UNDERSTANDING THE NATURE OF TARGETED KILLINGS WITH DRONES: A POINT OF AMBIGUITY IN INTERNATIONAL LAW

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ABSTRACT: The present study inquires into the legality and nature of targeted killing operations carried out by Unmanned Aerial Vehicles (UAV). By advancing a conceptual analysis methodology divided in a demarcation phase and a subsequent critique, it is argued this kind of attack relies on the reinterpretation of international legal principles such as the right of self-defense, military necessity, and general guidelines of the laws of armed conflict. It also shows the theoretical presumptions behind the borderless battlefield rhetoric used to justify these operations, pointing out how States have revisited ideas of just war and unlawful combatants to keep the treatment of this issue framed in the laws of armed conflict, instead of treating them as extrajudicial executions in violation human rights law.

KEYWORDS: Targeted killings; Drones; Laws of armed conflict; Macrosecuritization; Conceptual analysis.

RESUMEN EJECUTIVO: El presente estudio indaga sobre la legalidad y la naturaleza de los asesinatos selectivos realizados con vehículos aéreos no tripulados (UAV). Mediante una metodología de análisis conceptual, dividida en una fase de demarcación y una crítica posterior, se señala cómo este tipo de ataques se apoya en la reinterpretación de principios jurídicos internacionales como el derecho a la legítima defensa, la necesidad militar y las directrices generales del derecho de los conflictos armados. También se muestran las presunciones teóricas que subyacen a la retórica del campo de batalla sin fronteras que se utiliza para justificar estas operaciones, señalando cómo los Estados reutilizan las ideas de

guerra justa y combatientes ilegales para mantener el tratamiento de esta cuestión enmarcado en las leyes de los conflictos armados, en lugar de tratarlas como ejecuciones extrajudiciales que violan la legislación sobre derechos humanos.

PALABRAS CLAVE: Asesinatos selectivos; Drones; Leyes de los conflictos armados; Macrosecuritización; Análisis conceptual.

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I. INTRODUCTION

The interest in the usage of remotely controlled aerial vehicles for military purposes has been a significant factor in shaping modern warfare. Although the global dissemination of drone technology is a relatively recent phenomenon, it is possible to trace attempts to incorporate it into security policies since the early 20th century. Furthermore, according to Kindervater (2016, pp. 226-231), this development had three phases in those years: first, the trials of pilotless bombings performed during the interwar period by countries such as the United Kingdom; second, its application in surveillance and reconnaissance activities in the Cold War; and thirdly, the early implementation of targeted assassinations as a strategy for reducing military risks during the so-called humanitarian interventions in Kosovo.

The approach of this latter phase transcended into the 21st century, but it became fully actualized only with the United States' campaigns in Pakistan, Yemen, and Afghanistan. The Bush administration resorted to this tactic for diminishing Al Qaeda's influence during the 2000s and, once the enemy began its decline, President Obama gave drone attacks a new push with what came to be known as "signature strikes" or "Terrorist Attack Disruption Strikes" policy (TADS) (Bergen & Rowland, 2014, pp. 25-26).

Since then, although the United States and Israel have dominated the use of Unmanned Aerial Vehicles (UAV), other states have also slowly incorporated drone technology into their security policies. A good example of this spread, according to Milan and Tabrizi (2020), is the fact that Middle East countries, to counter transnational threats, have attempted indigenous crafting of UAVs and, moreover, have tried to purchase them from China, once the Asian giant provided the supply that the United States was not willing to give (pp. 734-735). Similarly, recent armed conflicts such as Ethiopia's war against Tigray rebels (Bearak *et al.*, 2022) and the 2020 war in the Nagorno-Karabakh region (Ilić & Tomašević, 2021, p. 13) featured drone strikes in a prime role as a way to harm key actors and disrupt the enemy's supply lines.

Simultaneously, after the events of 9/11, the evolution of States' military doctrines to include drone technology became mixed with the political narrative of the Global War on Terrorism (GWOT), providing an unprecedented impulse for targeted killing operations using UAVs. Part of the justification for this conduct is the prevention of greater damage that the enemy would carry out. Consequently, this technique does not only deter the enemy from doing further harm, but it also represents less human risk than conventional special operations or warfare; and, simultaneously, it allows attacking a specific target with greater precision. Hence, it represents a legitimate course of action.

Juridically speaking, these procedures could comply with international legal standards if the involvement of each of the targets in a constant and unrestricted armed confrontation with States that resort to such killings could be proven. However, the previously exposed narrative has not been able to get incorporated into international law, since the execution of targeted killing campaigns has gone beyond it and slaughtered people that hardly represented an immediate threat. As a result, ambiguity around the nature of these attacks spreads, hampering the production of standards of application that can restrict (or at least regulate) them, either through international human rights law or international humanitarian law.

a. Research design

With these considerations in mind, the present study inquiries how the nature of targeted killing attacks with UAVs, outside direct armed confrontation, can be theoretically delimitated to identify the international law regime applicable to them.

As a preliminary answer, it is suggested that defining a concrete nature for the attacks related to the category of "targeted killing with UAVs" requires carrying out a thorough characterization of the operations. Thus, it is imperative to inquire into three issues: the way these attacks are perpetrated and the role that they have in armed conflicts; the discursive justifications derived from the junctures that expanded its

use; and the domestic and international norms applied so far for authorizing and judging their utilization.

Following those three elements, this study proposes the following delimitation: first, it is a practice that shall be understood as a course of action that complements traditional battlefield armed confrontations to achieve security policy goals. Second, as a borderless use of lethal force, it is predicated on the assumption that contemporary conflicts are not tied to a set geographic scope and, therefore, actions can be taken on fronts that do not entail sustained military clashes. And thirdly, it is imperative to note that the legal treatment of targeted killing thus far has primarily read them as mere deprivations of life, instead of understanding them as actions bound by their nature to an unrestricted state of war interpretation.

In sum, this study proffers that the nature of targeted killings can be summarized as attacks that intend to expand the legal use of lethal resources by reinforcing a subjective narrative of a permanent state of war that absorbs all contexts. Treating them through the laws of armed conflict implicitly legitimates the notion of having an omnipresent confrontation and, therefore, the regulation of this practice may pass through human rights law.

Bearing this hypothesis in mind, the general objective of this project is to establish theoretical elements for defining the nature of targeted killing attacks with UAVs, outside direct armed confrontation, to allow the identification of the proper international law regime applicable to them. Consequently, the thesis aims to achieve the following specific goals:

- Identify the evolution of targeted killing with UAVs after 9/11 inside domestic and international legal doctrines related to its justification and treatment.
- Determine if the understanding that international law has formulated for targeted killing addresses the actual issues inherent in their perpetration.
- Analyze the unregulated problems associated with targeted killing through the lenses of the laws of armed conflict and human rights law.

b. Methodology

Given that the implementation of the aforementioned proposal requires a thorough review of and inquiry into the precepts that have shaped the idea of targeted killing in international law, this work bases its methodology on an interdisciplinary approach between law and philosophy. The suitability of this mixed approach for the treatment of the research problem is justified by the need for identifying not only the main advances in codified international law regarding targeted killing, but also the assumptions upon which the categories used in that legislation were constructed.

The methodological approach for this dissertation is derived from Stephen Riley's (2021) perspective on philosophical inquiries about international law. Specifically, this study takes as its starting point the author's assertion indicating that, despite the inherent plurality of means through which these two disciplines interact, there are two common problems to be addressed when analyzing international legislation from a theoretical viewpoint: first, the issue of *demarcation* – that is, spotting the general structural commitments that a community recognizes as rules through which to initiate individual judgments; and second, the process of *critique* – including both the questioning of the presuppositions behind legal imperatives and the positive needs of a law regime (pp. 393-395). Simply put, the method applied shall answer *what* is considered as law and *which* are the voids of the *lex lata* regarding a chosen international law concern.

That being said, this view does not represent a consensus. For instance, other scholars such as John Finnis (2003, pp. 115-116) have argued that the starting point of legal philosophy studies must be no other than asking what moral imperative is to be pursued with the rules in question. On the other hand, Julie Dickson (2019), affirms that philosophical inquiries into law must depart from merely recognizing the existence of a fixed nature that dictates the ethical standards for evaluating it, and that criteria arising from other sources may be relevant, but only during a later stage (pp. 83-84).

Notwithstanding the validity of these approaches, the preference for the demarcation-critique method is more in line, since the other options leave aside the problematization of those preconceptions through which regulations are emitted. And, even though the latter might not be an issue in more homogeneous regimes (like domestic law), doing so when analyzing an international law juncture implicitly means passing over its contested nature – made in the absence of a central power.

Since this contentious characteristic has been the core issue of legal philosophy contributions such as Anthony Carty's (2007, pp. 222-223) proposal of a tension between a fear-based and a responsibility-based international order, John Tasioulas' (2010, p. 101) notion of the legitimacy of public international law as the opposing force of volitional defects, or even Anghie & Chimni's (2004, p. 191) contribution to the second wave of Third World Approaches to International Law (TWAIL), according to which colonialism is at the very heart of the predominant international law regimes; choosing a method that allows incorporating these considerations by carrying out both a delimitation and a further critique is appropriate for discussing a topic with ambiguity in regulations as is the study's subject matter.

Having the methodological framework for approaching the issue, the specific strategy for conducting the philosophical analysis of international law regarding targeted killing with UAVs will be conceptual analysis. Since starting from a demarcation-critique framework automatically sets a two-stage investigation, this study will follow the interpretation of conceptual analysis established by Kenneth Einar Himma (2015). According to Himma's work, the traditional version of this methodology also is a binomial process, with a first stage of grounding what conditions and/or attributes constitute a *term*, and a second one of identifying the actual *sense* of the concept regarding its contextual and real-world interactions (pp. 70-71).

Consequently, the demarcation requirement – and its implicit question of what is considered law – corresponds with the first stage of narrowing the meaning of the relevant concepts. While, on the other hand, the critique condition – and the needs

of the issue's *lex lata* – are addressed during the second stage of problematizing the interactional perception of these labels. This dual understanding of conceptual analysis methodology is backed up by the distinction made by Frege (1960, p. 58) between reference and sense, with the former being the material manifestation that a concept alludes to, and the latter indicating the metaphysical charge that the sign used seeks to contain.

Despite critiques from authors such as Andrei Marmor (2013, p. 216), who asserts that conceptual analysis is a simple reduction of legal phenomena into broader categories of social issues, applying these precepts for studying the law gives the added value of relativizing the idea of norm production as an objective process, since a reference may have more than one sense associated to it (and vice versa). This latter position finds support in works of authors such as Zanghiellini (2017, p. 490) or Jackson (1998, pp. 57-58), revendicating the importance of understanding legal development as a dialectic relationship between contingent situations and the establishment of rules for normalizing (both empirically and theoretically) its subjects' behavior.

For achieving the objective of determining the elements of the nature of targeted killing attacks with UAVs, the demarcation phase focuses on tracing which characteristics have been assigned to this tactic through international and, in some particular cases, domestic legislation. That includes reviewing rulings, resolutions, legal opinions, and security/public policy documents emitted by intergovernmental and local authorities. More specifically, the goal of this first stage is to identify which are the strongest consensus regarding the jurisdiction, legitimate targets, and implementation requirements that establish the legality of these attacks.

The subsequent critique step is divided into two parts, starting with the discussion of the assumptions that have sustained the extension of the use of lethal force via drone technology, and how notions of enemy and war have been altered to correspond to these legal justifications. Once those precepts have been identified, the second stage details the gaps derived from a false objectivity ascribed to the

current legislation on targeted killing and points out how the conceptual delimitation established in the first part can be used as a starting point for revising it. During this part, the main sources are of secondary nature, given the relevance of philosophical deliberation for the proposed discussions.

c. Theoretical framework

Alongside the epistemic considerations introduced in the previous section, there are three dimensions that set the tone of the discussion presented in the following pages. These are: 1) the role of targeted killing operations inside military doctrines, 2) which international legal theory will be used for approaching this tactic, and 3) the way of interpreting the changes in and evolution of the codified legal framework concerning the subject throughout recent history. Even if each one of these pivotal topics will be further treated across the execution of the two-phased conceptual analysis, it is appropriate to set out some preliminary considerations to begin the problematization of international law's approach to targeted killing with UAVs.

Regarding the first axis, it is necessary to highlight how drones' usage has influenced the way in which priorities are defined inside security and military policies since a crucial idea for the expansion of this tactic is related to its purportedly higher efficiency over traditional means of warfare. There are two approaches used as our starting point: the first one is derived from Jon Lindsay's work (2020, pp. 102-105), and it is the claim that employing UAVs is part of a process of sociotechnical innovation. This assumption, despite being contestable, has easily expanded because it portrays the inception of drone strikes in modern warfare as an inevitability that has evolved from being a curiosity to widespread practice, while depicting collateral damages and other disadvantages of its use as a process of adaptation that, in any case, has already evolved from being a curiosity around a new technology to a widespread conduct.

The other approach has to do with the opportunity cost related to targeted killing with UAVs. This notion, complementary to the one introduced in the previous paragraph,

maintains that drone attacks have inserted themselves into military strategies as a desirable alternative to traditional battlefield operations due to the reduced risk it represents in terms of human cost. Furthermore, since reducing potential collateral damage has been enshrined not only in moral consensus, but also in customary laws of armed conflict, it is possible to suggest that there might be a positive obligation for expediting the implementation of remote warfare and, therefore, the usage of UAVs (Gross, 2015, p. 66). Once again, the relevance of these claims rests on their contribution to spreading the practice rather than on them being undisputed.

Jumping to the second cornerstone, it is imperative to begin recognizing the plurality of theoretical options to carry out a review of international legal regimes. Nonetheless, and keeping in mind that one of the goals set for the current study is inquiring into the correspondence of *lex lata* regarding drone-executed targeted killing with the issues that the practice entails, the perspective selected is the one advanced by Brunée & Toope (2011) called interactional international law. This frame of reference has as its central proposition the idea that, since international law is inherently a horizontal system – in which States are both subjects and law-makers – the only way of bestowing legitimacy on the rules that compose its jurisprudence is that they correspond with how actual interactions in the international arena play out (pp. 312-313).

This idea entails not only an imperative of constantly updating the regulations of the different regimes in accordance with the developments of the phenomena of interest, but it also leaves the door open for recognizing the impact that nonstate actors and even non-interactional rules may have on the evolution of international law regimes and their effect on the reality they are trying to regulate. This latter assertion has gained strength because both the aforementioned authors and other scholars such as Abbott & Sindal (2013) implicitly concede that while States are the primary makers of international law, political affairs, empirical reality, and vertical legalization intentions all have an influence over the dialectical link between international regulations and the problematics it addresses (pp. 39-40). Consequently, since

targeted killing with UAVs is a field where all of the above factors clash, the proposal advanced by these authors is a suitable jump-off point.

Finally, concerning the third dimension, the approach selected as the basis for advancing further discussion is norm evolution theory and, specifically, the three-stage scheme suggested by Finnemore & Sikkink (1998). According to their account, regulatory affairs around a topic pass through three phases: one of emergence after the issue gains momentum, another of "cascade" once crucial actors get involved in the matter, and a final one of internalization once clearer consensus over what needs to be regulated spreads (pp. 895-896). This proposal would later be incorporated into technological developments by authors such as Mazanec (2015, p. 80), increasing its relevance for treating phenomena like targeted killing with UAVs.

With the methodological and theoretical bases for the study set, the discussion unfolds as follow: First, in the demarcation phase, I will review the evolution of international law regarding drone-executed targeted strikes in accordance with the three-stage scheme introduced above, Second, I will take a closer look at the correspondence of *lex lata* with the issues derived from targeted killing using interactional precepts and complementary international law theories. Third, I will evaluate the existing assumptions that underlie targeted killing operations and the voids they leave. Fourth and, finally, I will present a concluding section taking stock of the main findings about the terminology and phenomenological nature of targeted killing with UAVs and their implications moving forward.

II. CHAPTER ONE: CONNECTING THE DOTS ON WHAT "TARGETED KILLING" MEANS

a. Narrowing the concept of targeted killing

Inquiring into the ontology of targeted killing with UAVs requires the identification of the characteristics that differentiate it as a category of analysis, a strategic precept, and as a judicial notion as well.

Starting with the first one, as Carvin (2012, p. 531) states, the definition of targeted killing has been a point of dispute with no consensus around what the term actually refers to, varying according to the issues that each author or stakeholder wants to emphasize. In the same vein, delimitating this practice is a challenge because most of the time its final purpose ends up being unclear. On one hand, we see a discursive portrayal stating that targeted killing aims to *deter* (forcing the enemy to desist from certain actions) whilst, on the other, the operational dimension shows a provocative nature that tends toward *compellence* (pushing the opposite side to alter their behavior) as the goal to be reached (Kirchofer, 2016, pp. 22-23). As a result, conceptualizing targeted killing means facing inherent ambiguity.

Regardless of these issues, there have been some attempts to narrow the concept. Among them, Nils Melzer's (2008, pp. 3-5) contribution is crucial, since it crafts a definition of targeted killing based on five elements that, together, are useful to distinguish it from other practices such as "extrajudicial executions" or "deprivations of life -not amounting to an international crime-." These are: 1) effective use of lethal force; 2) intent, premeditation, and deliberation to kill; 3) aiming to individually selected persons; 4) lack of physical custody of the target; and 5) attributability to a subject of international law.

From here, the definitions fluctuate in accordance with each study or policy's guidelines. Some of them limit the scope of the practice to be directed at terrorist actors (Hunter, 2009, p.3), or to take place outside the territorial jurisdiction of the

State that sponsors it (Kretzmer, 2005, p. 176). Similarly, there also are positions that disregard the importance of the circumstances -and even the intensity of the conflict- for determining if an assassination ought to be understood as targeted killing, focusing only on whether the attack was directed at a specifically identified individual, implying that other variables only matter to determine whether each targeted killing is legal or not (Rosenzweig, 2014, pp. 48-50).

In sum, targeted killing has been broadly accepted as the planned use of lethal force, towards persons individually chosen, by a subject of international law -usually a State- which is not holding them in custody. Since this point of departure is still too wide, the ideas proposed by Senn and Troy (2017, p. 176) are quite useful for narrowing the notion of targeted killing by putting it in the context of the contemporary issues that have rendered it relevant. According to the authors, the term is currently experiencing a transformation that ties it to three new characteristics: first, being an extremely recurrent type of violence globally; second, relying almost completely on drone technology; and third, passing from being a low-profile tactic to inserting itself into the national security speeches and policies of States.

Bearing these ideas in mind, this study narrows the concept of targeted killing to those assassinations that comply with the aforementioned characteristics set up by Melzer (2008, pp. 3-5), with the additional requisites of them being carried out with UAV technology and as a clear part of the actor's "pattern of violence". This latest concept, according to Gutiérrez-Sanín and Wood (2017), is defined "on the part of an armed organization (state force, rebel group, or militia) as the relatively stable and recognizable configuration of violence in which it engages" (p. 21). In other words, the strike has to be a part of a larger strategy in which targeted killing is used to achieve the goals of a security agenda.

Reducing the term using these guidelines contributes to a better understanding of the subject matter not only since it makes it easier to differentiate targeted killing from other instances of selective murder, but also because it explains the necessity of focusing on the strikes using UAVs. The legality of State-sponsored

assassinations, as Michael Schmitt (1992) points out, has been a topic of discussion ever since Greek and Roman times, reaching points in which even classic legal theorists, such as Gentili and Grotius, have backed it up and/or tried setting limits for its proper application (pp. 613-616). Drone strikes, however, have played a key role in turning “targeted killing” into a separate notion due to their capacity to extend their use and, simultaneously, to make it necessary to create a narrative for validating its regular and openly recognized use.

Significant counter-arguments for the previous positions have been made by Elisabeth Schweiger (2019), who asserts that the primacy of “targeted killing” as a term is not related to innovations in modern warfare (i.e., drone technology), but rather to a political intention of certain international actors to arbitrarily expand the right to self-defense. Moreover, the author also argues that the concept has not been able to transcend to international legislation neither as codified law nor as custom, citing its low usage in United Nations documents (pp. 289-290).

Notwithstanding the concurrence regarding the importance of political factors in rendering the notion important, there are two points of dispute between Schweiger’s interpretation and this study. The first one, is that the former implicitly relegates targeted killing to discursive interactions exclusively. The author justifies denying real-world technological advances as a relevant factor for the construction of the term by basing her premises on a Wittgensteinian reading, according to which concepts do not have inherent meaning and are solely built by their layers of application and interaction with related terms (Schweiger, 2019, pp. 281).

However, apprehending Schweiger’s proposal is ignoring that Wittgenstein himself made inquiries into the role that constituent parts have within a concept, indicating that they are “the materials from which we construct that picture of reality” (Wittgenstein, 2009, p. 33^{e}). Even if he showed a clear preference for the whole notion over its components, there is no evidence of an intention to dismiss their existence. Consequently, claiming that UAV technology has not impacted the surge of targeted killing as a concept would imply not acknowledging the operational

challenges it has raised and equalizing it with any other discussion on the right to self-defense (which would go in the detriment of any further attempt of regulating the practice through international jurisprudence since the specifics of drone usage would go overlooked).

The second discrepancy worth expounding upon is related to the incorporation of the term into international law. Since part of the demarcation process contained in this chapter focuses on the treatment of targeted killing as an international judicial notion, an in-depth analysis is carried out in its corresponding subheading. Nonetheless, Schweiger's idea about the incapacity of the term to transcend from the political sphere to international jurisprudence is deserving of a brief comment in this initial theoretical discussion because, once again, it is based on encapsulating targeted killing in discursive disputes, leaving aside its significance as an international phenomenon.

Here, it is useful to highlight Blichner & Molander's (2008, pp. 38-39) examination to the concept of juridification. According to the authors, this idea refers to a process of consolidation inside a legal order in the making and is composed of five dimensions: 1) constitutive juridification, referring to setting the functions of a political system; 2) law's expansion and differentiation; 3) increased conflict solving by reference to law; 4) increased judicial power due to the legal arena's capacity to decide political controversies; and 5) legal framing or consciousness of a common system between subjects.

The allegation that targeted killing has not had the capacity of being inserted into international law, using as proof the low usage of the exact term inside the relevant jurisprudence, seems to allude only to the second of these five dimensions. In other words, although it is true that the interchangeability of "targeted killing" with other terms may have had a detrimental effect on the production of highly specialized regulations, there are other ways in which international legislation approaches the issue. By accepting that the ambiguity around its naming means that it is just a political euphemism, these other four approaches are being left unexplored.

The previous claims do not intend to suggest that wording is not relevant, after all, this thesis project itself is a conceptual analysis. Instead, the point to be made is that the reduced presence of targeted killing inside certain areas of international jurisprudence cannot be understood as proof of its inexistence as a real-world occurrence. The intention of starting out the analysis with considerations regarding the subject matter as a category of analysis is precisely to show that even with the existence of ambiguity on the theoretical level, we can identify common elements that allow delimitating targeted killing as a reference to a pattern of violence and, as the rest of this chapter shows, as a tactic and a definite legal issue as well.

b. The role of UAVs and targeted killings in contemporary warfare

Aside from the changes mentioned in the previous part, the inception of drone technology and, as a consequence, the spread of targeted killing inside States' military doctrines could not have been possible without a change in the way that armed conflicts were understood – both in law and politics.

One of the works that better explains this alteration is Carl Schmitt's (2013, pp. 29-31) *Theory of the Partisan*, which points out that irregular combat tactics have gained a preferential spot over traditional fighting due to the collapse of the inter-State regular war notion that the *jus publicum europaeum* contained. As the author affirms, after World War II, more small irregular combat groups abandoned the understanding of war as a conflict between two contentious and legitimate actors, and preferred understanding it as an inner enmity that seeks nothing but the total annihilation of the adversary.

Even though this switch in paradigm has had different expressions, such as guerrilla warfare and decolonization conflicts, it is with the rise of religious terrorism – and more specifically with the strengthening of jihadi movements – that this understanding of inner animosity between States and divergent nonstate actors became more explicit. This is thanks to the fact that religious terrorism usually has goals linked with transcendental or sacramental imperatives, it uses broader notions

of the “enemy” and, therefore, implies higher levels of violence due to not being completely restricted by political calculations (Hoffman, 2006, p. 87-89).

Almost simultaneously, with the Gulf War, the first manifestations of a Revolution in Military Affairs (RMA) started to emerge. Following the ideas of Fitzsimonds and van Tol (1994), the Desert Storm operation featured not only the implementation of new military technologies (i.e., stealthy long-range precision strike weapons), but also showed the capacity of these innovations to influence the doctrinal - or strategic - and organizational dimensions (pp. 25-27). In other words, the conflict caused by Iraq’s invasion of Kuwait marked a paradigm shift derived from the use of remote air strike technology that, with the spread of transnational bellicose actors, positioned itself as a preferable strategy compared to regular troop warfare.

The definite turning point would come with the events of September 11, 2001, since the launch of the Global War on Terrorism (GWOT) spurred the relevance of drone technology, turning a relatively unknown science into one of the core factors of military and social change of the 21st century (Sherman, 2020, p. 45). As a reference, Unmanned Aerial Vehicles are, essentially, remote-controlled aircraft with surveillance and load capacity. Inside this concept lies a subcategory designed for those vehicles adapted to carry ballistic materials, namely combat UAVs – or UCAVs – (García Rico, 2016, pp. 283-284). Although they are usually operated remotely by humans, the United States Department of Defense (2010) has also included in this category those UAVs with software that allows them to be autonomously operated (p. 494).

The tactical opportunities that drones represent for military strategy have yet to be fully determined. As Rogers and Hill (2014, pp. 50-52) suggest, UAV technology in military affairs ought not only to be understood as the means for carrying out airstrikes against specific targets, but they also can have an impact on the supply lines for regular troops, on keeping patterns of surveillance over set locations, on contributing to electronic combat by intervening lines of communication, deceiving radars, and even being used as Improvised Explosive Devices (IED). Still, what all

these tactics have in common, and what defines the role that UAVs have been gaining in military doctrines, is that they are attempts to reduce risk as much as possible by handling subsidiary and logistic tasks from a distance.

In a similar line of argumentation, military bodies like the Israel Defense Forces have consistently stated that the core contribution of drone technology is the ability to keep pace with asymmetric confrontations by expanding the field of perception of law enforcement agencies. That is, since UAVs give more precise information about the location and behavior of the enemy outside the conventional battlefield, targeting becomes more reliable and the military gains a greater capacity to decide when and how to attack the enemy. Such decisions can be made, not only according to strategic considerations, but also depending on the sociopolitical landscape surrounding the attack and, subsequently, the amount of violence – and collateral damage – that the perpetrator will be able to justify before domestic and international actors (Borg, 2021, pp. 411-412).

Regardless of these advantages, there is a side effect to embracing the imperative of progressively prioritizing remote warfare that emanates from the rise of drone technology, and it is that the lack of actual physical presence of the perpetrator contributes to fostering reliance on drones for carrying out lethal actions, since the responsibility and moral implications are not as direct as they are in the case of traditional battlefield operations (Fiorese, 2021, p. 66). This is problematic because, although it cannot be directly stated that the use of drones causes an aggravation of the levels of violence, it surely renders it more difficult to identify the people responsible for targeted killing assassinations given the fact that they do not need to actively engage in in-person battlefield operations.

Moreover, critics of this discursive line indicate that the improvements in surveillance derived from drone usage, and the alleged deterrence intended with the targeted killings that follow, are not as effective as they are presented. For instance, taking the case of the United States as an example, Cronin (2013) claims that GWOT drone strike policy has not stopped the attempts of terrorist acts and, instead, has helped

to create a higher dispersion of enemies like Al Qaeda, whilst worsening the image of the country worldwide. Furthermore, the positive outcomes of targeted killings cannot be understood without complementary lines of action in military affairs, as is international cooperation with allies in intelligence and judicial processes (pp. 47-50).

Although the effectiveness of drone-executed targeted killings has been questioned due to the levels of civilian casualties that these operations entail, one of the most recurrent arguments from its defenders is that UAV technology has become so widespread that the only option is for States to be ahead of the curve and set good practices for its use (Byman, 2013, p. 41). Intended or not, that line of argument shows the strong influence that politics has over the way this tactic is used, with decision-makers backing up an understanding of the situation where the opportunity costs make it impossible to abandon the practice as a legitimate course of action.

Considering that targeted killing only reached its peak once terrorism became the common enemy for Western states, it is expected for it to be instrumentalized to fit that narrative. An example, still following Byman's (2013) work, is the United States' practice of "signature strikes", which not only targets individuals, but entire groups that the armed forces of the targeting country deem suspicious (p. 36). The limits of this *modus operandi*, therefore, do not depend on strategic considerations exclusively, but on the evolution of a political discourse as well.

However, and as it was hinted at the end of the previous sub-chapter, targeted killing with UAVs is an issue transcending the mere discursive dimension due to the capacity of drone technology to change how military confrontations unfold. A good example of this constant self-actualization is the increasing fame of new weapons like the Hellfire R9X, which relies on six deployable blades for killing its targets instead of using detonations (Teyas, 2022, p. 269). It is thought that this particular technology was used in the recent killings of Iranian General Qasem Soleimani and Al Qaeda's leader Ayman al-Zawahiri (Debusmann Jr. & Partridge, 2022), suggesting that the military industry is looking for answers to the concerns about

collateral damage. Regardless, and as the following part shows, the validity of these attacks in light of international law has yet to be fully addressed.

In sum, the role that targeted killings with UAVs have come to represent inside military doctrines is to be the means for lowering the risks that regular troops are exposed to. This is achieved by actively surveilling the enemy and by remotely neutralizing them with higher precision and less collateral damage than traditional military operations would entail. At the same time, as tactical fixtures in the GWOT, reflections of the Revolution in Military Affairs boosted by the availability of drone technology, UAVs have scattered enemies such as Al Qaeda and partisan-like movements, and the idea of terrorism as a permanent threat with a global reach.

c. International law's current approach to targeted killings

Although it has been a topic of the utmost primacy in the last couple of decades, regulations around targeted killing in international law have yet to be developed with more precision. This responds mainly to two factors: the primacy of one actor in defining the trends of the matter outside international institutions, and the hesitation as to whether to regulate it through the laws of armed conflict or human rights law.

The former has its roots deeply in the United States' foreign security policy discussions after 9/11. Specifically, the United States Congress (2001) enacted Public Law No. 107-40, the Authorization for the Use of Military Force (AUMF), granting the president, in accordance with his war powers, the capacity to:

> […] use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons. (p.1)

With Pub Law- No. 107-40, the United States set the basis for a borderless battlefield notion, where the final goal was pursuing potential terrorist threats without limiting

this campaign to specific time frames or geographical scope but focusing on the targets instead. Later on, the Obama administration extended these precepts for justifying targeted killing by stating that, after the AUMF created a context of sustained hostilities with terrorist actors – specifically, Al Qaeda - , the use of targeted lethal force against these aggressors could be considered as an "important incident of war" as described by the U.S. Supreme Court in *Hamdi v. Rumsfeld*, complying therefore with the laws of armed conflict set by the Geneva Conventions (United States Department of Justice- Office of Legal Counsel, 2010, pp. 22-23).

This narrative of compliance with international humanitarian law does not only give away the international law regime preferred by the United States to approach the practice of targeted killing with UAVs, but also has been sustained across administrations by the Department of Justice's Office of Legal Counsel (2006, p. 13). Further proof of that is another legal opinion emitted during the Bush administration, in which the NSA's intelligence gathering activities are justified by arguing that this kind of activities is contemplated by the laws of armed conflict as long as it complies with the principle of necessity and proportionality. The key contribution here is that, according to the document, both the use of force and intercepting communications fulfill the aforementioned requirement since they are targeting *specific* individuals profiled for *preventive* reasons. At no point is there any question of whether there is indeed an ongoing armed conflict.

Alongside the primacy of the United States' perspective in the debate around UAVs and targeted killing, it is also important to highlight Israel's interpretation of the issue. Even though the country has not had the same capacity to position its view as the international standard, discussions have been held at the domestic level for justifying their targeted killing policy and trying to prove that it complies with international legal strictures.

A particularly important document that summarizes the arguments made by Israeli authorities on this front is the ruling of the Supreme Court of Israel (2005) in the case *Public Committee against Torture in Israel v. Government of Israel*. When asked

about the legality of Israel's targeted killings policy (or preventive strikes as the government and the court's opinion put it), the judicial authority points out, in paragraphs 60 to 62 of its decision, that the protection that customary international law affords to civilians is suspended if, at the time the operation is carried out, they are taking an active part in hostilities. Moreover, it poses that fighting terrorism requires balancing human rights with the military advantages obtained from those preventive strikes and, therefore, carrying them out in the *areas* where terrorist actors operate is a necessary course of conduct.

The problem with the conclusion reached by the tribunal, as Eichensehr (2007, pp. 1878-1879) indicates, is that, by accepting the legitimacy of targeting terrorists without needing to prove that they were actively engaged in planning or executing an attack, the protections that civilians have been guaranteed through human rights law and international humanitarian law get dangerously narrowed. Not only would this interpretation increase the level of collateral damage that is considered permissible, but it would also expand the meaning of "actively participating in hostilities" to cover the mere presence of a person in an area where it is believed that a criminal actor operates. However, and regardless of these problems, the decision made history as the first-ever judicial ruling concerning targeted killings.

These ideas, despite not being uniformly welcomed in all States' domestic regulations, transcended into international law. This gives rise to the uncertainty over whether international humanitarian law is the *lex specialis* to be applied in targeted killing cases or if the practice does not amount to an international conflict and, therefore, regular human rights regimes are applicable. In favor of the first hypothesis, it can be said that the duration and intensity of the confrontations are usually not considered to define the existence of an international armed conflict (International Committee of the Red Cross, 2015, p. 8). However, on the other hand, the Special Rapporteur on extrajudicial, summary, or arbitrary executions has recently presented the opposing view before the United Nations Human Rights Council (2020), pointing out that the application of international humanitarian law

ought to be restricted in order not to create fictional conflicts that can help states justify illegal activities like targeted killing outside active military confrontations (p. 11).

Adding to this general uncertainty, international law concerning targeted killing with UAVs has not even been up for discussion in most multilateral agencies. When it comes to regional organizations, for example, there are no concrete definitions of this practice. For instance, the European Union has kept an ambivalent position by both condemning and supporting targeted killing activities, but being silent on regulating it itself (Schweiger, 2015). And, in both the African and American human rights regimes, it has only been vaguely treated inside the debate of the use of lethal force by State agents, but not as a specific practice that requires further concrete considerations (Inter-American Commission on Human Rights, 2002, §86-87; African Commission on Human and People's Rights, 2015, §34-35).

As a consequence, it is plausible to say that, similarly to the ambiguity in defining what targeted killing covers as a concept, and in accordance with the dependence of the tactic on the GWOT's discourse, international law finds itself in a grey area when faced with the task of regulating this kind of assassination. The root of the confusion, as the hypothesis for this study suggested, is the ambiguity in determining the nature of the attacks: if they are solely arbitrary executions or if they indeed are part of a warfare dynamic that has to comply with the laws of armed conflicts.

d. Norm evolution of targeted killing with UAVs

To shed light upon the roots of this issue, I follow the previously exposed three-stage scheme for norm evolution proposed by Finnemore & Sikkink (1998, pp.895-896), aiming to identify patterns and consensuses across the scattered regulation process that was triggered after the expansion of targeted killing practices in the early 2000s. The first stage, referring to the emergence of the issue inside doctrinal law, is characterized by the reliance on existing international law principles to address targeted killing as a subsidiary issue subsumed to larger junctures; secondly,

regarding the proliferation or “cascade” phase, the discussion revolves around soft law sources; concerning the internalization stage, however, there are no developments as of yet, given that there is no unanimity around the concept.

To elaborate further on the initial phase, it is important to start by highlighting the controversy around article 51 of the Charter of the United Nations, referring to states’ principle of self-defense. As Leo van den Hole (2003, pp.80-84) states, the inclusion of this clause answers to the intention of the negotiators to codify a “customary” and “inherent” right. From there, publicists have emitted opposing views, with scholars like Hans Kelsen (1952, p. 61) and Ian Brownlie (1963, pp. 275-277) affirming that self-defense interpretation is restricted to situations where an actual attack takes place, whilst others, bringing back precedents like the *Caroline* case -in which preventive self-defense was allowed if the situation fulfilled the requirements of necessity and proportionality, suggest that anticipatory self-defense can be perfectly contemplated under the provisions of article 51 (Schloss, 2012, pp. 558-560).

This discussion is crucial for targeted killing with UAVs because it provides grounds for questioning its legality under the legitimate use of force debate. Although the discussion remains open, a report issued by the United Nations General Assembly (2004) endorsed the idea that the pre-emptive use of military force may be in order if there is an *imminent* threat to states (paras. 188-190). The problem, as Guiora (2008, p. 17) points out, is that there were no specific criteria for defining the imminence of a threat and, as of now, the issue persists regardless of doctrinal attempts to narrow the issue. For instance, Bethlehem (2012, pp. 775-776) suggested five principles for determining the imminence of an attack -specifically by nonstate actors, including immediacy, probability, continuity, scale, and likelihood of other deterrence methods.

Even though the United Nations has supported this proposal, citing it in documents like the previously mentioned Human Rights Council (2020) report, there is no direct adoption of the criteria suggested, leaving the immediacy issue -and consequently the anticipatory right to self-defense- exposed to the influence of the GWOT. This

gave a second push to the broad interpretation of article 51 and the preventive self-defense considerations contained in the *Caroline* case – whose defenders claim it is customary international law –, leading the discussion to a realm where self-defense actions could be executed before an actual attack and, moreover, towards nonstate actors (Tibori Szabó, 2011, p. 243). In sum, a favorable interpretation for a more recurrent use of UAV targeted killings.

Having considered the angle of emergence with the disruption brought up by 9/11 and the responsibility to protect (R2P) narrative, the "cascade" process started with the issuance of Resolutions 1368 and 1373 by the United Nations Security Council (2001a; 2001b), invoking the idea of self-defense and, by implicitly recognizing nonstate actors' capacity to carry out crimes of aggression, making individuals involved legitimate targets for pre-emptive attacks. Subsequently, there was a progressive transition from seeing drone attacks as a subsidiary manifestation of the use of force issue to understanding it as a differentiated phenomenon.

That transformation started with a change of scope. Since accepting preventive self-defense emerged as the prevailing position under the GWOT, the question stopped being only whether targeted killing with UAVs represented a state-to-state breach of the principles surrounding *jus ad bello* (that is, if a crime of aggression was being committed), but whether this particular tactic fell under the category of arbitrary executions or not (that is, if it constituted a transgression of the right to life as well). That being said, several United Nations documents about drone attacks cited below justify this binomial approach by recalling that the International Court of Justice (1996) had emphasized that the protections established by human rights instruments is not suspended during wartime (paras. 24-25), making it necessary to consider both regimes.

These considerations are set as a basis because, during this "cascade" instance, there is a considerable leadership from the UN Human Rights bodies and rapporteurs regarding the task of creating legislation about targeted killing with UAVs, especially since only the two great powers mentioned before (the United

States and Israel) had significant developments on the subject matter during this time. For instance, actors like the Royal Courts of Justice of the United Kingdom (2012) disregarded the issue, leaving the regulatory considerations for these procedures to the executive powers (par. 3) and refusing to take a position on the legality of these attacks at their peak (par. 13).

From there, it is appropriate to begin the review of the work made by these actors bearing in mind the seminal approach contained in the report presented before the United Nations Economic and Social Council (2002, p. 11) by the Special Rapporteur on extrajudicial executions about the fact-finding mission to the Democratic Republic of the Congo. Although the document does not present a direct reference to drone attacks, it *does* refer to targeted killings, with a special focus on deliberated civilian casualties, during the armed conflict in question. This equalization between targeted killing and extrajudicial executions reinforces arguments made in subsection “a” of this chapter, according to which drone technology *did* have an impact on “targeted killing” as a concept. As technological progress become more widespread, the fungibility between the two terms will start to fade inside the documents themselves.

To illustrate this affirmation, as the first decade of the 2000s moved forward (and with it, the drone campaigns in the Middle East), UN organs began to separate targeted killing as a concept. A good example is found in the thirty-second Fact Sheet emitted by the Office of the High Commissioner for Human Rights (2008), in which they distinguish “targeted killing” as a tactic from rhetorical terms such as “shoot-to-kill policy” and, furthermore, accept that human rights law contains provisions that render the former legal (namely, when human life is at risk), albeit remarking that this conduct cannot be understood as a method of deterrence or punishment, but as a last resource exclusively (pp. 30-31).

Similarly, Philip Alston, acting also as Special Rapporteur on extrajudicial executions, presented a study to the United Nations Human Rights Council (2010, pp.4-5) specifically focusing on targeted killing, and suggesting it may be legal in armed conflicts, differentiating it from extrajudicial executions and assassinations,

which are categorically illegal. Also, the document presents a definition of this concept that incorporates the first three elements of Melzer's (2008) -i.e., the intended, premeditated, and deliberate use of force against specifically identified individuals. In other words, in this document we can find the most explicit intention of breaking with the idea of targeted killing as a synonym for extrajudicial executions, and, at the same time, we witness a constant referral to drones as the specific weapon to carry it out.

Targeted killing with UAVs remained a prime topic for Alston's successor, Christof Heyns. However, this interest remained more of a will for regulation than as a concrete proposal. For instance, in a follow-up presented to the Human Rights Council (2012) on country recommendations to the United States, Heyns questions the efficiency of drone attacks and criticizes the country's lack of transparency around them, but then falls back onto asking the American government to show the considerations that made these operations compliant with international law, instead of advancing a specific diagnostic (paras. 79-83). A problematic position since, as previously shown, the United States' legal justification for targeted killing with UAVs does not prioritize international human rights considerations, but strongly focuses on laws of armed conflict under a perpetual war narrative.

More concrete restrictions are suggested by Heyns in another report, presented this time before the United Nations General Assembly (2013). In there, questioning the legality of targeted killing with UAVs is justified by recognizing that drones allow this tactic to be carried out without physical custody or jurisdiction considerations, so the responsibility of the State carrying it out, in human rights terms, needs further clarification (par. 47). In the same vein, the document is relevant due to two claims: first, that an individual can only be targeted as part of an armed group if it is a clear part of its command-and-control structure, going against the 2005 Israeli ruling's assumptions; and second, that the idea of a *transnational* non-international armed conflict -which is the narrative used by the United States- is indeed possible, but only if all the individuals targeted are part of the same organized group (paras. 62-64).

These considerations – and especially the second one – are crucial because they show, to some extent, a complicity with the ideas of a borderless battlefield. They do not problematize the assumption of an armed conflict against scattered actors, but instead tentatively suggest broad and ductile criteria for determining whether every single attack can be justified under international humanitarian law or not. This complicity is more evident in Heyns' next report to the Human Rights Council (2014), where it is pointed out that every targeted killing attack outside armed confrontations must oblige with human rights law, necessity, and proportionality (paras. 140-141), but leaves pending to further work how these principles should be interpreted in accordance with the tactical singularities of this strategy. In other words, it draws out the ambiguity around ideas like pre-emptive self-defense.

That inherited vagueness is precisely what the 2020 report – cited in Subsection "c" of this chapter, before analyzing the norm evolution process – attempts to counter by narrowing to four scenarios the cases in which drone targeted killings occur: outside an armed conflict; during an armed conflict amid battlefield confrontations; during an armed conflict far from battlefield confrontations; and as the "first strike" that may trigger an armed conflict (United Nations Human Rights Council, 2020, par. 41). Since this document finds that the case that triggered its issuance – Qasem Soleimani's death – deserves to be tagged as an arbitrary killing, it is possible to say that it defends an interpretation that prioritizes in all four cases the regime that gives more protection to individuals. In other words, it breaks the aforementioned complicity by giving primacy to international human rights law.

To conclude both this subtitle and the chapter, it appears appropriate to mention three things. First, assuming that the absence of hard law documents about targeted killing with UAVs in international law proves that the concept is merely theoretical means adopting a very narrow interpretation, since it leaves aside the impact that drone technology as an aspect of the revolution in military affairs has had over discussions such as self-defense and the scope of the laws of armed conflict.

Second, the ambiguity announced from the beginning of the discussion is the reason why, to be able to trace international law's understanding of targeted killing with UAVs, we must rely on soft law -and particularly UN material- to seek the common factors between all the viewpoints involved: its regulatory evolution has not reached an internalization phase because lawmakers -i.e., States- have yet to find consensuses to which they are willing to commit, and the consequent ambiguity is a more tempting scenario for them.

And thirdly, reviewing this process is meant as the demarcation process of the conceptual analysis of targeted killing with UAVs. Keeping that in mind, the conclusion cannot be that there is no consensus at all. There are indeed certain characteristics cross-cutting the theoretical and normative discussions, and those are: 1)) the use of drone technology rules out the need for physical custody and limiting armed confrontations to set geographies, but pursues a more precise application of lethal force; 2) this tactic traces its legitimacy to the laws of armed conflict and, consequently, has to embrace ideas such as borderless battlefield and scattered enemy to reinforce its compliance with international law; 3) albeit not the same, they are strongly related to the arbitrary executions concept.

Because of these three elements, tension arises regarding human rights law. Usually, and as it was shown with the review of the relevant UN legislation, this results in determining whether each UAV-executed targeted killing was part of an armed conflict or not. However, doing so is departing from the very precepts that have allowed the expansion of the practice and hindered its regulation: opening the door to the existence of a ubiquitous state of war and the applicability of human rights protections in conjunction to it. This explains its relegation to soft law, the way it boosted reinterpretations of principles like self-defense, and will be the basis for the critique stage to be developed in the following chapters.

III. CHAPTER TWO: THE NEED FOR A NEW BELLIGERENCE AS THE BASIS OF TARGETED KILLING OPERATIONS WITH UAVS

The demarcation phase of this discussion closed by listing three elements that international legal doctrine and codified law have generally accepted as the attributes of targeted killing with UAVs. Thanks to this revision, despite the previously mentioned ambiguity, it is possible to say that there is – to some extent – a tacit agreement. In other words, any given definition of targeted killing with UAVs based on international legal developments has to recognize it as a differentiating tactic of modern warfare which is independent from conventional battlefield confrontations, mainly ascribed to transnational non-international armed conflicts, and that can actually be legal (in contrast to other arbitrary assassination such as extrajudicial executions). Coming back to Frege's (1960) ideas exposed in the introduction, this consensus acts as the "reference" part of the concept studied.

The goal of the current chapter is to present the first part of the critique phase of my conceptual analysis. That is, identifying the underlying presumptions behind this agreed-upon definition of targeted killing with UAVs as an international phenomenon. Bearing in mind that doing so requires analyzing the real-world interactions behind it, this would correspond to pinpointing the "sense" part of the concept – or the actual intended meaning of it -, on one hand, and determining if its definition corresponds with the empirical features it connotes.

I will review, therefore, three foundational myths behind it: the borderless battlefield and permanent state of war ideas; the notion of individual and transnational actors as legitimate targets under a broader interpretation of what is the "enemy"; and the alleged legality of suspending human rights protections as a sign of the prevalence of States' will over international legal imperatives.

a. An ever-present threat: Bringing back just war precepts

The idea that targeted killing operations with UAVs have derived their legitimacy from a GWOT-based narrative, and subsequently incorporated the precept of an

uninterrupted state of war, has been a constantly reiterated proposition during the demarcation phase of this study. Nonetheless, further discussion is needed to depict its full impact on international affairs and, particularly, on the understanding of what constitutes an armed conflict. Therefore, it can be suggested that behind the conception of remotely engaging in armed confrontations through drone technology in any time or space lies the idea that the use of lethal force outside of, and even far away from, direct clashes can always be justified by securitization discourses.

This implicit sense behind remote warfare has been denounced by several theoretical approaches up to now. Among them, Mary Kaldor's (2012, pp.247-248) characterization of "new" wars is particularly relevant, because it presents the prioritization of special operations – and the use of force outside direct confrontations - as the inherent consequence of the network-like, and proxy-dependent, configuration of the armed groups involved. Even further, Chinkin & Kaldor (2017) also point out how targeted killing operations with UAVs underlying the intention of giving undisputed primacy to the right to self-defense over jurisdiction or human rights considerations, as long as this kind of actors pose a *continuing* and *imminent* threat (pp. 163.164).

It is possible to identify here one of the changes that this rhetorical line poses to international law, since accepting that preference towards the right to self-defense implies relegating the *jus in bello* in favor of the *jus ad bello*. As Adam Roberts (2002, pp. 10-11) indicates, counterterrorism relies on the indignation caused by these transnational actors to justify conducting arbitrary applications of lethal force. In other words, the perpetration of these executions shows an inversion where the "why" hostilities are conducted is used to underline considerations of proportionality and distinction. Following Buzan & Wæver's ideas (2009, pp. 264-265), this alteration could be read as a "macrosecuritization" process, since the GWOT ideas succeed, to some degree, in creating a universalism against un-civilized individuals (i.e., terrorist) who, by rejecting the global consensuses on civilization, are alleged to have forfeited their right to be protected by restrictions on the use of force.

The interest to avoid questions around the means through which hostilities are conducted does not end up being crystalized in codified international norms, but rather necessitates the reinterpretation of existing principles. For instance, targeted killing operations with UAVs bring the ideas of Francisco de Vitoria and the School of Salamanca on “just war” back to international legal discussions. Their proposition that offensive and even preventive war is legitimate if it is directed against an *outer* subject that constraints natural law imperatives such as free trade (Mantovani, 2017, pp. 126-128) is particularly relevant because, to some extent, is close to the idea of a necessarily unbound war against a scattered alien enemy.

A conceptual formulation of targeted killings with UAVs as a tactic that embodies the notion of a borderless battlefield, equally to this early conception of “just war”, bears a deeper meaning. Assigning them this characteristic of omnipresence creates an imperative for the universalization of an arbitrary mindset (namely, natural law, homeland security, liberal values…) as the motor of a sustained dispute against alleged enemies. Despite the subsequent changes and the plurality of theoretical takes on “just war”, what remains and gains momentum with drone technology and remote attacks is an implicit devaluation of space accountability – and operational *jus in* bello considerations along with it. The legitimation of the use of lethal force, in other words, ends up instrumentalizing law (Williams, 2015, p. 100) in favor of a “greater good” notion bequeathed of false objectivity (Herrero, 2010, p. 28).

All these considerations do not intend to concede to the idea that targeted killing with UAVs has turned the laws of armed conflict and the principles of proportionality and discriminatory harm into irrelevant norms, because they keep representing legal commitments taken by States. However, the recently mentioned devaluation of space accountability spreads ambiguity over these restrictions.

Since *jus ad bello* witnessed an expansion under these discursive devices in both time and location, drone attacks stop being a last resort measure and become the default strategy for dealing with these ever-present armed conflicts (Brunstetter & Braun, 2011, pp. 345-346). Even further, they are presented as a “measure of short

war", preferrable to "actual warfare" (Walzer, 1977, p. xiv-xv). To wit, they do back up the notion of "new wars" by implicitly extending the idea that contemporary armed conflicts require flexibility on the criteria for applying lethal force, and that justifying that pliability is achieved through presenting the targets as opponents of generally accepted axioms. The bottom light here is that the rise of the remote use of lethal force as a distinctive characteristic of contemporary warfare presents targeted killing with UAVs as a manifestation of a permanent armed conflict and, consequently, as an incident of war that can easily have its military necessity justified.

As it can be seen, none of this is explicitly manifested in the referential part of the concept listed at the beginning of this chapter, but the interactional changes derived from the perpetration of these operations and the understanding of war they entail serve as evidence of this implicit sense. UAV attacks, in the end, are an example of the idea of a bellicose peace presented by Raymond Aron (1963), according to which the legitimacy of "semi-violent" means is expanded by being presented as a less harmful scenario (pp. 204-205).

An example to back up the arguments presented so far in this section can be found once again by looking at the American instances and, specifically, in the Supreme Court of the United States ruling in *Hamdan v. Rumsfeld* (2006), invalidating the military commission system created by the Bush administration to try Al Qaeda members in Guantanamo Bay. Even though the court ruled in favor of the petitioner, the relevance of the case for the current discussion lies in the Court's interpretation of Common Articles 2 and 3 of the Geneva Conventions. Writing for the majority, Justice Stephens argued that the American armed conflict with Al-Qaeda and its affiliates does not fall under the "international armed conflict" category, since it does not feature two contracting parties (i.e., signatory States), regardless of its material scope (pp. 67-68).

Based on these assumptions, the ruling affirms that the confrontations with Al Qaeda only has to comply with the minimum protections set in Common Article 3, instead of being bound by the full dispositions of international humanitarian law. As it can be

seen, this characterization of the GWOT dynamics illustrates the precepts delineated so far: it does not deny the existence of an armed conflict but argues in favor of defining it as one of a different nature, in which ambiguity in the geographical and time scopes facilitates a broader use of force.

That lack of precision in *Hamdan* has been criticized by authors such as Milanovic (2007, pp. 386-389), who indicates that the ruling recognizes the existence of an armed conflict but does not *fully* accept it to be under the provisions of Common Article 2, nor 3. Furthermore, he points out that, even though the decision recognizes that the protections afforded in the latter apply to all terrorism detainees, it does not take a clear position as to the role of the so-called unlawful combatants, leaving open the door for justifying targeted killing with UAVs under the ideas previously exposed. The Department of Justice's Office of Legal Counsel (2010) would use *Hamdan*'s ambiguity to argue that non-international armed conflicts can take place outside the territory of the contracting party (p. 24), reinforcing the idea of a scattered unlawful enemy and the impossibility of prioritizing captures over targeted killing (p. 41).

As it was shown in the previous chapter, this narrative influenced the approaches made by the United Nations human rights entities to the issue, with the term "transnational non-international armed conflict" showing up in one of the documents reviewed (United Nations General Assembly, 2013, paras.62-64), even though it is not part of the taxonomy of armed conflicts codified in international humanitarian law. Nonetheless, at this point, opposing views can question the actual capacity of targeted killing operations with UAVs to change the notions used to treat armed conflicts and the ideas around war themselves since, as it was said before, none of the ideas of an ever-present war have been incorporated into any hard legislation.

To answer to these objections, it is useful to revisit the ideas of Brunée & Toope (2010) around interactional international law as a horizontal system and, specifically, their take on the dependence of legal legitimacy on reciprocity. As the authors claim, obedience with legal imperatives does not only base itself on consideration – or the material dimension of reciprocity –, but it also requires the mutual fulfilment of the

obligations derived from them – i.e., the process of appropriateness. If a party neglects this foundation of trust, it simultaneously gives less incentive to other agents to enforce them, rendering the rules in question weak (pp. 37-39). In international law, this is even more relevant because of the role of States both as subjects of law and lawmakers.

With this basis in mind, it is possible to say that even if a change in the precepts that shape international law occurs, that alteration might not even have to be reflected in the *lex lata* to entail an actual influence, especially when considering the importance of customary law as a source of international law. Therefore, the changes in the conception of armed conflicts and war itself suggested in this subchapter may not come by reformulating the current legislation, but by relativizing the validity of the imperatives derived from it, and that is something that targeted killing with UAVs has undoubtedly done when it comes to war.

Raising the question around whether a State can engage in an armed conflict without the presence of a specific battlefield – and time -, means effectively problematizing the telluric nature of what the international legal framework has been so far. Introducing the possibility of a legal use of lethal force outside traditional shooting wars entails enhancing the idea of an ever-present enemy that can only be distinguished through political dialectics. This ambiguity is all it takes for States to expand the borders set by the laws of armed conflicts and to legitimate targeted killing operations with UAVs as an idiosyncratic incident of “new wars.” Furthermore, as the following section will show, this ambiguity has not only changed the idea of conflicts but has also altered the idea of what a legitimate target is.

b. A new belligerence or unlawful combatants?

While homing in on the American legal justifications for a borderless battlefield, the previous subchapter presented the United States strategy of advancing *sui generis* categories to justify a broader scope for applying the use of lethal force, on one hand, and the influence that this argumentative process has had over international legal

doctrine and jurisprudence, on the other. So far, the critique stage of this study analyzed just war reinterpretations and the RMA-mediated idea of “new wars” as the precepts behind depicting targeted killing with UAVs as a predictable manifestation of an ever-present war. Nonetheless, the aforementioned expansion of the *jus ad bello* also depends on a reinterpretation of the legal status of those who are being targeted as completely legitimate. Considerations on this issue are presented below.

To advance the conception of a *transnational* non-international armed conflict – i.e., the second part of the referential consensus listed at the beginning of this section- means characterizing the opponent as a non-unitary force, both referring to the logistic outsourcing carried out by these groups and to the plurality of jurisdictions they operate in.

The latter presents a legal problem that, as hinted at earlier by alluding to Schmitt (2013), Mantovani (2017), and Buzan & Wæver (2009), is solved through the creation of an *outer* enemy notion that aims to aggregate the political power and suspend certain protections in the name of defending the shared ideas of an international community. This assemblage goes beyond arguing in favor of treating relevant crimes, such as terrorism, as a matter of “universal jurisdiction” only because of the exposure or potential damage that States fear. As Addis (2009) points out, customary international law implicitly shows that, for a transgression to be successfully positioned as a universal crime, it usually matters most *who* the perpetrator is rather than the scale of damages they cause – see, for instance, the crime of piracy (pp. 138-139).

Due to this assertion, isolating the adversary from the common grounds of the international liberal order gains relevance. By indicating their reluctance to comply with legal standards, it becomes easier to expand the means through which they are combatted since they are depicted as a threat both to material and epistemic stability. Here, the American example is once again useful, especially due to the introduction of the previously enunciated notion of “unlawful combatants.”

This construct derives from the Supreme Court of the United States' 1942 case *Ex parte Quirin*, where the petitioners' rights for a civil trial was overturned in favor of them being judged by military tribunals due to a distinction between lawful and unlawful combatants. According to the ruling, the former may be considered prisoners of war in case of detention with all the guarantees provided by the customary law of war; however, the latter may be judged by military commissions and not benefit from these protections because of their participation in activities that turn their belligerency into an unlawful one (paras. 9-10). In other words, this ruling implicitly set precedent for considering that a breach in the law of war by combatants may entail that they can be denied the guarantees set by custom.

Since the decision came up during a global conflict – that is, before the existence of humanitarian law-, *Quirin* has been criticized as a contingent decision that cannot justify arbitrary treatments to those so-called unlawful combatants in contemporary times (Steyn, 2004, pp. 9-10). Moreover, in the GWOT context, the Bush administration attempted to justify the arbitrary acts at Guantanamo Bay with it. However, when addressing the legal issues involved in *Hamdan v. Rumsfeld*, the Supreme Court gave primacy to Common Article 3 of the Geneva Conventions over *Quirin*. Regardless, the tribunal did not rule out the possibility of judging Guantanamo detainees through military tribunals if the Congress issued authorization (Hafetz, 2008, p. 371). This kind of ambiguity, already dispelled above, contributes to create a trend of expanding the grounds for arbitrary decisions. *Quirin* might be weakened, but "unlawful combatant" as a construct has transcended its original context.

Authors such as Etzioni (2009) disregard the primacy given to international humanitarian law and insist on the idea that, since they pose as civilians to take military advantage in bellicose activities, terrorists cannot be considered either combatants or civilians, reinforcing the idea that this kind of transnational actor belongs to a "third" category that must recognize that they have forfeited certain rights (pp. 111-113). Even further, scholars that have opted for describing the notion of unlawful combatant as a legal deviation. Ahmed Buckley (2012), for example,

concedes that States should be cautious about labeling these adversaries as civilians or combatants, because it would give them certain “unwarranted legitimacy” (pp. 449-450). In fact, Buckley recognizes that not addressing that void may lead to Balkans-like scenarios, where illegal conduct ends up becoming legitimized (p. 454).

The author fails to recognize, however, that such an ambiguity already was – and still is – broadly acepted at the international level when it comes to targeted killing policies with UAVs. Similar to the Supreme Court of the United States’ reasoning that arbitrary acts toward GWOT targets would be permissible if Congress authorized it, doctrinal approaches such as the one presented by Xiao Mao (2018, pp.69-71) argue that there is no loophole in international humanitarian law that conceives the idea of unlawful combatants. In other words, it would not be possible to mark assailants as actors not protected by Common Article 3 and article 75 of Additional Protocol I. However, the author still concedes that articles 4 and 5 of the Third Geneva Convention would force a case-by-case review as to whether the target taking part in hostilities meets the requirements for being considered a *lawful* combatant or not – leaving the door open for opposing views to insist on the existence of *unlawful* ones.

This is problematic because, similarly to what was presented above with regard to the considerations regarding a reinterpretation of war, targeted killing operations with UAVs have effectively relativized protections of individuals – without having to re-write the law - by casting doubt on legal standards that should be considered as both positive norms and long-standing customary international law.

That being said, the header for this subchapter hints at two ways in which that relativization takes place: whether the individuals targeted by this kind of operation are understood as unlawful combatants, or they are part of a conflict that entails a broader understanding of belligerence and what is considered an active participation in hostilities. Here, the landmark case of the Supreme Court of Israel (2005), mentioned in chapter one, is a good example because, while it does not corroborate the notion of unlawful combatants as actors with no protection whatsoever, it does

establish an extended idea of what it means to actively participate in hostilities; whether it be through violent actions, logistical support, presence in the area, or even sustained ideological commitment (paras. 35-40).

Either one of these options implicitly encompasses the goal of justifying an arbitrary use of force by advancing the idea that those attacked through targeted killing operations with UAVs actively choose to defy the establishment. Moreover, it may be argued that both options imply that the actors that resort to targeted killings do so in a way that allows re-thinking *jus in bello* precepts, whether it is through the creation of a new category that explicitly shows their nature as outsiders of the rule of law, or through a more permissive application of the principles of proportionality and discriminatory harm since policy guidelines and an enemy characterization alone are presented as sufficient to carry on with counterinsurgent tactics (Sitaraman, 2013, p. 78).

Narrowing the options to these two courses of action is not a matter of chance, but an answer to the predominant narrative regarding targeted killing with UAVs according to which, as previously shown, these operations subsume themselves under the *lex specialis* of the laws of armed conflicts. By identifying the sense behind labeling transnational actors as a global threat and as perpetrators of crimes of aggression, we can point out that this characterization gives them an antagonistic role, not an agonistic one.

Martha Crenshaw (2008) explains that by suggesting that presenting the enemy as an actor outside global legal conventions is only possible if the target is a *strategic* actor that, although not unitary in composition, pursues the specific goal of tearing down the principles of democracy, freedom, and the rule of law (pp. 23-25) – i.e., the post-Cold War identity of the Western hemisphere. A similar viewpoint appears in official government sources, such as in one of the National Security Strategies of George W. Bush (2006), which reinforces the idea of a global democratic coalition against terrorism (an *us*) unlawfully challenged by militant Islamic radicalism (a *them*) (pp. 35-38).

Similar theoretical positions, such as Samuel Huntington's (1997) "clash of civilizations", have been regarded as reductionist for simplifying terrorism and unconventional warfare to the inherent idiosyncratic features of the actors in conflict (Kwak, 2019, p. 275). However, it appears the idea of an immanent enmity between the liberal world order and partisan-like movements that dispute its primacy has been revived to justify targeted killing with UAVs and, in the process, has wrought changes on the idea of the adversary.

As seen both in this subchapter and in previous sections, the rise in asymmetric conflicts did not only entail a reinterpretation of the conventional battlefield and time where confrontations take place, but it also meant a recalibration of the idea of legitimate warfare *without* necessarily having a legitimate adversary. Doing so means that, even though attempts of excising them from the *jus in bello* protections have not been entirely successful, the actors attacked through targeted killing with UAVs have been portrayed as organizations and individuals that took the conscious decision of deviating from the application of consensual rules for the conduct of hostilities.

The actual sense of this second element of the reference constructed in the demarcation phase, in other words, is that the enemies may be transnational, but they definitely are strong enough to represent a permanently imminent threat to the States' sovereignty; that they are insurgent, but that they have neither accepted nor applied the proper means for engaging in armed conflicts that could protect them for the arbitrary use of force. In sum, those who are fought by means of targeted killing operations with UAVs, are characters that engage in a pattern of violence that allegedly rules out less severe responses and that apparently force security forces to fully embrace the ever-present state of war.

International law may not have codified the concept of "unlawful combatant" and might be firm on limiting the application of States' lethal force to traditional battlefield operations and actively engaged individuals; nevertheless, one cannot deny that targeted killing has opened the door to interpretations of the law that render arbitrary

killings legitimate provided that the individuals targeted meet the requirements mentioned above. Whether that legitimacy is enough to make up for other potential breaches of the law will be further discussed in the following subchapter.

c. Legitimacy over legality: Normalizing contingency

The last part of the referential concept of targeted killing with UAVs, presented in the demarcation chapter of this study, corresponds to the presumption that this tactic may be legal – a possibility that is ruled out completely for the notions of arbitrary and/or extrajudicial executions. For this element, the existence of an implicit sense beyond the literal formulation of the category might be clearer than in the other two parts of the definition. Drone executions *are* arbitrary, since they are semi-violent means carried out with distinction, intention, premeditation, and deliberation. Simultaneously, drone attacks *are* extrajudicial, because they rarely rely on *a priori* case-by-case judicial processes or authorizations, taking advantage instead of the primacy of *jus in bello* and the flexibility around what military necessity is (Klabbers, 2015, pp. 245-246). Yet, "targeted killing" is still presented as a distinct concept.

After the revision of the documents emitted by the UN Human Rights organs and the analysis of the two domestic legal approaches of the primary actors regarding the issue (i.e., the United States and Israel), it is safe to say that the *lex lata* does specify provisions that render targeted killing operations with UAVs legal. However, and as the two previous subchapters discussed, the way in which that legality has been established implied advancing alternative interpretations of certain norms and principles that have not been fully accepted, neither by judicial doctrine nor by the totality of States as lawmakers in the international arena. Consequently, I suggest that the actual sense behind this last referential element is that these attacks are legitimate rather than legal.

To back up this formulation, it is necessary to start by revisiting the problems around authorization. While discussing *Hamdan* and articles 4 and 5 of the Third Geneva Convention, it was established that these instruments rely on a case-by-case review

and/or authorization to determine whether the arbitrary use of lethal force, or the suspension of procedural guarantees, complies with international and domestic legal standards. Furthermore, this approach has been regarded as a coherent way for dealing with these uncertainties, even in cases of terrorism and other non-centric transnational threats, ruling out monolithic characterization of these individuals and organizations (Bott, 2015, pp. 110-111).

In terms of special prevention, international criminal law, and individual accountability, taking on targeted killing with UAVs as an illicit use of lethal force under this case-by-case perspective may be valid. Nonetheless, in general prevention – either at the individual or, most importantly, the state level –, its effectiveness is unclear because of the incapacity to gather all actors around the same principles or to display exemplary punishment (Tallgren, 2002, p. 575). Moreover, the justifications for the tactic, as presented in this study, follow different precepts to the ones behind the imperative of particularization of the cases. If just war, borderless battlefield, and inherent enmity notions are relevant, it is precisely because they position targeted killing as the primary evidence that the ends of the confrontation are subsumed to a globally legitimate crusade.

Since deterrence derived from punishment does not seem to be a plausible option, the alternative would be to restrict the attacks by establishing rigorous criteria and tying them to the issuance of *a priori* authorizations outside high politics. The problem, aside from the fact that this takes for granted the States' willingness to adapt their domestic legislation, is that targeted killing operations with UAVs, albeit not erratic (for they are directed at specific individuals), are imbued by a sense of urgency and, as seen before, pre-emptive self-defense.

An important parallel can be drawn with the ideas behind R2P, since this latter concept is a manifestation of the anticipatory interpretation of the right of self-defense - more specifically, from a collective viewpoint (Deng et al., 1996, pp. 14-15). This comparison is relevant because, similarly to the idea of implementing an *a priori* case-by-case authorization for targeted killing with UAVs, the so-called

humanitarian interventions that invoke R2P also depend – at least ideally – on prior approval stemming from article 51 of the San Francisco Charter (Domínguez, 2012, pp. 90-91).

Interventions under RP2 have had different levels of compliance with the idea of a prior authorization. For example, we can reference United Nations Security Council (2006, paras. 4-5) Resolution 1674, which recognized it as an international legal principle for the protection of civilians, and Resolution 1973 (2011, par. 4), which acted as an effective authorization for the intervention in Libya. However, this codification has not impeded interventions such as the ones in Syria (United Nations Security Council, 2012) or Mali (Fisher, 2015, p. 29), where no initial authorization was issued whatsoever.

This weakness can be traced to the genesis of the R2P concept, since the first doctrinal document that specifically formulated it recognized that it would be naïve to think that there would not be any arbitrary applications of this alleged principle, suggesting that normative developments shall leave the door open for the emission of *ex post* authorizations (International Commission on Intervention and State Sovereignty, 2001, pp. 54-55). The primacy of this mindset can be traced, once again, in the Syrian case, where United Nations Security Council (2015) Resolution 2249, authorizing States intervention under R2P, came a year after an American-led coalition started operating in that country.

Both R2P and targeted killing with UAVs are concepts that gained relevance amid the imperatives derived from the GWOT and the debates around the valid means for counterterrorism (Etzioni, 2013, pp. 344-345). As such macrosecuritization process gets exposed, it is possible to understand why these liberties were allowed and the preference for trying to impose new interpretations of already existing principles, rather than creating a new *lex specialis* for these conducts: the States interested in promoting these agendas took advantage of the dialectic relation immanent to the interactional construction of international law. In other words, they used discursive devices to legitimate a whole reinterpretation of the use of force as an ad-hoc

measure that, with time, has started to weaken the effective application of those customary agreements that had limited it before.

This proposition of an alteration in the strength of customary international law may come as controversial, however, it is not new. In a conceptual analysis focusing solely in the “custom” term, Bruno Celano (2014) points out that, whether customary law is understood as the set cornerstone for a legal system or as the general conviction around which imperatives are legally binding, it represents an ideological coverage for discretional decisions. As codified law attempts to differentiate itself as a separate phenomenon from those in the mere social arena, its legitimation through customary law as a source gets more unclear (pp. 658-660).

In other words, since answering to what is custom will always kick off a clash between interpretations affected by a contingent landscape, justifying the need for complying with certain areas of *lex lata* because of “customary law as a source” is an argumentation with variable effectivity. The precepts set for targeted killing operations with UAVs understand this well because they attack legal imperatives open to interpretation while simultaneously advancing with their actions a new consensus of what custom in the use of lethal force allows. They are legitimate because they question the appropriateness of certain codified dispositions by alluding to malleable imperatives and, only because of this, is it at all possible to argue that they are legal albeit bending certain international provisions.

In sum, this chapter wraps up three senses behind the agreed literal formulation of targeted killing with UAVs as a concept: first, it is a tactic that defines its borderless field of application from “just war” and securitization overarching ideas; second, it targets actors that allegedly opted out voluntarily of the common standards that grant them certain protections; and third, it is a practice that does not fully comply with international legal standards, but that has been built as legitimate enough from a changing composition of customary law to be well accepted. Considerations about what all of this means for pinpointing the tactic’s nature – and the correspondence of the theoretical formulation with reality – are presented in the next section.

IV. CHAPTER THREE: AN ONTOLOGICAL CROSSROADS BETWEEN ACCOUNTABILITY AND PREVENTION

Up to this point, the conceptual analysis carried out across this study has identified the largely accepted referential grounds for the understanding of targeted killing operations with UAVs and, subsequently, the implicit senses and narratives behind each part of that definition. That critique did not have a strong focus on semantic approaches, given that there is no codified definition of this tactic within international law. Instead, the concept has been disputed through the analysis of the dominant interpretations and the changes advanced with respect to foundational categories such as war, combatant, legitimacy, defense, and sovereignty. The final step to round off the analysis presented in this thesis is to construct an answer to what the nature of the subject matter is based on the incongruences previously presented.

As advanced in the introductory section, the answer to that question is that targeted killing operations with UAVs – when completely dissociated from direct battlefield confrontations – are attacks that, by themselves, do not amount to incidents of war from which it may be deduced the existence of an armed conflict of any kind. Consequently, they should not be covered under the provisions of the laws of armed conflict but must comply with international human rights law provisions. In addition to this, they imply an expansive trend in the accepted use of lethal force.

Further considerations about this pointare presented below in the following order: first, it is argued that the widespread use of this tactic does not correspond to an irreversible process associated with technological advances, but, instead, strongly depends on the expansion of a rhetoric of exception; second, it is illustrated how the contingent reading of the issue, through the laws of armed conflict, enhances a process of disengagement from advancing the coordinated construction of a set of rules addressing targeted killings; and thirdly, it is discussed how the combination of the previous two elements generates a crossroads between strengthening prevention against unconventional threats and the need of solid legal bases for accountability.

a. Debunking the technological pretext: The RMA as a justification for exceptionality

Back in the demarcation phase, and more specifically when addressing the role of UAV technologies in contemporary warfare, the RMA conception was introduced as one of the predominant explanations for the changes witnessed in military operations. In a similar vein to the discourses that typify transnational actors as omnipresent threats, this perspective characterizes technological advances as an uncontainable disruptive factor behind the prioritization of remote attacks over battlefield operations. These two statements share an overarching assumption of inevitability and, while it has been argued above that drone technology as a novelty plays a key role in re-shaping the notion of targeted killings, it is deemed necessary to dispute that proposition that scientific advances serve as the trigger for revolutions in military doctrine.

Authors such as Aaron Major (2009, pp. 358-359) have examined the making of post-Cold War American security policy, including budget distribution, to show that the shifts that the RMA logic attributes to information technology actually follow a trend that began before the incorporation of these advances. In other words, although there is a correlation between innovation and tactical shifts, a causality cannot necessarily be established. For targeted killings with UAVs, that claim is corroborated by the fact that proxy wars, transnational armed actors, and terrorism had already been established as security threats challenging traditional warfare long before the expansion of drone technology.

The causes behind the defense innovation paradigm introduced by the RMA logic, therefore, cannot be reduced to the imperative influence of phenomena external to the decision-makers, since they have shaped these new ways of warfare based on a specific set of theoretical notions around the potential threats that great powers must face (Jensen, 2018, p. 311). That mindset is, simultaneously, the working basis for addressing the task of legitimizing practices such as drone warfare in the international arena, which is why the vanguardists of these tactics (i.e., the American

and Israeli governments) tend toward the reinterpretation of existing legal principles. This allows the persistent use of inherited analytic categories to define security and military policies at the domestic level.

Those biases, however, are not restricted to the formulation of the guidelines, but are also evident at the operational level. A good example of this, bearing in mind the plurality of uses of UAV technologies in modern warfare, is the fixation with a reconnaissance-strike complex as the central feature of contemporary wars. This, as Shimko (2015) points out, is problematic because of two things: first, because the RMA-driven reliance on UAV surveillance and reconnaissance has not obviated the difficulties of gathering accurate battlefield information for strikes and special operations; and second, because of the overemphasis on efficiency, the leganl and political justifications that every bellicose confrontation is expected to be based on loose visibility (p. 27).

The widespread proliferation of drones in the military operations of great and middle powers is reason enough to think that the difficulties exposed above are not related to low precision derived from poor technological capacity. Instead, it has to do with how priorities for their application are being set by stakeholders and, specifically, with the way in which they place exceptional measures as regular standards. As Kent Roach pointed out (2018, pp. 92-94), actors such as the United States have taken advantage of the lack of accountability in the international arena for arbitrary killings to compensate for comparatively restrictive domestic frameworks, thus creating a context where exceptionally vigorous forms of military action are deemed normal.

In sum, drone technology as part of the RMA process could manifest in more precise and less recurrent applications of lethal force. However, the way in which targeted killing operations with UAVs have been incorporated by states into modern warfighting doctrine enhances a trend toward unrestricted attacks. As seen in previous chapters, the most frequent strategy for justifying unrestricted targeted killings under international law is by expanding the idea of sustained armed

confrontations to proceed under the provisions of the law of armed conflict. The problem, besides the already explored artificiality of a permanent state of war, is that this approach strongly relegates the use of military technology to remotely neutralize enemy combatants and, given that these strategies imply less engagement than traditional battlefield operations, key principles of counterinsurgency such as assisting the creation of governability are left unattended (both domestically and, evidently, internationally) (Gorka, 2008, pp. 51-52).

These considerations, taken together, reinforce the idea that drone technology – and other advances that supported the RMA notion during the post-Cold War and GWOT eras – is far from being the main reason for States' prioritizing targeted killing and molding international legal principles to render them legitimate. Technological improvements are the means, but not the engine of that change. Instead, it might be worth considering that restricting their usage to arbitrary deprivations of life derives from the reluctancy of stakeholders to redefine a security policymaking mindset which prioritizes exceptional violence in the international arena.

That bias has multiple roots. Some of them were discussed above, such as Schmitt's (2013) idea of an ontological enmity that creates legitimate wars without a legitimate adversary, or Anghie & Chimni's (2004) understanding of international law as the means to maintain structural patterns of violence inherited from colonialism. However, an additional – and central – element that confirms the same argument is the insistence on the notion of exceptionality.

Schmitt (1968) himself explores exceptionality in his work *Dictatorship*, pointing out the tendency to codify in normative frameworks the suspension of legal provisions limiting the use of military technical resources once certain factual preconditions are met – namely, having to face an internal enemy within States or engaging in an armed conflict internationally (pp. 228-229). Authors such as Saint-Bonnet (2018, pp. 68-69) would bring back these ideas for the analysis of 21st century struggles with terrorism and insurgencies, pointing out how great powers, in a rush to neutralize the threats this form of violence represent, have implicitly forged an implicit

consensus toward the state of exception, in which the effectiveness of surveillance and individual targeting have diminished but terminating these contingency measures is deemed unreasonable.

The rise of targeted killing operations with UAVs, as described across this study, is an explicit manifestation of this fixation with the state of exception. As an isolated tactic, these attacks do not amount to an armed conflict of any kind, especially because at the time the operation is carried out some of the victims are not actively engaging in bellicose actions. However, States have managed to set a rhetoric where their mere existence is an imminent threat in and of itself. For individuals representing a high tactical value (i.e., non-signature strikes), that line of thought might be valid, but even in such a case, proportionality, necessity, and self-defense principles can be applied loosely by prioritizing military necessity.

The work of Goppel & Schwenkenbecher (2012) corroborates this claim by indicating that conventional readings of international law do not contemplate targeted killing as a permissible action, but a combination of legal ambiguity and, most importantly, alleged ethical necessity compensates for that transgression (p. 117). During the conceptual analysis carried out in this study, the importance of the expansion of that subjective ethical interpretation was pointed out, and it is crucial to categorically affirm the inexistence of the borderless battlefield rationale used to legitimate drone-executed targeted assassinations.

Claiming that the technological improvements that constitute the RMA in the 2000s initiated an unstoppable process of transformation in modern warfare is what legitimates those discursive devices. By portraying the rise of the remote use of lethal force as the inevitable result of a technology-driven military advantage, the traditional concept of the battlefield and the laws of armed come to be viewed as outdated and their reinterpretation necessary. These reinterpretations, according to which the international community has livee in a permanent state of war since September 11, 2001, necessitate new international legal categories such as “transnational non-international armed conflicts” to be implemented arbitrarily, and

enable the “unlawful combatant” notion to be back on the table. In sum, a subjective narrative of armed conflict is positivized to turn exceptionality into the prevailing framework for the conduct of hostilities.

b. Giving room for contingent biases: Overreliance on the laws of armed conflict

Regardless of the homogenizing character of the rhetoric used for their justification, this study has not disputed – in any of its stages – the idea that targeted killing operations with UAVs have gained a level of relevance that makes it impossible to ingore them as an independent category of analysis. As a matter of fact, the whole theoretical proposal advanced in these pages is based on the idea that this tactic is a differentiated concept with its own references and senses. Similarly, when discussing Schweiger’s (2019) opposing view, according to which the scarce presence of “targeted killing” in hard law would mean that it is not an actual independent term, this work defended the position that the UAV technology factor created a sufficiently different phenomenon that makes it necessary to discuss it outside the general self-defense and arbitrary killing debates.

The review of legal sources presented in chapter one, especially the legislative contributions of UN Human Rights bodies, confirms the need for a differentiated approach to UAV- executed targeted killings, given that they are proof of the interest of lawmakers and doctrinal thinking in the construction of a concrete definition of this tactic. Notwithstanding the formulation biases described in the sections above, the call for regulation prevails.

With this in mind, it is worth listing some considerations regarding the inappropriateness of the laws of armed conflict as the principal legal regime applicable to this phenomenon. The starting point for doing so is pinpointing the nature of targeted killing operations with UAVs as 1) intended, premeditated, and deliberate applications of the use of lethal force; 2) actions allegedly subscribed to

an armed conflict, but notoriously separated from direct battlefield confrontations; and 3) perpetrated without physical custody of the victim.

The first thing to point out is that stakeholders have taken advantage of the subjectivity around the definition of military necessity for advancing remote warfare. While this malleability is a common characteristic of all international legal regimes, the laws of armed conflict are particularly notorious in this respect because the same sovereign powers that have the duty to protect individuals – namely, States – are also those in charge of labelling them either as combatants or civilians. Whereas human rights law follows a logic of universality, the application of the laws of armed conflict calls for subjective judgements regarding necessity, proportionality, and distinction. In that latter context, the application of legal dispositions is more affected by the subjective appreciations of the sovereign authority, hindering the protections granted to those individuals being targeted (Gupta, 2021, p. 8).

That line of thought is problematic because of the strong process of macrosecuritization described in chapter two. Since evaluating military necessity for targeted killing operations with UAVs is a process influenced by an ever-present war rhetoric, the amount of collateral damage deemed acceptable would inevitably be larger, especially when considering that civilians are frequently depicted as “duplicitous shrapnel” or, in other words, bare assets used by transnational actors to defend themselves (Gupta, 2021, p. 19). As seen before, we can trace this reasoning back to documents such as the 2005 decision of the Supreme Court of Israel on targeted killings, where the tribunal refers to military necessity to justify the legality of these attacks in areas where terrorist actors operate, regardless of human rights protections granted to civilians.

It is possible to see, therefore, that the counterterrorism framework under which targeted killing operations with UAVs are carried out has voids for proper regulation. Even though necessity, proportionality, and distinction are mandatory considerations for this kind of attacks, the way in which this legal framework has been understood does not contribute to setting clear criteria for each one of those requirements. In

different stages of this study, it has been pointed out that the narrative preferred by actors such as the United States is one claiming that targeted killings are events inside an ongoing armed conflict. However, it is also true that stakeholders have made substantial efforts to affirm that not all terrorism and counterterrorism operations should be considered under the laws-of-war framework (Roberts, 2002, p. 12).

This halfway commitment may be considered the reason why more precise standards have not been set. States portray these killings as measures to counter the imminent threats derived from an ongoing armed conflict but are reluctant to elaborate on how the legal status of the targets is defined. Another example is the way in which “direct participation” is treated. According to Kristina Benson (2014), signature strike protocol tends toward presenting “observed patterns of behavior” – such as affiliation or proximity to an armed group – as sufficient evidence of direct participation in hostilities. This is in direct contravention of the International Committee of the Red Cross’ insistence that for the fulfillment of that requirement there must be concrete action that contributes in a continuous manner to the warlike activities of the group (pp. 30-32).

Here, the aforementioned pattern of constant resignification of international standards by advancing new categories reappears. Authors such as Eric Posner (2010) have pointed out that this may be a manifestation of a rearguard attitude of global liberal legalism, in which the executive power does recognize the international legal standards, but only through a reinterpretation process that guarantees the legitimacy of the rule of law without having to see their decision-making capacity diminished by the influence of international institutions (pp. 174-175). The problem of that assessment, when applied to the use of the laws of armed conflict to regulate targeted killings with UAVs, is that it makes it easier to justify human rights transgressions, and simultaneously, it contributes to a redefinition of legal standards originally designed to reduce indiscriminate and arbitrary violence.

Although it has been argued that technological innovations should not be understood as an objective and uncontainable driver for widespread UAV-executed targeted killings, that does not mean they have not produced changes at the operational level of military affairs. The laws of armed conflict do not have provisions to manage these alterations and, therefore, reinterpretations are expected. The problem, similarly to what was argued in the previous subsection, is that these reinterpretations carried out by the executive power lean on normalizing exceptionality and, more specifically, in turning contingent responses into the accepted reading of international legal principles.

As shown by Pomès (2017, pp. 209-211), the incorporation of robotics and cybernetics has rekindled the debate about what determines the existence of an armed conflict and, in the same vein, if "isolated acts" – such as targeted killing operations with UAVs – rise to the level of intensity required for attributing them a character of *animus belligerandi*. So far, the answer given by States is that they do, claiming that the individuals and organizations targeted are continuously plotting to commit indiscriminate acts of violence. That pre-emptive approach undermines the necessity to prove a continuous combat function – in association to a group – because the participation in armed conflicts is broadly framed.

With all these elements in mind, it can be seen why the application of the laws of armed conflict to targeted killing operations with UAVs is not an optimal alternative. It does not mean that the classifications and provisions that it contains are ontologically flawed, but that their guiding criteria have been susceptible to arbitrary and subjective interpretations through the advancement of novel discursive devices and analytical categories (Brookman-Byrne, 2017, p. 38). This regime, therefore, is prone to being misused by States to justify the expansion of the use of lethal force to areas outside of active hostilities, in response to the incidental dynamics of transnational threats.

It is true that certain drone strikes – and some of the terrorist attacks that have been used to justify their use – have had a level of repercussions that allows attributing to

them a character of *animus belligerandi*. However, this specific tactic has been utilized to become a systematic campaign to counter a poorly defined threat. Most of the targeted killing operations with UAVs happen in contexts with very low proximity to active hostilities (or the logistic support they require, for that matter). Justifying them by alluding to the laws of armed conflict does not only give States the liberty to define how the relevant criteria are applied, but also diminishes protections that are thought to be of universal application – i.e., human rights law – by turning a contingent law regime into the common framework for the use of force.

c. Increased reliance on pre-emptive action and the instrumentalization of the current frameworks

So far, two ideas have been presented as elements implied in the delimitation of the nature of targeted killings with UAVs. First, the fixation on exceptionality and its portrayal as an objective attitude through the RMA logic. Second, the susceptibility of the laws of armed conflict regime to contingent reinterpretations. Under these preconditions, accountability and the need for effective counterinsurgency measures come into conflict. This final subchapter presents some remarks on that clash by indicating how the general consensus in the international legal order has been marked by the idea of favoring the implementation of preventive counterinsurgency, the dehumanization of war, and the instrumentalization of the current regimes.

Based on the idea that targeted killing operations with UAVs are not ontologically linked to an armed conflict, both the reinforcement through technological advances argumentation, and the implicit reinterpretation of the *lex specialis* applied to it, can be labeled as strategies of legitimation. This constitutes, therefore, an additional element of the nature of this tactic: that is, a constant need for justifying its framing under the discursive and legal facets of the ever-present war. And that struggle stems, precisely, from the fact that its bases – before the GWOT upsurge – were relegated to a narrowly defined exceptionality.

That permanent process of legitimization, as shown in chapter two, manifests in multiple discursive devices. Efforts to dismiss the perception of targeted killings with UAVs as abnormal applications of the use of lethal force, however, does not only rely on extending the notions of battlefield, enemy, and armed conflicts. As scholars such as Hagger & McCormack (2011, p. 82) point out, drone attacks have also been justified by revisiting principles like the *Martens* clause, which states that conducts not covered by a specific law during an armed conflict must comply with customary provisions, humanity, and public conscience requirements. In other words, legitimizing this tactic also requires positioning it as a desired conduct in the face of public scrutiny.

During the demarcation phase, it was argued that military doctrines attempt to fulfil this requirement by claiming that UAV-executed targeted killings provide higher precision and effectiveness in counterterrorism operations. Furthermore, some studies show that there is not sufficient evidence to confirm that general public opinion is actively opposed to targeted killings with UAVs (Horowitz, 2016, pp. 6-7). Consequently, it is plausible to say that these operations comply with the public conscience requirement of the *Martens* clause – albeit, as shown before, not being fully legal under other normative considerations. Nonetheless, this strategy of legitimation also presupposes the pre-emptive rationale under which they are carried out.

Bearing in mind the previously explained debate on the legality of pre-emptive self-defense, it is worth noting that the higher reach that drone technology has given to government security responses – and its associated legal reinterpretations – strengthens the preference for anticipatory counterinsurgency tactics. Moreover, as Wilmshurst (2013, pp. 358-359) points out, even those who deny the existence of a right to anticipatory self-defense still usually contemplate pre-emptive attacks as valid courses of action. Whether through expanding what is understood as “armed attack” under article 51 of the Charter of the United Nations, or by labeling potential threats as aggressions derived from an attack already performed, the international

legal framework keeps being rearticulated in a way that favors prioritizing anticipatory use of force.

In itself, that tendency is not necessarily problematic, given that transnational threats cannot usually be addressed in a concrete battlefield. Be that as it may, the overreliance on pre-emptive counterinsurgency and anticipatory applications of the use of lethal force – such as drone-executed targeted killings – does raise issues when considering effective accountability for arbitrariness and/or excessiveness. The criteria for the application of the principles of proportionality and necessity are indeterminate, and consequently compliance checks are strongly case-specific. However, this approach renders the implementation highly unpredictable (Tams, 2013, pp. 416-417), making it hard to draw commonly recognized guidelines for how to conduct counterterrorism and, consequently, identify and prosecute transgressions. That volatility, therefore, ends up leaning toward treating every case as *sui generis*, instead of reinforcing concrete boundaries for these operations.

In addition to this drawback, another factor that contributes to a conflictive relation between accountability and preventive counterinsurgency methods is the high level of tolerance when it comes to excesses. Besides greater permissibility regarding collateral damage, the rush to stave off transnational threats through anticipatory self-defense contributes to the dehumanization of the conflict. Result oriented policies lead to outcomes in which the abstract process of adjudicating a level of guilt to justify the assassination of the victim leads to more permissible calculations of military advantage, despite States having strong protocols of reconnaissance and target definition (Bachman & Holland, 2019, p. 1040).

With all these considerations in mind, it can be said that the need for constant legitimization of targeted killings – manifested in an RMA-based justification of permanent exceptionality and contingent reinterpretations of the laws of armed conflict – creates a tension between counterinsurgency and accountability. The processes of dehumanization and enhancement of preventive attacks increase the amount of permissible collateral damage, causing some excesses to stop being seen

as such and, consequently, blurring the lines for potential adjudication of responsibilities for transgressions. The configuration of this tension forces the acceptance of a tendency of expansion of the permitted uses of lethal force that is nurtured by the ambiguity surrounding international legal limitations.

These changes, nonetheless, do not exclusively stem from the creation of *sui generis* legal categories. Instead, an additional strategy for fostering the legitimacy of targeted killings can be found in in the instrumentalization of the current legal regimes. As Lugosi (2003, pp. 276-277) suggests, ever since the GWOT dynamics increased the pressure for improving counterterrorism effectiveness, political narratives have captured legal standards and inserted them into the set of references used for the justificatory discourse of exceptional measures. That incorporation does not mean substantially reforming codified norms, but using their terminology – for example, “enemy combatant” – for arguing in favor of a relaxed and circumstance-based application of protections that the targets are entitled to.

This process of framing the political justifications for targeted killing operations with UAVs in the existing legal regimes reinforces the idea advanced in the previous subsection: that is, the susceptibility of the current legal provisions to arbitrary applications and reinterpretations. That being said, it may be argued that the international legislation used for addressing the issues of this tactic has followed a particular version of the rule of law, in the sense that it relies on a well-known set of norms whose overall viability, despite some deviations, is not subverted (Tushnet, 2014, pp. 80-81).

Drone attacks, as seen throughout this chapter, are handled through the use of the rhetoric of a particular *lex lata* – i.e., the laws of armed conflict – that allows contingent interpretations for expanding the use of lethal force. Both this conduct and the discursive devices used to validate it are deemed as legitimate because they use the terminology of widely accepted legal precepts. Moreover, even when States resort to the advancement of new concepts to solve legal limitations, they do so by constantly referring to that widespread terminology. An example of this latter claim

may be the notion of the “transnational non-international armed conflict”, given that it uses the same wording that international humanitarian law employs for characterizing disputes.

The expansion of a pre-emptive imperative for countering transnational threats, manifested in anticipatory uses of lethal force for self-defense, reinforce the idea that the way in which this tactic has been heretofore addressed leaves significant voids in accountability. In addition to the foundational myths presented in chapter two, this second part of the critique stage of the conceptual analysis has shown that the theoretical and legal understanding of targeted killings with UAVs is not properly connected to the actual problems derived from its application.

Although the main concerns about this tactic of the so-called “new wars” have to do with the fulfillment of the distinction, necessity, and proportionality requirements, the legitimation strategies presented in this thesis largely focus on depicting these attacks as legal. By arguing, on one hand, the inevitability of remote warfare, and, on the other, that the laws of armed conflict must be applied to isolated acts, States involved in targeted killing activities create a tension between creating a legal framework for neutralizing potential threats, and the possibility of holding accountable those responsible for potential excesses. From there, the current legal grounds are instrumentalized to reinforce acceptance of the conduct.

The problem with this process, therefore, is that it limits the precept of prioritizing the legal regime that gives more protection to those involved in armed conflicts. Since the requirements for arguing the existence of one of these situations are lower – both because of macrosecuritization and the arbitrary usage of the laws of armed conflict tendency –, the targeted killing by UAVs of a victim who was not making a continuous contribution to one of the parts of the alleged conflicts are treated as incidents of war, instead of being deemed as what they are: arbitrary executions that come under the purview international human rights law. The need for constant legitimization as one of the elements of the subject matter’s nature is, in itself, proof of a legal tension related to a bellicose approach to transnational threats that erodes legal consensus.

V. CONCLUSIONS

The theoretical discussion advanced in this study sought to answer the question of which elements constitute the nature of targeted killing operations with UAVs and, from there, identify the proper legal regime for their treatment. To do so, a conceptual analysis of this category was carried out, with a demarcation phase reviewing the main doctrinal and legal sources, and a subsequent stage of critique discussing foundational myths behind the term and its correspondence with the issues derived from the execution of the tactic in the real world.

The results of this review show that these drone attacks, despite not having a formal definition codified in international law instruments, have a generally accepted meaning associated with them. That referential part of the concept presents targeted killings with UAVs as premeditated and effective applications of the use of lethal force, directed to individually selected persons who are not in physical custody of the perpetrator, and that are part of the pattern of violence of a subject of international law (more specifically, States). Additionally, it was identified that these operations are presented as incidents of war, clinging for their legality and legitimacy to the laws of armed conflict and, more importantly, to the idea of a scattered enemy and a borderless battlefield.

By following a three-stage scheme of norm evolution theory, this study also explored how international law has treated this phenomenon so far, leading to two main conclusions on that matter. First, there international legal developments have been strongly dependent on the interpretations advanced by the two trailblazer States that have made extensive use of this tactic: namely, the United States and Israel. And second, United Nations Human Rights bodies have produced a cascade of legal instruments of soft law for addressing the issue.

Regardless of their quantity, these contributions have failed to address targeted killings under human rights law. Instead, in certain instances, they have resorted to reinterpretations of legal principles that aim to frame them under the laws of armed

conflict. Those principles have been: anticipatory self-defense, a broadly defined notion of armed conflict, and belligerence through the lens of the unlawful combatant designation.

Once those precepts were identified, the study passed from the demarcation phase to a critique of the notion of targeted killings with UAVs. The first action taken toward accomplishing that purpose was to identify the actual senses behind the definition. In this regard, three key findings were presented. First, accepted understandings of the tactic rely on "just war" ideas in which the *jus in bello* is relegated in favor of the *jus ad bellum*, opening the door to more frequent transgressions as long as they are framed as part and parcel of a widely accepted cause (i.e., the GWOT). Second, it relies on extending a transcendental idea of enmity that presents those who are being targeted as unlawful aggressors outside commonly agreed upon legal protections. And third, there are instances where these attacks are not fully compliant with international legal requirements, but ideas such as R2P render them legitimate enough to discard *a priori* normative considerations.

With those presumptions identified, the second part of the critique phase focused on the interactional considerations of the targeted killings with UAVs concept with its real-world problematics. There, the first crucial finding was the need for refuting the idea of drone strikes as an inevitable manifestation of contemporary warfare, since their ubiquity in patterns of violence is better explained by a fixation with exceptionality, than by objective calculations derived from the RMA process. Similarly, it was seen that the overreliance on the laws of armed conflict is problematic due to the susceptibility of those norms to contingent interpretations based on the subjectivity surrounding the criteria for military necessity, proportionality, and distinction.

Lastly, the critique advanced in this study pointed out how all these elements combine to propel a line of thinking in which the pre-emptive use of lethal force is deemed as the main and most desirable course of action for counterinsurgency and counterterrorism purposes. The problem, as it was pointed out in chapter three, is

that it blurs accountability for transgressions executed by state agents during targeted killing operations with UAVs. Those complications stem from the dehumanization of the targets, on one hand, and from the political instrumentalization of the legal precepts and analytical categories under a rule-by-law mindset, on the other.

With all these findings in mind, it is possible to confirm the hypothesis proposed at the beginning of this study as a preliminary response to the research question. Targeted killing operations with UAVs are indeed a distinctive tactic that, through its perpetration and discursive justifications, attempts to expand the permitted use of lethal force by relying on an unbounded state of war. This is not only supported by States' insistence on using the laws of armed conflict outside direct armed confrontations, but by the fact that the defenders of this tactic created *sui generis* categories to corroborate the idea of a borderless battlefield.

In the same vein, normalizing an allegedly ontological animosity must be perceived as a manifestation of an interest to expand the use of lethal force for the complete annihilation of the enemy. To consider it possible to have a *bona fide* war without facing a legitimate enemy erodes compliance with the legal provisions to restrict levels of violence during war, especially when considering the pressure for prompt military achievements.

Both this redefinition of legal categories and the creation of exceptions for legal protections when facing an *outer* enemy are manifestations of a macrosecuritization process. The influence of R2P and the GWOT as the predominant rhetoric during the 21st Century has led to a tension between common legal grounds and neutralizing potential threats. A tension that, so far, has been leaning in favor of exceptionality. Consequently, those same legal precepts can be instrumentalized for depicting practices such as targeted killings with UAVs as legitimate incidents of war, instead of reading them as a more sophisticated way of extrajudicial executions.

The second element presented in the central argument for this text was the need for prioritizing the treatment of targeted killings with UAVs through human rights law, instead of doing so through the laws of armed conflict. With the findings of the conceptual analysis in mind, this need appears to be even clearer, since States have advocated in favor of new customary readings of international principles surrounding the right to life. Arguing that article 51 of the UN Charter allows anticipatory uses of force for self-defense, that Common Article III of the Geneva Conventions can be overlooked when facing so-called “unlawful combatants”, or that civilians adjacent to terrorist ringleaders are actively participating in armed confrontations because military necessity implies it, slowly puts human rights protections on the back foot.

It is true that violent phenomena such as terrorism and partisan movements, alongside technological advances, have thrown up operational issues that cannot be fully covered by either traditional warfare or by international *lex lata*. However, giving in to a non-consensual redefinition of legal standards through arbitrary customary readings should not be the alternative, especially since, across this study, one of the key theoretical bases was interactional international law. Treating targeted killings with UAVs through an approach that constantly redefines widely accepted principles inevitably damages the material legitimacy of those same norms. That risk exists because, since the legal frameworks is instrumentalized, both lawmakers and subjects of law end up seeing it as a set of guidelines that should not be enforced.

In sum, targeted killing operations with UAVs has proven to be a tactic that, regardless the discursive or material reasons, will prevail in the international arena. So far, the conceptual treatment it has received – both by doctrine and codified law – has rendered it a practice that carries a need for constant legitimation as part of its nature. The risk behind that approach, therefore, is that legitimizing it through altering commonly accepted readings of international law causes exceptional measures to be seen as ordinary, adding to the detriment of human rights protections. Although it is not pervasively present in codified law, it would be impossible to say that it is not a distinctive phenomenon that raises several legal problems of its own. It is in States’

hands to decide whether to accept this constant contingent erosion of legal consensuses or to find alternative regulations that actually address the issues that this tactic entails.

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