and practical duty of commanders and individual troops. Chapter 4's examination of the precision-guided Brimstone missile, fired from either aircraft or drones, established that designers proactively seek to minimise the collateral effects of warheads, while not needing to be, necessarily, at the expense of our own troops' safety. The USCCB's reflections from Chapter 4 were that efforts to reduce the risk to a nation's own forces must be balanced with a positive appeal to accept greater risk of harm to them, in order not to neglect the moral rights of non-combatants; the bishops did not address how that 'positive appeal' may be expressed and delivered, leaving a gap in moral tools. Those that formulate doctrine, procedures, processes, protocols and tactics seek to reduce their own casualties and minimise collateral damage. Military commanders then apply the physical and conceptual components of fighting power, developing them with the changing character of war, as described in Chapter 1; the moral component must also be addressed.

Conventional forces clearly hold the technical and equipment advantage over their asymmetric irregular adversaries, such as the Brimstone missile fired from drones. Walzer recognised more than a decade ago that those aiming these types of weapons – precision-guidance with significant stand-off – are 'largely invulnerable to counterattack' but, moreover, that '[t]here is no principle of just war theory that bars this kind of warfare. So long as they can aim accurately at military targets, soldiers have every right to fight from a safe distance.'[136] The UK is no different to other countries in seeking to reduce its own combatant casualties, through all means possible, which includes technical developments and the deployment of weapons and defensive measures that protect its troops. The UK has a history of such activities.

Dispelling the myth that the defeat of the British Expeditionary Force at the beginning of World War Two was a result of technical, industrial and military failures, historian James Holland determines that:

> It wasn't. Britain was already out-producing Germany in terms of aircraft, tanks and ships, and its purchasing power around the world and access to resources remained second to none… And while it was certainly true that its Army was much, much smaller than that of Germany, *this was part of a deliberate policy to use air and naval power and modern technology rather than millions of front-line troops to fight the war.* Steel not flesh was the mantra.[137]

He went on to reinforce the idea that such policies were proactively established to reduce military casualties within the British Empire:

> As far as Britain was concerned, large-scale armies were an inefficient use of manpower because they inevitably led to higher casualties. This was something Churchill passionately believed in and was nothing new: after all, it had been Churchill, while First Lord of the Admiralty in 1915, who had pioneered the development of the tank… with exactly this principle in mind.[138]

[136] Walzer, 2004, p. 16.
[137] James Holland, *The War in the West, A New History, Volume 1: Germany Ascendant 1939-1941* (London: Bantam Press, 2015), pt. 3, ch. 28, p. 1. [My emphasis.]
[138] Ibid., pp. 1–2

So, the UK has had and retains a just desire to reduce its own combatant casualties during conflict; the exploitation of technology has been a significant contributing factor in achieving it. But what of moral restraint, above and beyond that expected by the rule of law, rules of engagement or general just-war theory? Author Tom Holland, elder brother of James, comments that a frontline soldier would be more likely to be killed during World War Two than during World War One, even though total British deaths were around double during the Great War.[139] It remains speculation but maybe a component of that increased proportion of frontline casualties during World War Two, with their better equipment and personal and collective protection, was due to some element of extra-sacrificial commitment by soldiers. Maybe there was an understanding that proportionality and discrimination required greater moral courage and risk to themselves.

The World War One Royal Welsh Fusilier private solider, Frank Richards DCM MM, records the story of clearing potential German hiding places in villages, dug-outs or cellars, by throwing grenades into them in order to kill the enemy. A verbal warning was unnecessary and may have encouraged enemy combatants to try and fight their way out of the situation, knowing that they were compromised and that a hand grenade and/or automatic gun fire was likely to follow. This could potentially cause those in situations like Richards and his fellow soldiers to become casualties; there was no legal or moral obligation to offer any such warning. However, Richards and his fellow soldiers were also aware that civilians were residing in villages. In one example, he and another 'shouted down one cellar twice and receiving no reply were just about to pull the pins out of our bombs when we heard a woman's voice…If the young lady had not cried out when she did, we would have innocently murdered them all [her and her family].'[140] Richards and his colleagues demonstrated supererogation, maybe a level of agape, increasing their risk of

[139] UK. BBC Radio 4, Making History, 'Tom Holland shares the stories that light up our past', 1500 hours, Tuesday 9 February 2016, MP3 download, accessed 20 May 2019, http://www.bbc.co.uk/programmes/b06zryym.
[140] Frank Richards, *Old Soldiers Never Die* (Eastbourne: Anthony Rowe Ltd, 1933), p. 302.

harm for what they believed to be a greater moral good – an act of the will. Yet at first sight, Richards may not have been expected to be of such moral standing; being an orphan at the age of nine years, he detested school, played truant frequently, and left at the earliest opportunity.

All UK military leaders demand moral impeccability. As referenced in Chapter 1, as head of the British Army, General Sir Peter Wall, explicitly stated that commanders were responsible for ensuring that the 'ethical and legal behaviour of their formations and units is proper.' In Section 5 above, I reference a successor stating that 'we cannot accept unacceptable behaviour.' The doctrine of "courageous restraint", analysed in Chapter 4, was intended to reduce non-combatant casualties during the war in Afghanistan. It was mainly achieved by withholding the legitimate and legal use of indirect fire – there was no added risk to the firers from aircraft or artillery but considerable danger if ground units chose not to call for such fire support as acts of supererogation. Accepting greater risk to one's own troops, however, in order to reduce non-combatant casualties must not forsake the military aim. If the mission requires a military component, then civilian casualties are likely in MAC, and an element of collateral damage must be accepted.

Military restraint also has an immediate cost to the tactical mission and collectively to the operational campaign plan. For every supererogatory action there is possibly or probably a missed opportunity to deliver a decisive military effect against the enemy. During recent conflicts, some military leaders felt hampered in achieving their military objectives because of an over-cautious attitude towards potential collateral damage. Very early during the war in Afghanistan, the US Central Command 'made avoiding civilian casualties or damage a major issue in the clearance process, officers said. "The whole issue of collateral damage pervaded every level of the operation," said one officer: "It is shocking, the degree to which collateral

damage hamstrung the campaign."'[141] Such hampering can lead to enemies escaping and being able to continue fighting, which in turn prolongs conflict and leads potentially to more casualties overall. For each situation, prudence is required to balance the effects of choosing or withholding lethal force: judging the medium to long-term effects is even more complex.

Senior commanders during wars in Iraq and Afghanistan frequently chose to withhold the use of lethal force, in order to prevent potential civilian casualties, through doctrines such as "courageous restraint". Unfortunately, they were not explicit in the levels of risk that ground troops should be willing to undertake – direction was unclear leading to confusion and frustration. In early 2012, British soldiers in Afghanistan exclaimed that 'new tactics are preventing them shooting at the Taliban until they have been fired at themselves… as part of American-led efforts to cut down on the number of civilians being wounded, but the new approach has made them more vulnerable.'[142] Whilst UK MOD denied any changes in rules of engagement at the time, 'a spokesman for the multinational forces… confirmed there had been a tactical review after which the British were told to alter their procedures.'[143] Such inconsistency, even a lack of integrity by the UK MOD, impacts profoundly on the moral component of fighting power as described in Sections 5 and 6 above. Soldiers deserve to know that their exposure to risks and expectations are not unduly disproportionate; they can then make informed decisions about supererogatory acts.

Walzer considers this issue of military supererogation partially in his 1977 book, *Just and Unjust Wars*, determining that the rule of double effect 'stands in need of correction' and thereby developed the doctrine of "double intention", which determines that military action should not

[141] Thomas E. Ricks and associates, 'Target Approval Delays Cost Air Force Key Hits', in *Journal of Military Ethics*, 2002, vol. 1, issue 2: p. 111, accessed 20 May 2019, http://www.tandfonline.com/toc/smil20/1/2.
[142] Mark Nicol, 'UK troops told: 'Don't shoot unless you are shot at... and our Helmand casualties soar' in *MailOnline*, 1 July 2012, accessed 2 March 2019, http://www.dailymail.co.uk/news/article-2167103/UK-troops-told-Dont-shoot-unless-shot--Helmand-casualties-soar.html#ixzz4fSp3keRy.
[143] Ibid.

only intend good outcomes and not intend to strike non-combatants, but also minimise unintended evil effects with the soldier 'accepting costs to himself.' [144] Walzer continues:

> Simply not to intend the death of civilians is too easy; most often, under battle conditions, the intentions of soldiers are focused narrowly on the enemy. What we look for in such cases is some sign of *a positive commitment to save civilian lives*. Not merely to apply the proportionality rule and kill no more civilians than is militarily necessary—that rule applies to soldiers as well; no one can be killed for trivial purposes. Civilians have a right to something more. And if saving civilian lives means risking soldier's lives, the risk must be accepted.[145]

Walzer goes on to acknowledge that

> there is a limit to the risks that we require. These are, after all, unintended deaths and legitimate military operations, and the absolute rule against attacking civilians does not apply. War necessarily places civilians in danger; that is another aspect of its hellishness. We can only ask soldiers to minimize the dangers they impose.[146]

O'Donovan, referring to an example from Afghanistan in 2001, where US General Franks was swayed too much by legal advisors over targeting, such that targets were escaping due to the issue of collateral damage, opines that '[t]he new orientation of military ethics to discriminate targeting seems to me to be a hugely important gain.'[147] Rodin also argues for conventional forces of developed countries to strengthen *jus in bello* norms. As introduced in Chapter 2, he suggests three ways: (1) 'place all ambiguous targets and dual-use facilities that have important civilian functions off-limits for attack'; (2) 'require certainty or near-certainty as to the status of a proposed target, through clear, unambiguous and reliable evidence before authorising any attack'; and (3) 'require the strong to take exceptionally rigorous steps to ensure that civilians are not placed at risk of collateral harm, and that the quality and habitability of the environment is not degraded.'[148]

[144] Walzer, 1977, p. 155.
[145] Ibid., pp. 155–6. [My emphasis.]
[146] Ibid., p. 156.
[147] O'Donovan, p. 126.
[148] Rodin and Sorabji, pp. 161–2.

Rodin acknowledges that it 'may require the stronger side to assume risks to its own forces to ensure that they do not expose civilians to avoidable risk of harm.'[149] The first critique to make is that it is not a case of *may* require the assumption of risks to own forces – it undoubtedly will do so. Second, an ambiguous target would be extremely unlikely to attract targeting from Western forces in MAC, as expressed in the examples above. Third, Rodin makes no attempt to visualise, qualify and quantify those risks: what is the scale of risk, deaths or injuries to conventional troops that enable this necessary strengthening of *jus in bello* norms? Moreover, such a posture, as a practical output of accepting increased risk, does little to deter irregular fighters in MAC that are likely to exploit any ambiguity or dual-use sites for their goals and propaganda.

Such greater self-imposed constraints, while morally attractive, admirable and humbling, and possibly even effective in some conventional engagements between adversaries of similar or mature moral cultures, are unlikely to moralise irregular fighters in MAC. There is no evidence that insurgent exploitation of dual-use sites and facilities during the war in Afghanistan was ever assuaged by such moral and practical self-restraints; the same lack of evidence applies to ISIL. Rather, there is plenty of evidence, some described in this thesis, of Western forces seeking to minimise casualties – through intent, policy and action – by making a positive commitment to saving non-combatant lives. It entails the addition of greater risks to soldiers' lives. Determining how much risk and what kinds of self-sacrificial commitments could be imposed and morally accepted, by militaries, is not forthcoming in Walzer's *magnum opus*, the pastoral letters written by the US Catholic bishops in the following two decades, O'Donovan's and Rodin's work in the new millennium, or Johnson's latest contributions to discrimination in asymmetric warfare.

[149] Ibid., p. 162.

A Christian hypothesis for supererogation in MAC must begin with scripture and demonstrate consistency with CJWT. Christ's self-sacrificial love embraces servanthood: by repentance and surrendering to the will of God, a servant-soldier can give of himself sacrificially, for God and his brothers. While commentators such as Uwe Steinhoff argue that international law and just-war theory 'do not support the idea that soldiers are inherently more legitimate targets of attack than civilians',[150] it is not supported by others such as Walzer, referenced above: 'if saving civilian lives means risking soldier's lives, the risk must be accepted. But there is a limit…' The USCCB's Christian stance from Chapter 4 is that efforts 'to reduce the risk to a nation's own forces, must be limited by careful judgments of military necessity, so as not to neglect the rights of civilians and armed adversaries'.[151] Altogether, it suggests a moral desire for a more sacrificial baseline for combatants, perhaps beyond that covered historically by the rules of double effect and double intention. As already referenced, Suarez makes absolutely clear a historic Christian view that combatant self-sacrifice in war

> must be considered in the light of the order of charity; that is to say, one must consider whether the good at stake in the case is to such an extent the common good, that there is an obligation to expose oneself in its defence to a peril so great.[152]

If legitimacy is scalable then CJWT regards combatants to be more legitimate targets of attack than civilians, but should expectations rise further in MAC? Does the change in its character suggest that an evolution in supererogatory thought is necessary, particularly if it is determined that people are the strategic centre of gravity? Could an even more self-sacrificial baseline be judged so morally desirable to the forces of developed countries fighting MAC that its imposition is unnecessary; rather it is infused into their psyche, well beyond that covered historically by the rule of double effect?

[150] Uwe Steinhoff, 'Killing Civilians', in *The Changing Character of War*, ed. Hew Strachan and Sibylle Scheipers (Oxford: OUP, 2011), p. 381.
[151] *The Harvest*.
[152] Suarez, sect. VII, para. 19, p. 849.

Proposing that there exists a moral duty to protect our own troops, while simultaneously ensuring discrimination and minimising collateral damage, is consistent with CJWT. The appeal from individual human rights to life and the seemingly relentless drive to guarantee almost no civilian casualties, even when faced with an enemy that considers civilians to be 'sacrificial weapons' of conflict, deliberately targeting them or placing them intentionally in harm's way, will continue to compel conventional forces to withhold lethal force in future MAC. Given that military objectives, from strategic to tactical levels, are morally, legitimately and legally robust, and that as analysed above, a developed CJWT *obligates* soldiers to *expose* themselves to greater risk of harm, then modern cultural norms and the character of MAC, with people as its strategic centre of gravity, morally obliges professional soldiers to greater supererogatory acts. This requirement, however, is extant only if the people are the centre of gravity, as is most likely in MAC (but not so in more conventional conflict). It is a positive appeal to accept an even greater risk of harm to one's own troops, in order to win the hearts and minds of the people through a persuasive strategic narrative – as concluded earlier, one that is possible because of the abundance of modern and easily accessible communications.

Appreciating that civilians under the 'protection' of irregular forces – possibly or probably suffering from intimidation, coercion, subversion, torture and murder – are the centre of gravity, is also to value the moral equality of all non-combatants, on all sides of MAC. The care that professional soldiers of a Judaeo-Christian-grounded country would consider, evaluate and enforce, to ensure that their own public did not become casualties of a war action, must be considered morally identical for all non-combatants. Being an effective and persuasive measure of success in MAC, lowering collateral damage to the absolute minimum reinforces this tenet. Soldiers would put themselves in harm's way to save their own public in MAC; a similar level of valour is necessary for all non-combatants. This novel and CJWT-based development supports a call on professional soldiers, not as courageous individuals for a given situation but as culture, to

accept greater risk of harm to themselves in MAC, as an offset to a preferable reduction in the potential for civilian casualties: in order to support the military strategy and a unifying purpose that remains, since Augustine, to punish the enemy for the evil they inflict, impart justice and restore peace. We are, after all, called to: 'Make justice your aim: redress the wronged.'[153]

It is moral and astute to commit soldiers more positively to preventing civilian casualties in MAC, beyond the rule of double effect as well as the even more limiting rule of double intention. It is an explicit appeal to one's own troops that they accept greater risk of harm to themselves, in acknowledgment that the character of war is changing, as is the way victory or success is measured and attained. Improvements in force protection measures will compensate some of the increased risk but the new priority is a vital conviction to save civilians from collateral damage and, where possible, the atrocities of conflict meted out by irregular forces. Expectations in MAC must be managed differently and developed countries need to address, enable, inculcate and empower a cultural shift in their forces.

Soldiers involved in toe-to-toe fighting with conventional enemies acknowledge their susceptibility to harm. They plan and train for it, being prepared to shoulder an even greater risk for an understanding of the operational and strategic needs: perhaps that an enemy position must be captured by a particular time, in order for essential follow-on military operations to occur eg Operation Market Garden, September 1944. Acknowledging that without capturing the position, those subsequent operations will fail, with their own side's casualties likely to be greater, commanders will demand and soldiers will accept added risk of harm and increased probability of death. The challenge for the changing character of MAC is that it necessitates combatants to fully embrace that for mission success – where truly minimising civilian casualties, winning hearts and minds and the strategic narrative are essential – the levels of self-sacrifice are morally

[153] Isaiah 1:17. New American Bible (Revised Version).

identical but causally different, to that required in fighting for or defending one's own, against a near-peer enemy.

It is not easy and requires a mental shift in what the ultimate sacrifice is worthy of risking; it requires a new form of supererogation and a new level of courageous restraint to be imbued through the moral and conceptual components of fighting power. Such a new doctrine of "courageous restraint plus" will bring greater risk of harm to conventional troops that, as stated, can be offset to a degree by improved protection measures but never overcome – ground troops are threatened in war but additionally in MAC subject to the unlawful tactics of irregular forces, and their distinctly abhorrent methods of bringing civilians into harm's way. "Courageous restraint plus" must not be misunderstood as "captive restraint", however, where soldiers feel ransomed to ineffective strategies, become sitting targets, or are ineffective as they are unable to respond to real threats and the changing or evolving situation in front of them.

For military planners that routinely predict their own combatant casualties in conventional encounters, as part of planning different courses of action, the mental agility required is identical for MAC. This is notwithstanding the counter-intuitive nature of actively planning riskier courses of action, in order to demonstrate their soldiers' willingness to accept a higher threat of harm; the aim being to reduce the potential for collateral damage to levels below those currently assessed to be legitimate and lawful. Conflict is a high threat-to-life activity and environment. With globalisation and interconnectivity, it is possible for the narrative of greater levels of self-sacrifice by professional soldiers to be communicated to all, even sceptics and the intransigent irregular forces, although the latter will clearly not acknowledge such a moral intention and commitment. While Frank Richards, his fellow soldiers and the French civilians may have told close friends about the supererogatory act of World War One, the rest of the world had to wait until his memoires published in 1933. Today, a similar example under "courageous restraint

plus" is potentially available to the world instantaneously. Accessibility to modern communications, interconnectivity and technology such as artificial intelligence, can be used to overcome the suspicions of intentions: to promote 'a more objective determination of right action' beyond the rule of double effect as required by Ramsey; and likewise, beyond Walzer's rule of double intention as 'a positive commitment to save civilian lives'.

Conclusion

Militaries, including the British, seek to reduce their own combatant casualties through all means possible – new doctrines, technologies, force protection measures, tactics, techniques and procedures. There is no part of CJWT that restricts this natural desire; it is also a practical requirement for future battles. Although not wholesale, there are many examples which demonstrate that troops are prepared to be self-sacrificing or restrained in the use of force available to them. They have often demonstrated a level of moral courage beyond that necessitated by rules of engagement, military law and IHL. Recent evidence in MAC, however, suggests that conventional force actions can be considered to lack sufficient discrimination by some groups, thereby having severely detrimental effects on long-term strategic outcomes. Caution is further raised: the acceptance of greater risk to our own troops, in order to reduce non-combatant casualties, must always be balanced against achieving the military objective. If a mission requires a military component then casualties are likely and an element of collateral damage must be acknowledged as unintentional, acceptable and tolerable.

Soldiers engaged in conflict recognise the nature of war and their own vulnerability to becoming a casualty – toe-to-toe fighting against an acknowledged and recognisable enemy force in conventional war. They will also accept a greater number of their own casualties, with an understanding of the operational and strategic plan, taking on added risk of harm and even death. Self-respect, dignity and honour are maintained by a sense of fairness in the fight. In MAC, the

asymmetry distorts this sense of fairness and equality of opportunity to kill or be killed; professional soldiers quail over operating without believing in an opportunity to distinguish the enemy, compete fairly and the invisible threats from such as IEDs. The considerable challenge is for the change characteristic of MAC – the dominance of non-combatant casualties in winning hearts and minds and the strategic narrative – to be understood as requiring a similar sacrificial commitment by soldiers towards the war effort.

The conceptual component of fighting power must change to reflect this developmental need. It will not be easy as it requires a mental shift in what the ultimate sacrifice is worthy of risking. A new doctrine of "courageous restraint plus", a different way to achieve success, needs to be imbued into soldiers, where they willingly accept greater risk to themselves, in order to minimise civilian casualties, win hearts and minds, and the strategic narrative, as an inspiring military and dutiful activity. It must not, however, be misunderstood as a form of "captive restraint", where soldiers feel ransomed to ineffective strategies, betrayed as sitting targets, or are ineffective – unable to respond to enemy actions and becoming disillusioned as a result. Whilst combatants of developed countries should be expected to take additional risk to themselves, as an obligation of their voluntary commitment to carry out their lawful orders, including protecting non-combatants, they must not be subjected to undue, unbalanced or extreme risk: that would be unjust and ungodly.

Chapter 6: Conclusion

In this chapter I have brought forward seven themes concomitant with discrimination, for which there are currently insufficient Christian moral tools and discourse to support the increasingly challenging task of acting discriminately in MAC. Having served the British army at tactical, operational and strategic levels for over thirty years, including in coalitions, I have first-hand experience of the shortfalls in moral tools and legislation, and their effects on military decision-

making, together with the consequences for combatants and non-combatants. In developing the task of discrimination in MAC, clearer guidance is necessary on what intentions, activities, capabilities, capacities and degrees of influence are that constitute warlike activities, sufficient to be more identifiable as being liable to lethal force – combatant status must be reinterpreted. I have proposed four groups of actors within the structure of irregular forces: those involved in attacking, facilitating, training and leading, whose actions are morally deserving of lethal force against them, based on a developed CJWT. By comparing these four groups with their conventional counterparts and assessing irregular force actors to equivalents in regular forces and against IHL, which is largely consistent with CJWT, I have argued that these actors and their facilities remain liable to direct, deliberate and intentional attacks at all times during MAC, or until some form of agreed and verifiable transfer to non-combatant or civilian object status, respectively, is performed. This guide overcomes the impracticalities of current laws of war in distinguishing combatant status, based on such as clothing or insignia, contract or covenant – irregular fighters will never distinguish themselves or their activities in accordance with current IHL.

Having proposed a new interpretation of combatant status, I recognise the growing unease of developed states with levels of collateral damage and that irregular forces in MAC are unlikely to act lawfully or morally. To address these two issues of immoral activities and collateral damage, it is essential to understand the intentions, actions and behaviours of irregular forces and how they shape the battlespace by such as urbanisation, which increases civilian vulnerability to collateral damage. Building on Ramsey's ethical conclusion that revolutionaries enlarge the target area that is genuinely collateral, I determine that irregular forces in MAC enlarge the target it is legitimate for conventional forces to attack with respect to the principle of discrimination, acknowledging that more civilians become liable to incidental but justified killing. Within CJWT, this requires that the doctrine of double effect is developed or modified,

with some more objective analysis of right action. Technical developments help and predictive analytics could be a gamechanger: to overcome scepticism and address the increased vulnerability of civilians. A programme of expectation-management is necessary across politicians, ethicists, media, humanitarians and the general public to describe how the intentions of forces from developed countries are to be controlled by more objective determination of right action eg artificial intelligence. Further, accessibility to global communications allows civilian retrieval of these more objectively determined outcomes in the most austere conflict situations; conventional forces can present their strategic intentionality to all in a way never previously possible, shaping the narrative to what is ethical, practicable and militarily achievable within new standards of contemporary culture and state practice.

Irregular forces knowingly disregard non-combatant immunity in MAC: by urbanisation, using suicide bombers, abusing civilians as human shields, attacking medical and humanitarian agencies, and in general intentionally targeting non-combatants. Such demonstrates an inability of conventional forces to protect the civilian population, which is a necessary component of politico-military-strategic success. This is a new criterion to address within CJWT; such casualties suggest that any rights-based model is likely to make war impossible to wage and if waged, impossible to conduct and deliver. Conventional forces should consider these civilian deaths to be, morally, a form of incidental collateral damage: they are foreseen by conventional forces but are not intended by them as they are clearly perpetrated by irregular forces. Delivering civilian protection must not, however, trump a higher moral obligation, within CJWT, to serve justice and restore an ordered peace, which is achieved by defeating the irregular force and, thereby, inhibiting its ability to target its own civilians. Balancing the needs of the military mission with protecting civilians from being abused is possible, with the Christian virtues of prudence, fortitude and justice to deliver moral outcomes when irregular forces act, altogether, immorally.

Irregular forces in MAC abuse the sovereignty and sanctity of state borders by using external areas to prepare, facilitate and launch elements of their war effort. Although international law largely prevents incursions into other states not involved in conflict, from the CJWT, national borders should not be available to irregular forces to conceal their activities and prevent attacks against them. The UK's different approach to the US, in applying military force against ISIL, with the UK initially terminating the targeting of military objectives once the objectives crossed into Syrian territory, but training moderate Syrian opposition forces in an ally's state, was a legal practice that was morally flawed. The Christian moral discourses from Grotius to Ramsey map helpfully to the transnational character of MAC including, potentially, the moral liabilities of those transnational facilitators, manufacturers, suppliers and leaders to lethal force against them, wherever they reside. Attacks against military objects in countries external to the conflict are morally permissible, given that they are discriminate, proportionate and prudent; however, an attack on irregular forces in an external state may be imprudent for other reasons, even if it is clearly discriminate and proportionate. Prudence also determines that wherever possible, a collective response by conventional forces and third-party states involved is best practice, particularly if a third-party state is willingly supportive, even if insufficiently capable itself.

Given a revised and clearer guide to combatant status for irregular forces in MAC, conventional forces need to familiarise themselves with how irregular forces shape the battlespace in immoral ways, wantonly abandon non-combatant immunity and reject codes of conduct. Regular forces must still act discriminately by maintaining high moral standards, observing core values and adhering to rules of engagement. However, soldiers sent to apply military force, in accordance with *jus in bello* norms, need to believe that, should their discriminatory actions lead to foreseen but unintended civilian casualties, those same actions were morally and legally supportable, and are not open to future, repeated scrutiny, which can cause moral injury and mental illness. When

there are shortcomings in the laws of war, as there are for MAC, and soldiers are fighting, then there needs to be an objective moral foundation to guide decisions. The sound moral baseline of CJWT has led and continues to lead to appropriate developments in the laws of war and conventions, and in turn the formulation of state practices and military doctrines, reflective of those morals in the contemporary age. Conventional forces must reasonably believe, rather than suspect, that targets are intentionally engaged in their destruction or the destruction of non-combatants. More broadly, if an activity is warlike and contributes to defeating conventional forces then that activity and those involved are targetable. A set of Christian-aligned values and standards, like the British army's, truly upheld, is more likely to yield the necessary task of discrimination, with any innocent death being genuinely collateral and complement the more objective analysis of right action that runs parallel.

For many soldiers, veterans and members of the UK public, it is sickening to witness the seemingly relentless pursuit of veterans for events that occurred many years ago. There is, as Johnson and others identify, an inequality in accountability of opposing forces with respect to acts of discrimination and, thereby, an injustice. The international community must seek to bring all war criminals to justice, without pursuing unfairly through ease, financial or political gain, the well-intended actions of professional soldiers that cause unintended civilian casualties. Should this modern phenomenon continue then frontline forces may consider abandoning essential tactical engagements through fear of facing, in the future, accusations of ill-treatment or unlawful killing, together with prolonged and intrusive investigations, long after their contribution has ceased. It could cause serving soldiers to be more apprehensive and risk-averse – an unhealthy combination in war – even if believing that their plans and actions are lawful. Rules of engagement, clear and concise enough for conventional troops, cannot cover the complexities that soldiers find themselves in during MAC. A moral code is necessary that gives

confidence and assurance that its adherence will ensure no intrusive investigations in the future; an agreed covenant is essential based on a solid moral foundation, such as a developed CJWT. Unintended civilian casualties in war can lead to stress-related disorders, PTSD and even suicide in soldiers. Pursuing soldiers for events long past, which they collectively interpret as a dereliction of any military covenant between government and themselves, is an exacerbation: it is immoral and must cease.

One last commitment to providing more objective analysis of right action is for politicians, ethicists, media, humanitarians and the general public to witness new levels of supererogation instituted into military ethos, doctrine and practice – part of this group's expectation-management. The considerable challenge is for it to be recognised that in MAC, even unintended non-combatant casualties have a hugely disproportionate and adverse effect on winning hearts and minds and the strategic narrative. Reducing non-combatant casualties to the levels imagined, to fulfil a satisfactory level of expectation-management, requires a level of sacrificial commitment by soldiers identical to that when they confront a conventional enemy. Regular troops need to actively seek to protect 'enemy' civilians to a moral degree comparable to how they would protect 'friendly' civilians. The conceptual component of fighting power must change to reflect this developmental need, requiring a mental shift in what the ultimate sacrifice is worthy of risking. A new doctrine of "courageous restraint plus", a different way to achieve success, needs to be imbued into soldiers, where they willingly accept greater risk to themselves, in order to minimise civilian casualties, win hearts and minds, and the strategic narrative, as an honourable and dutiful military activity. However, while combatants of developed countries could accept higher risk to themselves, as moral obligation of their voluntary commitment to carry out their lawful orders, including protecting non-combatants, they must not be subjected to undue, unbalanced or extreme risk: that would be sinful.

CONCLUSION

MAC is the latest fundamental change in the character of war; it is still evolving. The means and ways that irregular asymmetric forces shape the battlespace, to gain advantage, incorporate distinct activities that are immoral, illegitimate or illegal, and often abhorrent. Such are the extreme, uncompromising and revolutionary activities of irregular forces that developed countries must transform the way that they organise and prepare their conventional forces, with new tools and resources, so that they are able to engage across the full spectrum of conflict, including MAC. In parallel, MAC's evolving character requires a moral review of any new application of force and fighting power by conventional militaries: if necessary, to deliver equally transformational moral tools and guides to assist discernment. The aim of this thesis has been to provide such moral assistance by advancing and developing Christian ethical thought on the task of discrimination in MAC.

First, I analysed wars over the last 200 years, to identify that the nature of war remains constant but its character changes. I concluded that, while the future character of war is very difficult to predict, it is provident to identify the most plausible operating environments, in order to conceptualise and plan effectively, resource accordingly, and remain morally dutiful. That is to optimise the physical, conceptual and moral components of fighting power in war. Departing Afghanistan in 2011, I was clear that both moral and legal guidance on discrimination were incomplete and sometimes confusing – from coalition headquarters to ground troops – in this newly developing form of war. After three years of research, analysing and discerning, primarily wars in Iraq and Afghanistan, I assessed that MAC was still evolving in character; that assessment materialised with the formation of ISIL in 2014 and its vile behaviours. The next war, no matter how it starts, is likely to develop quickly into MAC but the current moral tools to support it are insufficient.

Then I examined the development of the IED as a new phenomenon, with its revolutionary impact on the asymmetric battlespace, and as an exemplar expression of the irregular force's asymmetric ethics, attitude, audacity and fighting effectiveness: along with cyber-attacks, suicide bombings etc. I concluded that Western military doctrines of manoeuvrist approach, traditional counter-insurgency, counter-terrorism and so on were inadequate for MAC and that change or adaptation was necessary. MAC raises several challenging issues regarding conventional forces and how they should demonstrate morally discriminate behaviour against a largely immoral enemy; original thinking and approaches are necessary. Having evolved not as a doctrine or set of unchangeable principles but a tradition built on the wise use of faith, philosophy and history, CJWT remains an effective resource for analysing discrimination, including in MAC. Three CJWT analyses were selected based on their suitability to provide (1) a type of war with similar features and characteristics, (2) a most recent fundamental change in war's character, and (3) a contemporary view.

Studying Paul Ramsey's progressive work on the morality of war – surveying his moral theology of discrimination in revolutionary warfare – revealed his design and development of a robust counter-insurgency ethic. Declaring that nuclear stalemate had made the world safe for insurgency, he recognised the need to revise moral doctrine surrounding discrimination in the evolving character of revolutionary warfare, based on how the Vietnamese insurgency had arranged itself for conflict. Ramsey revealed his cardinal principle governing just conduct in war: the absolute immunity of non-combatants from direct, deliberate attack (meaning intentional too). He was equally clear that intention must be controlled by more objective determination of right action and recognised the significant challenges in practically applying discrimination on military operations. Analysing and synthesising his moral views on revolutionary wars revealed that, while helpful, they were insufficient for moral discrimination in MAC.

Ramsey's work on insurgency shares some key features with MAC. I chose the USCCB's pastoral letters as a moral revision of CJWT caused by a most recent change in the character of conflict, namely the potential for nuclear war, which made the world more susceptible to new forms of unconventional conflicts. The USCCB's Catholic views complement Ramsey's Protestant perspective, as a second major resource; but together, they are still insufficient for the needs of a satisfactory moral guide to discrimination in MAC. Analysing James Turner Johnson's moral reflections on contemporary asymmetric war, a third major and modern source of CJWT, provided additional, valuable assistance to the issue of discrimination in MAC, but even he acknowledges that recent moral discourse has largely failed to engage it.

Together, the combination of Ramsey, the USCCB and Johnson, and including elements of other analyses relating to discrimination, both Christian and secular, remain collectively insufficient for the needs of a moral guide to discrimination in MAC. Synthesising the features and characteristics of MAC with these major contributions led me to seven foremost themes, in need of moral examination to provide some essential moral guidance to the task of discrimination in MAC.

1. Guiding CJWT-based discrimination in MAC. Irregular asymmetric fighters show no intent to distinguish themselves from the surrounding population or abide with any shared international morals or laws of war. Traditional conditions of combatant status including uniform or insignia, contract or covenant with people through legitimate government are not discernible with irregular forces in MAC. While in conventional war, a dress-code makes discrimination between combatants and non-combatants possible, irregular forces flout the obligation to distinguish themselves from the civilian population while they are engaged in an attack, or in a military operation preparing for an attack, as demanded by IHL; in so doing they forfeit any

status as combatants or prisoners-of-war. Their immoral actions seem to exceed those of previous revolutionaries in amount and levels of revulsion. Why, in short, because activities like intentionally targeting civilians as a strategy, with such as suicide bombers, and deploying mass, hazardous victim operated IEDs, in an asymmetric equivalent form to anti-personal mines, are immoral and unlawful respectively. In MAC, therefore, conventional forces require a new protocol to determine the combatant status of those connected with irregular forces, outside dress-code etc. Collateral damage should not increase, so long as targeting remains only against combatants, as newly defined.

The international community considers antipersonnel mines to be immoral and unlawful, notwithstanding fail-safe switches, self-destruct mechanisms, and marking or at least recording where mines are deployed. The precariously manufactured victim operated IED, constructed without a fail-safe switch, self-destruct capability or formal recording must be at least as immoral and unlawful. The number of civilian casualties caused by IEDs in recent MACs reinforces their essentially indiscriminate nature and use. What I have argued is that with their collective intent, capability and capacity, being able to deliver and regenerate thousands of lethal IEDs to the asymmetric battlespace, those within the IED network and irregular groups of attackers, facilitators, trainers and leaders more generally, are morally liable to justice comparable with conventional forces – frontline troops, trainers, commanders and those manufacturing, storing and supplying booby-traps, mines and claymore devices for use in conflict.

This novel development in moral equality, mapping directedly the actions and intentions of irregular forces with those of conventional counterparts that have mature CJWT-based responsibilities, accountabilities and liabilities, allows a clearer moral guide and justification of which warlike activities deserve targeting, whatever lexicon of war is used to define irregular

combatants. Irregular fighters, facilitators, trainers and leaders chose neither to identify themselves in their combatant or combatant-support capacities, nor when they are active as opposed to inactive in hostilities, tilling their land or working legitimately. My moral equivalence proposition removes any reliance on the IHL obligation placed on irregular forces to distinguish themselves, which those in MAC purposely violate. Once these newly ordered irregular combatants enter into conflict, they should retain combatant status until they cease their warlike activities, which for their personal safety and benefit, they should identify to the conventional force in a recognisable and independently verifiable manner. Further, they do not qualify for the moral rights of reservists, which differ depending on when they are and when they are not on active duty.

The conduct of some people, even though they may bear no arms, can no longer be considered a minor accompaniment with reference to the new character of hostilities in MAC. These people must surely be accountable, lose their non-combatant status and thereby become subject to lethal force. I reject Coady's argument that the principle of discrimination is absolute as it would make actual fighting in MAC impossible. In arguing that *jus in bello* norms need strengthening, if necessary, by conventional forces taking on added risks, Rodin makes no attempt to visualise, qualify and quantify those risks: what is the scale of risk, deaths or injuries to conventional troops that enable this necessary strengthening of *jus in bello* norms? Moreover, such a posture, as a practical output of accepting increased risk, does little to deter irregular fighters in MAC that are likely to exploit any ambiguity or dual-use sites for their goals and propaganda, including the manufacture, storage and distribution of IEDs and components. I address this in the form of military supererogation, with my operational experience from platoon commander to commanding officer. At the other end of the spectrum, in proposing that asymmetric war permits any, never mind expands permissible and intentional targeting of civilians, Gross is inconsistent with CJWT.

A combatant of the irregular force in MAC is one who intends, that is freely, wantonly and wilfully chooses to engage in an attempt at our destruction or that of civilians, either as an attacker or functioning supporter in the form of facilitation, training or leadership. The threshold is for a conventional combatant to reasonably believe this to be true; reasoning and prudence will be better informed, in many instances in future by technological advances, particularly predictive analytics. To put it another way, "improvised combatants" in the form of irregular forces and improvised weapons are still combatants and weapons respectively – emplacing, facilitating, training and leading the development, manufacture and deployment of weapons are combative functions, deserving of combatant status or military objective.

2. Collateral damage and transforming the rule of double effect. Urbanisation is predicted to grow in the future and be more apparent in lower economically developed regions, where MAC is more likely. If developed countries must engage in MAC, then a new understanding or interpretation of the rule of double effect must allow for campaign strategies that overcome the seduction to reduce civilian casualties to unachievable levels. Following on from Section 1, those complicit (facilitation, training and leadership roles) and not blameless in their support to irregular forces are liable to harm, and the blameless liable to unintended collateral damage, given that a reasonable attempt has been made to allow their separation from the irregular force's imposition. This attempted separation must not be at all cost and prudence must prevail, otherwise irregular forces will exploit delay and prolong conflict for their benefit.

Civilians will become more vulnerable to collateral damage in MAC, because of the way that irregular forces purposely shape and exploit the battlespace and not because of any lesser commitment to its reduction by developed countries and their militaries. Civilians are, however, to remain invulnerable to intentional attack. I oppose Coady's view that modern warfare is not so

different and ‘noncombatants remain immune whether or not their immunity obstructs someone’s supposed right to a fighting chance’, as it would mean that MAC could never be engaged. To advance the possibility of engaging in MAC, the principle of discrimination cannot be absolute and, although relatively low, collateral damage may seem higher than anticipated; it needs discourse and a programme of expectation management across politicians, ethicists, humanitarians, soldiers and the general public.

Unlike the counter-insurgency in Vietnam, which although morally supportable lacked campaign success, MAC has exposure to new technologies; for instance, in surveillance, guidance and stealth today, and artificial intelligence now and more so in the near future, which all aid the practical task of discrimination by conventional forces, thereby determining more objectively the likelihood of collateral damage. These advances in technologies, particularly artificial intelligence, have the potential to transform the application of the doctrine of double effect, allowing more objective decision-making. The principle remains the same but its application in MAC can become more morally robust, satisfying the need to demonstrate evidentially that intentions were genuine. Confidence in artificial intelligence supporting moral discernment in conflict will grow, as its use in other life-affecting professions develops, such as medical diagnoses, and legal judgments. The key will be to ensure sufficient, uncorrupted data for decision-making and setting the ethical conditions for software and machines to formulate solutions for this original thinking.

Also, unlike previous revolutionary conflicts, civilians have shown in the most austere and threatening MAC environments, like besieged Aleppo, that through globalisation, they have worldwide access to information and communications. In the case of Aleppo, civilians have been fully aware of their exploitation as human shields, the ruthless nature of ISIL if they demonstrate any disloyalty against the group, and the Russian-backed Syrian regime’s betrayal of the laws of

war, for example using chemical weapons and deliberately targeting non-combatants. Developed countries and their forces can present their strategic intent to all in a way never previously available, and supply more evidence of their right action, as described above – the integrity of that message will be measured by the visible witness and subsequent reflection of those intentions and actions on discrimination. If achieved, it will supress Ford's longstanding challenge to the doctrine of double effect – drop our bombs but say we withhold our intention to harm innocents.

3. Responding to the erosion of non-combatant immunity. The protection of non-combatants from harm has traditionally addressed attacks originating from enemy combatants: the expectation being that combatants do not intentionally attack their own civilians. Insurgency wars, with guerrilla tactics such as selective terror on civilians, modify this established view. In MAC, irregular forces shape the battlespace purposely by performing the most reprehensibly immoral acts, such as intentionally targeting their own innocents, as well as other non-combatants such as medical services, patients and aid agencies that seek to assist everyone.

A CJWT view is to come to the aid of the persecuted and put right a wrong. I have argued that conventional forces in MAC have a moral responsibility to try and protect all non-combatants, including communities associated with irregular forces, from being attacked by those irregular forces. Protecting these non-combatants must not, however, take primacy over discriminate and proportionate ways and means of defeating irregular forces, notwithstanding that seeking to reverse the erosion of non-combatant immunity, caused by the actions of irregular forces in MAC, seems futile. What I propose as an evolution of CJWT is that non-combatant casualties associated with irregular forces, and targeted by those same irregular forces are, in a sense, incidental to a conventional force's application of discriminate and proportionate force – foreknown but not intended. Conventional forces must not, therefore, impose targeting self-

constraints that see civilian protection trump the overriding moral obligation and duty to bring justice and an ordered peace.

If, in the long run, defeating irregular forces is more likely to prevent their ability to target the civilian communities within which they live, then the killing of innocents by irregular forces must be tolerated as incidental damage. By their intentionally murderous actions, irregular forces have enlarged the area of innocent deaths or collateral damage, and not conventional militaries. Developed countries must confront the abhorrent events presented by irregular forces in MAC, overcome their distressing and demoralising effects by reason, in the search for justice through prudence and fortitude.

4. Moderating the sovereignty of state borders. The Christian moral discourses from Augustine, through Grotius to Ramsey map helpfully to the transnational character of MAC including, potentially, the culpability and liability to lethal force of facilitators, manufacturers, suppliers, trainers, trainees and leaders, wherever they reside. Challenging the integrity of national borders as written in IHL, I have advanced a CJWT-based response that given a justified military target, discriminate attacks outside countries technically engaged in conflict are morally permissible, given that they are proportionate and prudent, and particularly if by not doing so increases the likelihood of collateral damage overall. Where irregular forces operate out of a neutral state, that state should first be urged to terminate their operations. If the neutral state is unwilling, it implicates itself in an act of war. If it is unable to act because, say, it lacks control over part of its territory, then *de facto*, if not *de iure*, it lacks sovereignty over that territory, and so to intervene across its borders in uncontrolled territory is not an invasion of actual sovereignty. Ideally, however, such intervention would be by invitation and therefore consensual, meeting IHL too.

5. **Enabling soldiers to act discriminately**. As the most mature moral foundation for discernment in war, CJWT offers appropriate developments in ethical thought, the laws of war, conventions, state practices and in-turn the formulation of military doctrines, reflective of the contemporary age. The new characteristics of MAC determine the need for the task of discrimination to be developed so that it is easily interpretable, as well as enabling and even compelling conventional force compliance. Further, for the modern era, how discrimination is discerned and enforced should be more clearly recognisable and verifiable as right action. As suggested, technological advancements such as predictive analytics have the potential to be groundbreaking.

Soldiers that target indiscriminately should always face justice. It must be clear to them, however, how to designate combatants in MAC and distinguish them from non-combatants, as well as the thresholds required to determine combatant status. Conventional troops dispatched to apply military force, in accordance with *jus in bello* norms, need to believe and have the confidence to know that, should their discriminatory actions lead to unintended collateral damage, those same actions were determined to be morally and legally unimpeachable; soldiers must not be hounded by future legal challenges.

I have proposed that those involved in the attack, facilitation, training and leadership of irregular forces are combatants, liable to lethal force against them until they recognisably cease their warlike activities for good (likewise improvised facilities). These newly ordered designations encompass those that it is reasonable to believe are from a contingent that is intentionally engaged in our destruction, or our units and formations, or non-combatants and are involved in warlike activities, aimed at our defeat. However, even recognising their discriminate actions as just and virtuous, for the needs of the common good, soldiers should feel the emotional distress of necessarily taking life as a last resort. Adherence to CJWT-based values and standards can

provide the guidance that it is reasonable to believe their targets, as newly developed and ordered in this thesis, are legitimate, and that any innocent death is genuinely unintended. Soldiers should never be exposed, however, to the fear of post-conflict intrusion and investigation based on abstruse rules of engagement, revised interpretations or ones that were discovered to be ambiguous during conflict. Inflicting such worry, which can cause apprehension in engaging in legitimate military activities during conflict and stress-related illnesses later, is shameful.

6. **Balancing accountability of actions by opposing forces**. Developed countries charge and sentence their soldiers, if found guilty, for indiscriminate acts of war. Irregular forces are unlikely to face justice for intentionally killing civilians, unless the international community captures them. It is vexatious and distressing that an irregular fighter is unlikely to face the scrutiny and intrusion that his/her conventional counterpart will for potentially immoral or illegal acts in conflict. Johnson has documented this problem explicitly as a characteristic of contemporary war in his work but offers no solutions. As is the case with not providing soldiers with easily interpretable rules for discrimination, the inequality of accountability is exacerbated by the pursuit of conventional soldiers for historical events, in their own countries, which they translate as a dereliction of the military covenant between government and themselves.

To advance this issue, the international community must seek greater equality of accountability between opposing forces, trying to bring all war criminals to justice with identical commitment, and not pursuing unfairly, through ease, financial or political gain, the rightly intended actions of professional soldiers that cause unintended civilian casualties. While lowering expectations of conventional troops' conduct is an immoral option, developed countries, including the UK, should ensure that government, solicitors, journalists etc, who seek to gain financially, politically or prestigiously, are prevented from hounding soldiers with highly disputable claims post

conflicts; that is, to actively improve the protection of regular soldiers from intrusion, as a way of seeking greater equality of accountability.

7. **Necessary military supererogation**. MAC is a form of war that generally places the people, rather than the enemy, as the centre of gravity – characteristics, capabilities or localities from which the regular force derives its freedom of action, physical strength or will to fight. It requires different ways and means to achieve success, including the primacy of non-combatant casualties in winning hearts and minds and the strategic narrative. Probably the most demanding but potentially rewarding of my original contributions to MAC is the proposition that to achieve the lowest levels of collateral damage, as a primary *way* to military success, requires a form of military supererogation that is understood, by soldiers, to require a potentially sacrificial commitment, equal to that which is nurtured in soldiers for fighting a conventional enemy.

The conceptual component of fighting power – providing the thought processes needed to develop the ability to fight – must be adapted for this new challenge; it requires a mental shift in what the potential of harm and death is worthy of risking and surrendering. Soldiers need to imbue a new doctrine of "courageous restraint plus", an advancement in moral and physical courage, where they willingly accept greater risk to themselves in order to minimise civilian casualties. Respect for others and selfless commitment are core values of the British army, which could include a virtuous understanding of a greater commitment to save civilian lives. This form of supererogation coheres with my desire for the direct targeting of non-combatants, by irregular forces, to be considered as collateral damage, unintended by regular soldiers; an intention of conventional troops will be to perform supererogatory acts that prevent irregular fighters targeting non-combatants. It also compatible with us targeting irregular forces in MAC, no longer distinguished by what they wear, which is never in accordance with their moral or legal obligation and thereby impossible, but by irregular force intention to engage in an attempt at our

destruction, either as attackers, facilitators, trainers/trainees or leaders. However, whilst conventional combatants should be expected to take additional risk upon themselves, as an obligation of their voluntary commitment to carry out their lawful military orders, including protecting non-combatants, they must not be subjected to undue, unbalanced or extreme risk: that would be unjust.

In the final analysis, MAC is a new character of war to add to the spectrum of conflict, which developed countries must plan for and possibly contest. It requires new approaches to the physical, conceptual and moral components of fighting power, together with morally supportable doctrines and tactics that deliver the task of discrimination. A developed CJWT to address discrimination in MAC, as I propose, offers a virtues-based ethic for militaries such that their conduct is governed by their values, sense of duty and intentions. Any rights-based approach to non-combatant immunity is likely to make engaging MAC and discrimination virtually impossible, by constraining the discretion of soldiers who, rightly fearing future consequences of unintended collateral damage, would err against targeting legitimate and important military objectives.

Abbreviations

AAP	Allied Administrative Publication
ANSF	Afghan national security forces
CJWT	Christian just-war tradition
FRY	Former Republic of Yugoslavia
ICRC	International Committee of the Red Cross
ICTY	International Criminal Tribunal for former Yugoslavia
IED	Improvised Explosive Device
IHAT	Iraq Historic Allegations Team
IHL	international humanitarian law
ISAF	International Security Assistance Force (Afghanistan)
ISIL	Islamic State of Iraq and the Levant
JDP	Joint Doctrine Publication (UK)
JIDO	Joint Improvised-Threat Defeat Organization
JIEDDO	Joint Improvised Explosive Device Defeat Organization (US)
MAC	modern asymmetric conflict
MOD	Ministry of Defence (UK)
NATO	North Atlantic Treaty Organisation
PTSD	post-traumatic stress disorder
UK	United Kingdom
UN	United Nations
UNAMA	United Nations Assistance Mission in Afghanistan
US	United States of America
USCCB	US Conference of Catholic Bishops

Glossary

[1]**Battlespace**: The environment, factors and conditions that must be understood to apply combat power, protect a force or complete a mission successfully. Note: It includes the land, maritime, air and space environments; the enemy and friendly forces present therein; facilities; terrestrial and space weather; health hazards; terrain; the electromagnetic spectrum; and the information environment in the joint operations area and other areas of interest.

[2]**Centre of Gravity**: Characteristics, capabilities or localities from which a nation, an alliance, a military force or other grouping derives its freedom of action, physical strength or will to fight.

[3]**Comprehensive approach**: combining political, civilian and military instruments. Building on its unique capabilities and operational experience, NATO can contribute to the efforts of the international community for maintaining peace, security and stability, in full coordination with other actors. Military means, although essential, are not enough on their own to meet the many complex challenges to our security. The effective implementation of a comprehensive approach to crisis situations requires nations, international organisations and non-governmental organisations to contribute in a concerted effort.

[4]**Counter-insurgency**: Comprehensive civilian and military efforts made to defeat an insurgency and to address any core grievances.

[5]**Fighting Power** defines our ability to fight, and comprises a: conceptual component (the thought process); moral component (the ability to get people to fight); and physical component (the means to fight).
[6]Previous doctrine provides greater explanation in defining it as armed forces' ability to fight and achieve success in operations. It is made up of an essential mix of three inter-related components: conceptual, moral and physical.
The conceptual component provides the thought processes needed to develop the ability to fight.
The moral component of fighting power is about persuading our people to fight. It depends on good morale and the conviction that our purpose is morally and ethically sound…
The physical component of fighting power is the means to fight. It has five elements: manpower, equipment, collective performance, readiness and sustainability.

[7]**Force multiplier**. A factor or capability that increases the effectiveness, availability, persistence, or reach of another capability or force.

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[1] NATO. Standardization Agency, *NATO Glossary of Terms and Definitions*, Allied Administrative Publication Edition 2018, AAP-06(2018), p. 19.
[2] Ibid., p. 24.
[3] NATO. Topics, 'A "comprehensive approach" to crises', dated 21 June 2016, accessed 18 May 2019, http://www.nato.int/cps/en/natolive/topics_51633.htm.
[4] AAP-06(2018), p. 34.
[5] UK. MOD, Development, Concepts and Doctrine Centre, *UK Defence Doctrine*, Joint Doctrine Publication 0-01, (JDP 0-01) (5th Edition), dated November 2014, accessed 7 May 2019, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/389755/20141208-JDP_0_01_Ed_5_UK_Defence_Doctrine.pdf
[6] UK. MOD, Joint Doctrine and Concepts Centre, *British Defence Doctrine*, Joint Warfare Publication 0-01, Second Edition, October 2001, pp. 4-1, 4-3 and 4-5, accessed 17 July 2017, http://ids.nic.in/UK%20Doctrine/30%20jun.pdf.
[7] UK. MOD, Development, Concepts and Doctrine Centre, *Air and Space Doctrine*, Joint Doctrine Publication 0-30 (JDP 0-30), dated July 2013, part 1, p. 1-3, note 4, accessed 18 May 2019, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/223495/jdp_0_30_uk_air_and_space_doctrine.pdf.

[8]**Force Protection**. Measures and means to minimize the vulnerability of personnel, facilities, equipment, materiel, operations, and activities from threats and hazards in order to preserve freedom of action and operational effectiveness thereby contributing to mission success.

[9]**Improvised explosive device (IED)**. A device placed or fabricated in an improvised manner incorporating destructive, lethal, noxious, pyrotechnic or incendiary chemicals and designed to destroy, incapacitate, harass or distract. Note: It may incorporate military stores, but is normally devised from non-military components.

[10]**Insurgency**: Actions of an organized, often ideologically motivated, group or movement that seeks to effect or prevent political change or to overthrow a governing authority within a country or a region, focused on persuading or coercing the population through the use of violence and subversion.

[11]**Manoeuvrist Approach**. An approach to operations in which shattering the enemy's overall cohesion and will to fight is paramount. It calls for an attitude of mind in which doing the unexpected, using initiative and seeking originality is combined with a ruthless determination to succeed. (Manoeuvre is not the same as movement in military doctrine.)

[12]**Mission Command** in the UK is a philosophy of command that has four enduring tenets: (1) timely decision-making; (2) thorough understanding of a superior commander's intent; (3) clear responsibility on the part of subordinates to fulfil intent; and (4) determination to take the plan through to a successful conclusion.

[13]**Wicked or unbounded** activities are recognisable but the levels of effect are unknown. They are non-linear, evolve, are unbounded, have no end-state and are unsolvable with current mission analytical techniques. They prevent our freedom of manoeuvre and action.

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[8] UK. MOD, Development, Concepts and Doctrine Centre, *Allied Joint Doctrine for Force Protection*, Allied Joint Publication-3.14 (AJP-3.14), dated April 2015, p. 1-1, accessed 18 May 2019, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/454616/20150804-AJP_3_14_Force_Protection_Secured.pdf.
[9] AAP-06(2018), p. 64.
[10] Ibid., 66.
[11] UK. MOD, Development, Concepts and Doctrine Centre, *UK Terminology Supplement to NATOTerm*, Joint Doctrine Publication 0-01.1 (JDP 0-01.1), (2019 Edition A), dated January 2019, p. 35, accessed 23 May 2019, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/773707/20190121-doctrine_uk_terminology_JDP_0_01_1_2019_1_.pdf.
[12] JDP 0-01, p. 28, para. 2.11.
[13] T C Greenwood and T X Hammes, 'War planning for wicked problems', in *Armed Forces Journal*, 1 December 2009, accessed 7 May 2019, http://armedforcesjournal.com/war-planning-for-wicked-problems/.

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