Master thesis International Studies

Rules of war during the Médecins Sans Frontières hospital bombings in Kunduz, Afghanistan

Student: Ayla Schildkamp
Studentnumber: S1792288
Date: 3rd of January 2016
Thesis supervisor: Dr Gawthorpe

Table of Content

Introduction……………………………………………………………………p.3

Chapter one……………………………………………………………………p.5

Methodology……………………………………………………………p.5

Theoretical Framework…………………………………………………p.6

The war in Afghanistan…………………………………………………p.7

Asymmetrical warfare……………………………………………………..p.8

The MSF hospital bombings………………………………………………p.9

Just War Theory and the principles of jus in bello………………………p.12

Chapter two……………………………………………………………………p.15

Scenario one……………………………………………………………p.15

Scenario two……………………………………………………………p.18

Chapter three…………………………………………………………………p.20

Scenario three…………………………………………………………p.20

Scenario four……………………………………………………………p.22

Conclusion……………………………………………………………………p.25

Bibliography………………………………………………………………...…p.28

Introduction

The end of the US led 2001-2014 phase of the war in Afghanistan was marked when US troops were withdrawn. The US and Afghanistan signed a bilateral security agreement that would allow NATO troops to remain after the withdrawal date in an advisory and counter-terrorism capacity.[1] On the 3rd of October 2015 a Médecins Sans Frontières (MSF) hospital in Kunduz Afghanistan was bombed by the United States (US) Air Force. At least 30 MSF staff and patients were killed during the airstrike and the MSF has three demands.[2] Namely, that a functioning hospital caring for patients cannot simply lose its protection and be attacked, that wounded combatants are patients and must be free from attack and treated without discrimination and that medical staff should never be punished or attacked for providing treatment to wounded combatants.[3] MSF condemned the incident, stating that all warring parties were aware of the hospitals location before the incident, and that the attack was intentional.[4]

Due to a lack of empirical evidence it is not possible to conclude that the MSF hospital in Kunduz was purposely targeted by the United States. There are four different actors involved in this case, namely; Afghan Armed Forces, the US Armed Forces, the MSF staff in the hospital in Kunduz and the Taliban. As this case involves the military forces of two different states, it took place in a war torn area and it is recent, it is difficult to research what exactly happened during the MSF hospital bombings in Kunduz, Afghanistan. The Afghan Armed Forces have published little information on the chain of events that led to the airstrike on the MSF hospital. The MSF and the US Armed Forces have both published an official report however this information may be biased. Due to the scope of this paper we will limit research to two actors involved in the MSF hospital bombings, namely; the US Armed Forces and the MSF staff in the hospital in Kunduz.

Firstly, this research will look at the possible scenario where the United States did target the MSF hospital on purpose and had evidence of enemy presence. Secondly, this research will look at the possible scenario where the United States did target the MSF hospital on purpose but did not have evidence of enemy presence. Thirdly, this research will look at

[1] Michaels, Jim. “Afghanistan, U.S. sign long-delayed security pact. Official website of USA today.” Accessed 1st November 2016. http://www.usatoday.com/story/news/world/2014/09/30/afghan-us-security-pact/16467441/.
[2] Liu, J. (2015) *Initial MSF internal review.* (Geneva, Switzerland): Médcins Sans Frontières.
[3] IBID.
[4] “Afghanistan: MSF Demands Explanations After Deadly Airstrikes Hit Hospital in Kunduz.” Accessed 24th of February 2016. http://www.doctorswithoutborders.org/article/afghanistan-msf-demands-explanations-after-deadly-airstrikes-hit-hospital-kunduz.

the possible scenario where the United States did not target the MSF hospital on purpose but did have evidence of enemy presence. Lastly, this research will look at the possible scenario where the United states did not target the MSF hospital on purpose nor did they have evidence of enemy presence. By looking at these different possible scenarios shown in the grid below this research will look at the law of war as set out in the Geneva Conventions and International Humanitarian Law (IHL), and whether it is compatible in modern day conflicts.

	US did know of MSF hospital location	US did not know of MSF hospital location
US did know of enemy presence	Scenario 1	Scenario 3
US did not know of enemy presence	Scenario 2	Scenario 4

In order to understand the rules of war in IHL this research try to find an answer to the question:

Did the United States airstrike on the MSF hospital in Kunduz violate International Humanitarian Law?

By looking at the different scenarios shown in the grid above, sections of IHL will be discussed. With this research I wish to contribute to the existing debate about the legitimacy of the US airstrike on the MSF hospital bombings in Kunduz and also to the functionality and the effectiveness of the rules of war in modern day warfare.

Chapter 1

This chapter will discuss the methodology and structure of this research paper and elaborate on the underlying theory of Just War Theory. The focus of this chapter will be on introducing and defining the main concepts of this research paper namely; the war in Afghanistan, asymmetrical warfare, the MSF hospital bombings, Just War Theory and the rules of war in IHL. Once the main concepts of Just War Theory are understood, the reader will be able to follow the debate in the significance of the rules of war in IHL in modern day warfare.

Methodology

This master thesis will be a qualitative research paper looking further into Just War Theory and the argument that the rules of war in IHL are not compatible with modern day warfare. It will try to find an answer to the question whether the rules of warfare can be applied in the MSF hospital bombings in Kunduz, Afghanistan. This research will contribute to the debate of the functionality of the rules of war during the US airstrike on the MSF hospital. It will try to find an answer to the question whether the US Armed Forces violated IHL during the MSF hospital bombings. Just War Theory and the rules of war in IHL will be explained, using the case study of the MSF hospital bombings in Kunduz as an example. Research will be based on primary sources, online data bases and secondary literature. Due to the time limit of this assignment and the subject, field research cannot be conducted in order to collect data. As there is a limited amount of empirical evidence and the sources available may be biased. Therefore scenarios, based on the different primary sources accessible to the public, will be used to research the different factors which may have led to the MSF hospital bombings in Kunduz. This is a method which allows us to research the many cases where there is a lack of empirical evidence and where the evidence available may be biased.

Joint Publication 1 of the Doctrine for the Armed Forces of the United States will be used to analyze to what extent the US Armed Forces were aware of the location of the MSF hospital in Kunduz. This publication is the capstone joint doctrine publication which presents fundamental principles and overarching guidance for the service of the US Armed Forces, by the US Armed Forces. Joint Publication 1 of the Doctrine for the Armed Forces of the United States defines war as socially sanctioned to achieve a political purpose. The failure of states to resolve their disputes by diplomatic means can result to war. The doctrine defines nine principles of war namely; objective, offensive, mass, economy of force, manoeuvre, unity of

command, security, surprise and simplicity. The doctrine acknowledges that war is a mechanism as war has continuously changed and it differentiates traditional warfare; war between nation-states, and irregular warfare; war between state and non-state actors. The doctrine addresses the different forms and methods of warfare with three levels of warfare namely; strategic, operational and tactical. There are no restrictions between these levels and they are used by commanders to design and synchronize operations, allocate resources, assign tasks and are used to attain national objectives. The strategic level of warfare is where a nation establishes the national, or in the case of an alliance multinational, regulations setting out its strategic aims. Strategy, as defined in Joint Publication 1, is a discreet idea for using the instruments of national power in a coordinated way to attain a states strategic aims. The operational level is used to connect strategy and tactics by creating operational aims necessary to attain states strategic objective. On this level commanders determine when, where and for what purpose key forces will be used and to manipulate the opponent's nature before combat. The tactical level is where battles and engagements are planned and take place to achieve military objectives. Tactics is the use and organized preparation of forces in relation to each other. Nevertheless Joint Publication 1 recognizes that the actual execution in warfare is more complicated. Additional information from Joint Publication 1 which is relevant for this research is that in Joint Publication 1 the Doctrine of Armed Forces state that the Armed Forces of the United States will adhere to the law of war during all military operations. The law of war regulates the legal and customary validations for using force and the performance of armed hostilities. It binds the US and its citizens. [5]

Theoretical Framework

In order to answer the main research question, sub-research questions have been formed to aid the structure of this paper. To start off this research will give a brief introduction to the War in Afghanistan, introduce the US airstrikes on the MSF hospital in Kunduz and the rules of war in IHL. Dominant paradigms of Just War Theory will be discussed and a literature review will be given. This chapter will also provide a brief background history on the Afghan Wars so the reader understands the complexity of the situation and all the different parties involved. The second chapter will look into scenario one and two, where the US was aware of the MSF hospital location. The third chapter will discuss

[5] Joint Publication 1. *Doctrine for the Armed Forces of the United States*. http://www.dtic.mil/doctrine/new_pubs/jp1.pdf. Accessed 15th November 2016. This paragraph is based on information from Joint Publication 1.

scenario three and four, where the US was unaware of the MSF hospital location. This master thesis will conclude summarizing the main arguments discussed is the various scenarios and answer the main research question.

The War in Afghanistan

This section will elaborate on the War in Afghanistan as of 2014; how it came to be, the effect it had on Afghanistan and the different actors involved. It is essential to understand the complexity of the situation in Afghanistan to understand how the MSF hospital in Kunduz could have been bombed and the aftermath of it.

Thomas Barfield gives an elaborate background in his book; *Afghanistan. A Cultural and Political History,* on how Afghanistan has been conquered and ruled by foreign powers for more than a thousand years. Barfield explains that Afghanistan is a country with a bewildering diversity of tribal and ethnic groups which are divided by regional, cultural and political differences. He describes that governing these different groups was relatively easy when power was concentrated in a small dynastic elite. However, this delicate political order was broken in order to oust the British and later the Soviets with mobilized militias. This undermined the Afghan government's authority as armed insurgency was necessary against foreign occupiers. As time passed Afghan governments continued to need armed insurgency against foreign occupiers proving that the country was difficult to govern. Barfield argues that Afghanistan's armed factions threw the country into a civil war, giving rise to the clerical rule by the Taliban and Afghanistan's isolation from the world. This clerical rule was pursued with radical policies resulting in minimal recognition for the Afghan government and for the fourth time in 160 years a foreign power invaded Afghanistan which led to the exclusion of a possible political elite in Kabul.[6]

After the attacks on September 11 the US, joined by the United Kingdom (UK), invaded Afghanistan on a mission to dismantle al- alone be accepted Qaeda and oust the Taliban, called Operation Enduring Freedom. The Northern Alliance, officially known as the United Islamic Front for the Salvation of Afghanistan joined them and the United Nations Security Council formed the International Security Assistance Force (ISAF), to assist with securing Kabul. In August 2003 the North Atlantic Treaty Association (NATO) became involved leading ISAF. The US forces in Afghanistan operated partly under direct US

[6] Barfield, Thomas. *Afghanistan. A Cultural and Political History.* Princeton: Princeton University Press. This paragraph was based on background information withdrawn from Barfield's book.

command and partly under NATO command. The Taliban insurgency in 2005 and 2006 was a turning point for the Afghan War as the US and its allies were not only focussing anymore on taking apart al-Qaeda but were fighting a full scale war against Taliban forces. On the 2nd of May 2011 Osama bin Laden was killed by US Navy Seals. Shortly afterwards NATO leaders approved an exit strategy to withdraw their forces from Afghanistan. In December 2014 NATO formally ended combat operations in Afghanistan and transferred security responsibility to the Afghan government.[7]

In 2015 a new NATO mission was launched called Operation Resolute Support with the objective of providing training, advising and assisting the Afghan security forces and institutions. The US wanted to help stabilize Afghanistan by building military and governmental institutions. Local proxies and the NATO were necessary to oversee outside forces withdrawing from Afghanistan. Later that year a small Taliban force managed to push out allied fighters and pro-government defenders and take hold of the city of Kunduz for the first time in 14 years. This was possible due to exploitation by the security forces of the Pashtun population and a corrupt and ineffective local government. The national government in Kabul has its fair share of responsibility with a lack of authority and incapability of actually forming a government. Kabul used an old Afghan strategy and turned to local warlords to provide security. This made it simple for the Taliban to operate as these warlords neglected their role as protectors of the people damaging the integrity of the official Afghan security forces. This was the case in many parts of the country.[8]

Asymmetrical warfare

Asymmetrical warfare is war between combatants whose military power, means, methods, organization, values and time tactics differ significantly.[9] The recent Afghan Wars are a clear example of asymmetrical warfare and an important concept of this research. Symmetrical warfare features organized militaries as the main actors while asymmetrical warfare features militias, paramilitaries, gangs and loosely organized rebel groups. Goals have changed from national interests and ideological visions to economic motivations and ethnic

[7] Gosset, Nicolas. *Lost in transition?: State of the conflict, sovereignty and post 2014 prospects in Afghanistan.* Brussels: Centre for Security and Defence Studies, Royal Higher Institute for Defence. This paragraph is based on background information withdrawn from Gosset's book.
[8] For more on this period, see Gawthorpe, Andew. *The second kick of a mule in Afghanistan.* Official website of the Boston Globe. Accessed 11th November 2016.
[9] Metz, Steven. "La guess asymetrique et l'avenir de l'Occident." *Politique Étranger* (2003): 1.

hatred.[10] It has become extremely difficult to separate civilians from combatants in modern warfare. This is a problem of asymmetrical warfare as combatants use the various forms of protections accorded to civilians in their advantage. Combatants often remove their uniforms and use civilian objects in war, as assuming civilian guise is an easy way to evade the enemy and cannot be countered.[11] While combatants become increasingly asymmetric, it becomes increasingly difficult to make a distinction between political and military objectives and necessities. Asymmetric conduct of war has become prevalent in modern warfare and as the rules of law were developed for symmetrical warfare one may question whether IHL has become obsolete.

The MSF hospital bombings in Kunduz, Afghanistan

The MSF publically released the initial outcome of its own review of what happened before, during and immediately after the US airstrikes on the MSF hospital in Kunduz. The review published by MSF is a primary source which describes the bombing of the MSF hospital and the aftermath of it, according to the MSF.

During the week before the air strikes, heavy fighting took place between the Afghanistan government and Taliban forces. It is MSF standard practice not to ask which armed group patients belong to however, based on uniform and other distinctive identification a vast majority of the wounded combatants were observed to be government forces and police since the Trauma Centre was opened in August 2011. With the heavy fighting before the US airstrike this shifted primarily to wounded Taliban combatants. On the 29th of September 2015 MSF reaffirmed the well-known location of the Kunduz Trauma Centre by forwarding the GPS coordinates to the US Department of Defence, the Afghan Ministry of Interior and Defence and the US army in Kabul, who confirmed that they had received the coordinates. At this time roughly half of the patients in the MSF hospital were Taliban combatants and the MSF was aware of two wounded combatants who appeared to be from higher ranks. The United States officially asked the MSF whether the hospital or any other of the MSF locations had a large number of Taliban “holed up” and whether the MSF staff were safe. The MSF responded stating that the Kunduz hospital was working at full capacity and that it was full of patients including wounded Taliban combatants. On the 2nd of October just hours before the airstrike, French and Australian diplomatic officials contacted the MSF and informed the

[10] Lamp, Nicolas. “Conceptions of War and Paradigms of Compliance: The ‘New War’ Challenge to International Humanitarian Law.” *Journal of Conflict and Security Law* (2011): 16, 2.
[11] Geiß, Robin. “Asymmetric conflict structures.” *International Review of the Red Cross* (2006):88, 864.

MSF that international staff in the hospital were at risk of being kidnapped. All MSF staff confirmed that it was very calm throughout the night before the airstrikes began. No fighting occurred around the hospital, no planes were heard, no gunshots reported, nor explosions in the environment of the MSF hospital.[12]

According to the MSF the US airstrikes on the MSF hospital in Kunduz started between 2.00am and 2.08am on the 3rd of October 2015. The hospital was fully functional and busy at the time of the airstrike. MSF staff were taking advantage of the quiet night to catch up on the backlog of pending surgeries. There were 105 patients in the hospital when the aerial attack began. The MSF estimated that three or four of the patients were wounded government officials and approximately twenty patients were wounded Taliban. 140 MSF national staff and nine international staff were present in the hospital during the time of the attack as well as one International Committee of the Red Cross (ICRC) delegate. The attack lasted for approximately one hour to one hour and fifteen minutes. During the aerial attack the MSF made numerous calls and SMS contacts in attempts to stop the airstrikes. The MSF representative in Kabul contacted the Resolute Support in Afghanistan, the ICRC and the Office for the Coordination of Humanitarian Affairs (OCHA) to inform them that the MSF hospital in Kunduz had been hit in an airstrike. MSF in New York contacted the US Department of Defence and the MSF in Kabul contacted the Afghan Ministry of Interior to inform them of the airstrikes. Throughout the airstrikes various actors were informed that staff had been confirmed dead and that many were unaccounted for and that the MSF suspected heavy causalities. The MSF states that the airstrikes targeted the main hospital building, which correlates exactly with the GPS coordinates provided to the US Department of Defence, the Afghan Ministry of Interior and Defence and the US army in Kabul. [13]

After the airstrikes, wounded people arrived in shock at the administrative building creating a chaotic scene. MSF staff did not leave the hospital compound, some looking for missing colleagues and some performing life-saving medical interventions on the wounded. The Ministry of Public Health (MoPH) provincial hospital in Kunduz was contacted to send ambulances, which arrived at the MSF hospital roughly around 5.45am. At this time some Afghan Special Forces entered the MSF hospitals, others remained at the gate while ongoing fighting between Afghan forces and the Taliban outside the area of the hospital compound

[12] "Attack on Kunduz Trauma Centre, Afghanistan. Initial MSF internal review." Accessed 30th March 2016. http://kunduz.msf.org/pdf/20151030_kunduz_review_EN.pdf. This paragraph is based on background information withdrawn from the MSF review.
[13] IBID.

continued. Between 7.30am and 8.00am all MSF international staff and the ICRC delegate were evacuated to the airport. At 8.30am the MSF staff which remained at the MSF hospital reported that fighting broke out again in front of the main gate, forcing them to remain in the hospital to hide in basement. The MSF hospital closed following the destruction caused by the US airstrikes.[14]

The MSF argues that a running hospital caring for patients cannot simply lose its protection and be attacked, that wounded combatants are patients and must be free from attack and be treated without discrimination and that medical staff should never be punished or attacked for providing treatment to wounded combatants. Shortly after the airstrike took place the MSF launched a call for an independent investigation by the International Humanitarian Fact Finding Commission. The IHFFC confirmed availability and is still waiting for the US and Afghan Governments to give their consent, which is an important step in showing their commitment to the Geneva Conventions. Immediately after the MSF hospital bombings took place it was unclear which actor was responsible for the airstrike. The US Armed Forces pointed fingers at Afghan Armed Forces and vice versa.[15]

An internal military investigation was carried out by the US and made a report available to the public in April 2016. Army General Joseph Votel provided a statement during a Department of Defence Press Briefing which describes the US report. This report shows what happened in Kunduz when the airstrikes took place on the MSF hospital. General Votel argues that there were false assumptions that all civilians had fled, leaving only the Taliban in the city. He said that no effort was made to find out if this was indeed the case and no precautions were taken to avoid civilian casualties. According to Votel Kunduz was considered hostile and the US Special Operations Forces and the Afghan special operations partners had been engaged in intense fighting. This led to a situation where the crew of the AC-130 aircraft did not get all the preparatory information necessary before a mission and therefore the no-strike list was not consulted in the hours before the attack. The US report argues that the MSF hospital was misidentified which led to 211 artillery shells being unleashed from an AC-130 gunship without any hostile threat being confirmed.[16]

---

[14] "Attack on Kunduz Trauma Centre, Afghanistan. Initial MSF internal review." Accessed 30th March 2016. http://kunduz.msf.org/pdf/20151030_kunduz_review_EN.pdf. This paragraph is based on background information withdrawn from the MSF review.
[15] IBID.
[16] IBID.

Just War Theory and the principles of Jus in Bello

This section will introduce Just War Theory and the principles of jus in bello otherwise known as the rules of war. These rules of war have been applied in IHL to limit the effects of war and were implemented at the Geneva Conventions after being ratified by 196 states.

Michael Walzer, author of *Just and Unjust Wars: A Moral Argument with Historical Illustrations,* says that war in itself is wrong nevertheless it is possible to be more or less humane and to fight with or without restraint. Walzer says that soldiers fight wars between political entities, not wars between persons. He argues that war can only be differentiated from murder and massacre when restrictions are recognized on the battle field. These restrictions are divided into two sets of rules. Firstly, rules specifying how and when soldiers can kill. Secondly, rules excluding particular groups of the permissible range of warfare specifying whom soldiers can kill. By making these restrictions on war Walzer strengthens his arguments that wars should be lawful and, that wars are fought between political entities and therefore individuals should be left out.[17]

Just War Theory predates international law, including principles and rules that are meant to bind societies. Although Just War Theory was initially conceived as a guideline to constrain the behaviour of rulers who shared the same norms and values, international law applies to numerous modern nation-states with no assumed common values.[18] Just War Theory has always included the condition that war can only be started and waged by a legitimate authority. It is split into two main fields of examination namely, jus ad bellum; the conditions that must be met in order for the resort to war to be morally justified and jus in bello; the moral permissibility of conduct in war by individual participants. Jus in bello focuses on the requirements; that participants must discriminate between legitimate and illegitimate targets and attack only the previous, and that the harms caused in war must be proportionate to the military advantage. Legitimate and illegitimate target differentiation is used to make a distinction between combatants and non-combatants. Although, this does not

---

" Department of Defense Press Briefing by Army General Joseph Votel, commander, U.S. Central Command." Accessed 4th November 2016. http://www.defense.gov/News/Transcripts/Transcript-View/Article/746686/department-of-defense-press-briefing-by-army-general-joseph-votel-commander-us. This paragraph is based on background information withdrawn from the MSF review and a transcript of the Department of Defence Press Briefing.

[17] Walzer, Michael. Just and Unjust War: A Moral Argument with Historical Illustrations. New York: Basic Books. 2006.

[18] Mednicoff, David M. "Humane war? International law, Just War Theory and contemporary armed humanitarian intervention." *Law, Culture and Humanities* (2006): 2, p. 373-398.

mean that it is prohibited to cause harm to non-combatants in war, simply that is it prohibited to target non-combatants. It is clear that non-combatants will always be harmed collaterally during warfare however this must at all times be proportionate.[19] Jus in bello has developed into international humanitarian law, which is the law that governs the way in which warfare is conducted and will be the main focus of this thesis. Its aim is to limit the suffering caused by war and is solely humanitarian.[20] The reality of the conflict is addressed without taking the reasons for or legality of resorting to force into consideration and only the aspects which are of humanitarian concern are regulated.

Although Just War Theory has in some way existed for thousands of years, IHL is a concept of the past two centuries. The first Geneva Convention was adopted in 1864 when states came together to improve the conditions of the wounded and the sick combatants on the field. This was notably changed and replaced in 1906, including shipwrecked members of armed forces at sea, and in 1929, including prisoners of war. In the mean time the Hague Conventions in 1899 and 1907 founded the laws of war determining the rights and duties of belligerents in the conduct of operations and limiting the choice of means in doing harm. Combatants were defined, states established rules relating to the means and methods of warfare and the matter of military objectives were studied. After the atrocities of the First and Second World War states came together to set up the Fourth Geneva Convention, updating the first three conventions with the protection of civilian persons in times of war, establishing the Geneva Conventions. These treaties were ratified in 1949, in whole or with reservations, by 196 countries.

Since 1949 the Geneva Conventions have been amended in 1977; Protocol I relating to the Protection of Victims of International Armed Conflicts and Protocol II relating to the Protection of Victims of Non-International Armed Conflicts, and in 2005; Protocol III relating to the adoption of an Additional Distinctive Emblem. The Geneva Conventions is applicable to all governments who have ratified its terms at times of war and armed conflict. Protecting powers take the role of looking after the interests of a state involved in the conflict and monitoring the implementation of the Geneva Conventions. The protecting power does not take part in the armed conflict and must act as an advocate for prisoners, the wounded and civilians. IHL is based on four principles namely; distinction, proportionality, humanity and

---

[19] Parry, Jonathan. "Just War Theory, Legitimate Authority, and Irregular Belligerency." *Philosophia* (2015):43. This paragraph was based on information withdrawn from Parry's article.
[20] "Jus ad bellum and jus in bello." Accessed 4th November 2016. https://www.icrc.org/en/document/jus-ad-bellum-jus-in-bello.

necessity. The principle of distinction ensures that civilian objects are protected from war and that only military objects can be targeted. The principle of proportionality ensures that the loss of life and damage caused by war must not be excessive in relation to the direct military advantage expected to be gained. The principle of humanity prohibits unnecessary suffering caused by war. Finally, the principal of necessity prohibits unnecessary injury to the enemy.[21]

An important rule which we must take into consideration for this research is precautions in attack. Article 57 of Additional Protocol I of the Geneva Conventions sets out the rule of precautions in attack stating that constant care shall be taken to spare the civilian population, civilians and civilian objects. Next to that those who attack must do everything possible to verify that the objective to be attacked are neither civilians nor civilian objects. They must refrain from attacking if it goes against the principle of proportionality, must cancel or suspend an attack if it becomes apparent that the objective is not a military one and that, when given the choice, the military objective causing the least danger to civilian lives must be attacked.

This chapter provided information on the MSF hospital bombings in Kunduz and explained the rules of war and Just War Theory. Now that the main definitions have been elaborated, this thesis will discuss whether the US violated IHL by bombing the MSF hospital in Kunduz. The next chapter will look at the first scenario where the US did target the MSF hospital on purpose and had evidence of enemy presence and the second scenario where the United States did target the MSF hospital on purpose but did not have evidence of enemy presence.

[21] Pictet, Jean. "Development and Principles of International Humanitarian Law." *The American Journal of International Law* (1987): 81. This paragraph was based on information from Pictet's article.

Chapter 2

This chapter will visualize two possible scenarios of what might have happened during the MSF hospital bombings in Kunduz, Afghanistan. Firstly, it will study scenario one where the US did know the location of the MSF hospital and was aware of enemy presence. Secondly, it will study the possible scenario where the US did know the location of the MSF hospital and was not aware of enemy presence. In order to research these scenarios and answer whether or not the US Armed Forces were aware of the location of the MSF hospital, the levels of warfare will be used as set out in Joint Publication 1, Doctrine for the Armed Forces of the United States.

Scenario one

Now that the different levels of warfare have been defined this thesis will apply them to the first possible scenario namely, that the US armed forces did know the location of the MSF hospital and were aware of enemy presence. The MSF report states that they had reaffirmed the well known GPS location of the MSF hospital to all parties involved in the conflict the week before the bombings took place. The US official report on the Kunduz hospital assault gives restricted information as only parts of the report are visible for the public. However, General Joseph L. Votel, Commander in the US Central Command, stresses that the MSF hospital was an unintended target. He explains how the personnel involved in the aerial strike assumed they were targeting an insurgent-controlled site about 400 meters away from the MSF hospital and were not aware that they were firing on a hospital.[22] It is clear that something went wrong if the MSF reaffirmed their GPS location to the US Armed Forces but the personnel involved were unaware that they were targeting the MSF hospital. The question is where did it go wrong? The levels of warfare help this research to analyze to what extent the US Armed Forces were aware of the location of the MSF hospital. On the strategic level the US was aware of the GPS coordinates of the MSF hospital as this was reaffirmed, and therefore well known, the week before the aerial strikes took place. On the operational level of warfare the location of the MSF hospital was known as commanders were updated on the location of the hospital. However, General Votel assures that due to the fatigue of days of fighting the crew of the AC-130 aircraft did not receive all the preparatory

[22] " Centcom Commander: Communications Breakdowns, Human Errors Let to Attack on Afghan Hospital." Accessed 15th November 2016. Official website of the US Department of Defense. http://www.defense.gov/News/Article/Article/746393/centcom-commander-communications-breakdowns-human-errors-led-to-attack-on-afgha.

information necessary and did not identify the no-strike area. This means that the personnel on the tactical level were not aware of the coordinates of the MSF hospital.[23] Nevertheless, as the US Armed Forces were aware of the GPS location of the MSF hospital on the strategic and operational level, it is their responsibility to make sure that personnel on the tactical level were informed. For the purposes of this scenario we may conclude that the US Armed Forces were aware of the location of the MSF hospital.

Now that this research concluded that the US Armed Forces were aware of the location of the MSF hospital, the question is to what extent was the US Armed Forces aware of enemy presence. The MSF initial report states that MSF staff in the Kunduz hospital were aware that the number of wounded combatants had shifted from primarily government forces and police, to Taliban combatants in the week preceding the aerial strike. In the MSF report MSF staff make clear that they suspected two wounded Taliban patients to be of a higher rank. The MSF report states that in the days preceding the aerial attack the US questioned the MSF whether there were a large number of Taliban patients "holed up" in the MSF hospital and if the staff were safe. The MSF answered that the hospital was working at full capacity and confirmed that there were Taliban patients as well as other patients in the hospital. This shows that the US had its suspicions about the Taliban presence in the MSF hospital and that the MSF hospital confirmed their presence.

In order to research the legitimacy of the airstrike in scenario one I will elaborate on the rule of proportionality as set out in customary IHL. Chapter 4, rule 14 of the Geneva Conventions define the rule of proportionality in attack as follows:

"Launching an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated, is prohibited."[24]

This rule has been established as a norm in IHL through state practice in international and non-international conflicts. When applying the rule of proportionality to scenario one, where the US was aware of the location of the hospital and aware of enemy presence, we see that the US Armed Forces launched an attack which may have expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects or a combination thereof. Due to a

[23] IBID.
[24] "Customary International Humanitarian Law." Accessed 25th November 2016. https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_cha_chapter4_rule14.

lack of empirical evidence it is difficult to determine whether the aerial attack was excessive in relation to the concrete and direct military advantage. 42 MSF staff and patients were killed during the MSF hospital bombings. MSF staff confirmed that there were Taliban patients, as well as other patients, present in the hospital the days prior to the aerial attacks, two of which were suspected of having a higher rank. The MSF have confirmed that 14 MSF staff, 24 patients and four caretakers were killed during US aerial attack of the MSF hospital in Kunduz. Even if Taliban combatants were killed during the bombings, they were patients who ceased to take part in the conflict and had the right to be treated without discrimination.[25] In addition, MSF staff are obliged under IHL to treat wounded combatants impartially. Hospitals are defined as protected civilian objects under International Humanitarian Law and the Geneva Conventions, prohibiting attack.[26] Under the principle of distinction, where combatants must be clearly distinguished from civilians, it is possible that a civilian object becomes a military object. IHL states that civilian objects can lose their protection from attack when they are used for military purposes or for military action.[27] Nevertheless, the MSF initial report argues that they have a strict no weapon policy which was strictly implemented and controlled at all times. MSF staff reported that the Taliban and Afghan army respected the no-weapon policy and state that there was no shooting from or around the MSF hospital during the aerial attack.[28]

Therefore it may be concluded that the aerial attacks launched by the US Armed Forces were illegitimate according to IHL in scenario one of this research. The US was aware of the location of the MSF hospital on the strategic and operational level, and therefore targeted a protected civilian object violating the principle of proportionality. The MSF initial report shows that the US Armed Forces were aware of enemy presence. One could argue that due to this knowledge the MSF hospital lost its protected status and turned into a military object. Nevertheless, the combatants present in the MSF hospital were wounded combatants, who had surrendered their weapons, and were therefore "hors de combat", meaning out of combat. It is prohibited by IHL to target wounded combatants and hospitals, such as the MSF hospital in Kunduz, are protected civilian objects which must remain immune from warfare.

---

[25] "Rule 110. Treatment and Care of the Wounded, Sick and Shipwrecked. Customary International Humnitarian Law." Accessed 26th November 2016. https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule110.

[26] "Rule 35. Hospital and Safety Zones and Neutralized Zones." Accessed 26th November 2016. https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule35.

[27] "Rule 10, Civilians Objects' loss of Protection from Attack. Customary International Humanitarian Law." Accessed 26th November 2016. https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule10.

[28] "Attack on Kunduz Trauma Centre, Afghanistan. Initial MSF internal review." Accessed 26th November 2016. http://kunduz.msf.org/pdf/20151030_kunduz_review_EN.pdf.

Scenario two

Scenario two portrays a situation where the US Armed Forces were aware of the location of the MSF hospital in Kunduz however were unaware of enemy presence. In the previous scenario it was demonstrated that the US Armed Forces were aware of the location of the MSF hospital in Kunduz as the MSF hospital had reaffirmed its GPS coordinates to all parties involved. General Votel argues that personnel on the tactical level were unaware that they were targeting a hospital due to fatigue from days of combat. This means that the strategic and operational levels of warfare, as set out in Joint Publication 1, were aware of the location of the MSF hospital however failed on the to ensure that the no strike list was verified at the tactical level before launching the aerial attack.

In the MSF initial report MSF staff state that the US Armed Forces had asked whether there were Taliban combatants "holed up" in the hospital and whether staff were safe. This shows that the US suspected enemy presence in the MSF hospital. MSF staff confirmed that there were Taliban patients, as well as other patients, being treated on the first of October 2015. However, the US Armed Forces could not have been aware of enemy presence when the aerial attack was launched two days later, as there is a possibility that the Taliban patients had already been discharged. Next to that, General Votel stated that the aircrew of the AC-130 aircraft were targeting a Taliban-controlled building a quarter mile away from the hospital. However, due to a technical error they were directed to an open field and then attempted to find the intended target nearby. The MSF hospital was mistakenly identified and the ground force mistakenly believed that the aircraft was firing on the intended Taliban controlled building. From this it may be concluded that the US Armed Forces were not aware of enemy presence in the MSF hospital in Kunduz.[29]

Therefore this research concludes that the aerial attacks launched by the US Armed Forces were illegitimate according to IHL in scenario two of this research. They were aware of the location of the MSF hospital on the strategic and operational level and therefore targeted a protected civilian object. The US Armed Forces did not respect the principle of proportionality and although the MSF initial report shows that the US Armed Forces were

[29] "Attack on Kunduz Trauma Centre, Afghanistan. Initial MSF internal review." Accessed 26th November 2016. http://kunduz.msf.org/pdf/20151030_kunduz_review_EN.pdf.
" Department of Defense Press Briefing by Army General Joseph Votel, commander, U.S. Central Command." Accessed 26th November 2016. http://www.defense.gov/News/Transcripts/Transcript-View/Article/746686/department-of-defense-press-briefing-by-army-general-joseph-votel-commander-us.
This paragraph is based on information retrieved from the MSF initial report and a news transcript of a statement given by Army General Joseph Votel.

aware of enemy presence two days prior to the aerial attack, there is a possibility that these were discharged before the MSF hospital was bombed. General Votel argues that aircrew intended to target a Taliban controlled building next to the MSF hospital which shows that the MSF hospital did not lose its protected status. It is prohibited the Geneva Conventions to target wounded combatants and hospitals, such as the MSF hospital in Kunduz, as they are protected civilian objects which must remain immune from warfare.

This chapter has evaluated two possible scenarios of what could have occurred during the aerial strike on the MSF hospital in Kunduz on the 3rd of October 2015. After analyzing scenario one, where the US Armed Forces were aware of the location of the MSF hospital and aware of enemy presence, it was concluded that the aerial strike was illegitimate according to IHL. The US Armed Forces did not respect the principle of proportionality as they were aware that they were targeting a protected civilian object. Even if they were aware of enemy presence, Taliban combatants present in the hospital were out of combat. In scenario two where the US Armed Forces were aware of the location of the MSF hospital and unaware of enemy presence, it was also concluded that the aerial strike was illegitimate according to IHL. Again, the US was aware that they were targeting a protected civilian object and as they were not aware of enemy presence there is no possibility that this status could have changed.

Chapter 3

This chapter will visualize the remaining two possible scenarios of what might have happened during the MSF hospital bombings in Kunduz, Afghanistan. Firstly, it will study scenario three where the US did not know the location of the MSF hospital and was aware of enemy presence. Secondly, it will study the possible scenario where the US did not know the location of the MSF hospital and was not aware of enemy presence. In order to research these scenarios and answer whether or not the US Armed Forces were aware of the location of the MSF hospital the levels of warfare as set out in Joint Publication 1 will be used, which were explained in the previous chapter.

Scenario three

Scenario three portrays a situation where the US Armed Forces were not aware of the location of the MSF hospital, however aware of enemy presence. The MSF initial report states that they had reaffirmed their GPS coordinates to US Department of Defence, the Afghan Ministry of Interior Defence and the US army in Kabul on the 29th of September 2015. The representatives of the US Department of Defence and the US army representatives as well as the Afghan Ministry of Interior confirmed that they had received the GSP coordinates. This shows that the US Armed Forces were aware of the location of the MSF hospital on the strategic level and on the operational level of warfare. General Votel stresses that the aircrew of the AC-130 aircraft and the ground forces were not aware that they were attacking the MSF medical facility. The US Armed Forces were targeting a Taliban controlled building a quarter mile from the MSF hospital however mistakenly identified the MSF hospital for that building as they did not check the no-strike list. General Votel argues that this is because the US Special Operations forces and their Afghan special operations partners had been engaged in intense fighting for several days and nights before the aerial attack took place. This led to the crew not getting all the preparatory information necessary including the identification of no-strike areas. For the purpose of this scenario we may conclude that the operational level, connecting strategy and tactics, failed to ensure that the no-strike list was consulted before the aerial attack was launched. Therefore, the tactical level of warfare, which conducted the aerial attack on the MSF hospital in Kunduz, was unaware of the location of the hospital. As the

attack was carried out on the tactical level one may conclude that the US Armed Forces were unaware of the location of the MSF hospital during the MSF hospital bombings.[30]

Even if the US Armed Forces were unaware of the location of the MSF hospital the US is obliged to take all precautionary measures as set out in Article 57 of Additional Protocol I of the Geneva Conventions in order to ensure the protection of civilian populations from the effects of hostilities. The US is obliged to take constant care to spare civilians and civilian objects by making sure that the objectives to be attacked are neither civilians nor civilian objects and should refrain from attacking if it becomes apparent that the objective is not a military one. Additionally the US must attack the military objective causing the least danger to civilian lives. Jean-Francois Quéginer argues that states have the obligation to verify the military nature of the objective to be attacked and to assess collateral damage before launching an attack. [31]

The MSF initial report shows that the US Armed Forces were aware of enemy presence. MSF staff in Kunduz stated that the number of wounded combatants had shifted from primarily government forces and police to Taliban combatants in the week preceding the aerial strike. Two wounded Taliban patients were suspected to be of a higher rank. The US questioned the MSF whether there were a large number of Taliban patients "holed up" in the MSF hospital and if the staff were safe according to the MSF report. The MSF answered that the hospital was working at full capacity with Taliban patients as well as other patients in the hospital. As this was two days prior to the aerial attack one may conclude that the US had its suspicions about Taliban presence and that the MSF hospital confirmed them. Although it is possible for a civilian object to lose its protected status and become a military object, Taliban combatants in the MSF hospital had surrendered their weapons and were out of combat. Therefore it is not possible that the MSF hospital lost its protected status as a civilian object.

As the US Armed Forces did not verify the no-strike list and were unaware that they were targeting a medical facility, they failed to take all precautionary measures necessary in order to ensure the protection of civilian populations as set out in Article 57 of Additional

---

[30] "Attack on Kunduz Trauma Centre, Afghanistan. Initial MSF internal review." Accessed 26th November 2016. http://kunduz.msf.org/pdf/20151030_kunduz_review_EN.pdf.
" Department of Defense Press Briefing by Army General Joseph Votel, commander, U.S. Central Command." Accessed 26th November 2016. http://www.defense.gov/News/Transcripts/Transcript-View/Article/746686/department-of-defense-press-briefing-by-army-general-joseph-votel-commander-us.
This paragraph is based on information retrieved from the MSF initial report and a news transcript of a statement given by Army General Joseph Votel.
[31] Quéguiner, Jean-Francois. "Precautions under the law governing the conduct of hostilities." *International Review of the Red Cross* (2006): 88.

Protocol I of the Geneva Conventions. However, William J. Fenrick argues that the duty to take precautionary measures is not absolute, but a duty to act in good faith and persons acting in good faith may make mistakes. Therefore, Quéguiner states that a situation needs to be legally assessed in order to determine whether a state has been negligent or whether a mistake was made despite taking all possible precautions.[32]

Since the US Armed Forces were not aware of the GPS coordinates of the MSF hospital a legal assessment is necessary in order to determine whether it was an act of negligence or a mistake. The US Armed Forces have conducted an investigation in order to assess the MSF hospital bombings and concluded that the personnel involved did not identify the MSF hospital. As this is the only legal assessment available, for the purpose of this scenario it can only be concluded that it has not been independently established whether or not the US Armed Forces violated IHL in scenario three. The legal assessment made by the US might be biased and therefore a conclusion cannot be made. Even if the US was aware of enemy presence in the hospital the US Armed Forces mistakenly identified the MSF hospital for a Taliban controlled building in this scenario. This means that they were targeting Taliban combatants, yet launched an attack on a civilian object with Taliban combatants that were out of combat. It is illegitimate to attack combatants which are out of combat and this scenario portrays a situation where the US Armed Forces failed to take all precautionary measures necessary as set out by Article 57 of Protocol I.

Scenario four

Scenario four portrays a situation where the US Armed Forces were unaware of the location of the MSF hospital in Kunduz and unaware of enemy presence. In the previous scenario it has been demonstrated that the US Armed Forces were unaware of the location of the MSF hospital in Kunduz as the personnel involved did not consult the no-strike list. General Votel states that personnel on the tactical level were unaware that they were targeting a hospital due to fatigue from days of combat. As this is the only legal assessment available, it may be concluded that the tactical level of warfare, as set out in Joint Publication 1, was not aware of the location of the MSF hospital as they failed to take all precautionary measures necessary and mistakenly identified the MSF hospital before launching the aerial attack.

---

[32] Fenrick, William J. "Targetting and proportionality during the NATO bombings campaign against Yugoslavia. " *EJIL* (2001): 12. p.501.

As discussed in the previous chapter, the MSF initial report shows that the US Armed Forces had their suspicions of enemy presence in the MSF hospital. MSF staff state that the US Armed Forces asked whether there were Taliban combatants “holed up” in the hospital and whether staff were safe two days prior to the MSF hospital bombings. MSF staff confirmed that there were Taliban patients and other patients being treated. When the US Armed Forces launched the aerial attack they could not have been sure of enemy presence as there is a possibility that these were discharged. General Votel stated that personnel involved mistakenly identified the MSF hospital for a Taliban-controlled building a quarter mile away. For the purpose of this scenario it may be concluded that the US Armed Forces were not aware of enemy presence in the MSF hospital in Kunduz.[33]

As a result it cannot be concluded beyond doubt whether or not the aerial attacks launched by the US Armed Forces went against IHL in scenario four of this research. The US failed to take all precautionary measures necessary and General Votel argues that they were unaware of the location of the MSF hospital on the tactical level and therefore they mistakenly targeted a protected civilian object. Although the MSF initial report shows that the US Armed Forces were aware of enemy presence two days prior to the aerial attack, there is a possibility that these were discharged before the MSF hospital was bombed. General Votel argues that the MSF hospital did not lose its protected status as the aircrew intended to target a Taliban controlled building next to the MSF hospital. However, the legal assessment made by the US might be biased and therefore the conclusion must be left in doubt.

This chapter has evaluated the remaining possible scenarios of what could have occurred during the MSF hospital bombings in Kunduz on the 3rd of October 2015. After analyzing scenario three, where the US Armed Forces were unaware of the location of the MSF hospital and aware of enemy presence, it may be concluded that it has not been independently established whether the aerial strike went against IHL. The US investigation concluded that the US Armed Forces had made a mistake despite taking precautionary measures however this legal assessment is the only one available and may be biased. The US Armed Forces were not aware that they were targeting a protected civilian object and even if

[33] “Attack on Kunduz Trauma Centre, Afghanistan. Initial MSF internal review.” Accessed 26th November 2016. http://kunduz.msf.org/pdf/20151030_kunduz_review_EN.pdf.
“ Department of Defense Press Briefing by Army General Joseph Votel, commander, U.S. Central Command.” Accessed 26th November 2016. http://www.defense.gov/News/Transcripts/Transcript-View/Article/746686/department-of-defense-press-briefing-by-army-general-joseph-votel-commander-us.
This paragraph is based on information retrieved from the MSF initial report and a news transcript of a statement given by Army General Joseph Votel.

they were aware of enemy presence, Taliban combatants present in the hospital were out of combat and therefore protected. In scenario four where the US Armed Forces were unaware of the location of the MSF hospital and unaware of enemy presence, this research cannot conclude beyond doubt whether the US aerial strike violated IHL. Again, the US was the only actor allowed to conduct a legal assessment and that this investigation may be biased.

Conclusion

This thesis about Just War Theory and the MSF hospital bombings in Kunduz, Afghanistan answers the question:

Did the United States airstrike on the MSF hospital in Kunduz violate International Humanitarian Law ?

This master thesis has elaborated on the aerial strike on the MSF hospital in Kunduz, giving a brief background history on the Afghan Wars and the situation in which the hospital bombings took place. It then explained what happened during the MSF hospital bombings, describing the events leading up to, throughout and immediately after the aerial strikes took place. This thesis then presented the theoretical framework of Just War Theory and jus in bello as set out in the Geneva Conventions and International Humanitarian Law. Subsequently it discussed four different scenarios of what could have occurred during the MSF hospital bombings. Firstly, the legitimacy of the aerial strike in scenarios one and two, where the US Armed Forces were aware of the location of the MSF hospital, aware of enemy presence or unaware of enemy presence. Finally, the legitimacy of the aerial strike in scenarios three and four, where the US Armed Forces were unaware of the location of the MSF hospital, aware of enemy presence or unaware of enemy presence. The conclusion can be drawn from the conclusions from each scenario.

In chapter two this research concluded that the aerial strikes launched by the US under the assumptions presented in scenario one and two were illegitimate according to IHL. On the strategic and operational levels of warfare the US was aware of the location of the MSF hospital and therefore targeted a protected civilian object defying the principle of proportionality. Although one could argue that the MSF hospital turned into a military object losing its protected status, the Taliban combatants in the MSF hospital had surrendered their weapons and were out of combat. Whether the US knew of enemy presence or not, it is prohibited by the law of war to attack combatants out of combat. Hospitals are civilian objects which must remain immune from warfare.

In chapter three this research concluded that the legitimacy of the aerial attack launched by the US on the MSF hospital under the assumptions presented in scenario three and four are left in doubt. The US Armed Forces did not take all the precautionary measures necessary in order to ensure civilian protection as set out in Article 57 Protocol I of the Geneva Conventions, as they failed to consult the no-strike list. However Article 57 is not

binding and the legal assessment made by the US Armed Forces concluded that the aircrew and ground forces were not aware that they were targeting a medical facility. Nevertheless this investigation may be biased and is the only legal assessment currently available.

Just War Theory is the foundation of IHL and the Geneva Conventions as it sets out the law of going to war and the law of war. It can be concluded that the rules of war are not obsolete. Although a state respects IHL there is room for human error and a legal assessment is necessary to determine whether IHL was intentionally broken or whether it was a mistake. The US Armed Forces investigation states that the personnel involved were not aware of the MSF hospital location. This is the only legal assessment available and due to the lack of empirical evidence released by the US Armed Forces, the only source. Yet this legal assessment may be biased and is the only legal assessment currently possible. It is not possible to conclude beyond doubt whether the US violated IHL during the MSF hospital bombings as it is not sure that the US knew the location of the MSF hospital on the strategic, operational and tactical levels of warfare. Although it is a reason to question it. It is important to hold combatants into account for their actions, how can this be done if they are being protected from foreign criminal conviction? As the US is not a member of the International Criminal Court there is no independent legal assessment possible to conclude whether the US knew at all levels of warfare of the location of the MSF hospital. It is clear that there is no clear line between civilians and the military in modern day warfare as there are no front lines and so many different actors involved. Therefore, the answer to the main research question is:

A conclusion cannot be drawn whether the United States violated IHL during the MSF hospital bombings until a legal assessment is made by an external neutral actor.

There are cases where IHL is not absolute, leaving space for human error. However, we cannot exclude the possibility that for this exact reason actors may use human error as an excuse to target civilians and civilian objects. IHL discusses factors which are essential for modern day warfare as civilians and civilian objects must remain immune. In order to see in which cases we can use Just War Theory to assess a violation of IHL, each case has to be individually studied needing further research. Due to the lack of an independent legal assessment a definite conclusion could not be drawn in this case study however this research confirms that Just War Theory is still applicable for the analysis of incidents, even under conditions of asymmetric warfare.

One may argue that IHL has become obsolete as IHL has failed to protect civilians in modern warfare where warring parties do not comply with the law.[34] Nevertheless, IHL has settled principles recognized by the international community, which are imperfect yet create a fine balance from peace to war and from life to death.[35] IHL is sufficiently flexible to make it applicable to asymmetric warfare. That in this case no definite conclusion could be drawn is not due to the insufficiency of IHL in asymmetric warfare. But that especially in asymmetric warfare independent legal assessments are necessary in order to determine whether IHL has been violated. This research shows the necessity of an independent legal assessment made by an institution such as the ICC. It also shows the importance of the collection of empirical evidence and testimonies in order to make a legal independent assessment possible.

---

[34] Lamp, Nicolas. "Conceptions of War and Paradigms of Compliance: The 'New War' Challenge to International Humanitarian Law." *Journal of Conflict and Security Law* (2011): 16, 2.
[35] Rona, Gabor and Raha Wala. "No Thank You to a Radical Rewrite of the Jus ad Bellum." *The American Journal of International Law* (2013): 107, 2.

Bibliography

Barfield, Thomas. *Afghanistan. A Cultural and Political History.* Princeton: Princeton University Press.

Gosset, Nicolas. *Lost in transition?: State of the conflict, sovereignty and post 2014 prospects in Afghanistan.* Brussels: Centre for Security and Defence Studies, Royal Higher Institute for Defence.

Liu, J. (2015) *Initial MSF internal review.* (Geneva, Switzerland): Médcins Sans Frontières.

Walzer, Michael. Just and Unjust War: A Moral Argument with Historical Illustrations. New York: Basic Books. 2006.

Articles

Quéguiner, Jean-Francois. “Precautions under the law governing the conduct of hostilities.” *International Review of the Red Cross* (2006): 88.

Fenrick, William J. “Targetting and proportionality during the NATO bombings campaign against Yugoslavia. ” *EJII* (2001): 12. p.501.

Garamone, Jim. “Cencom Commander: Communications Breakdowns, Human Errors Let to Attack on Afghan Hospital.” *Official website of the US Department of Defense.* http://www.defense.gov/News/Article/Article/746393/centcom-commander-communications-breakdowns-human-errors-led-to-attack-on-afgha. Accessed 15th November 2016.

Gawthorpe, Andew. “The second kick of a mule in Afghanistan.” *Official website of the Boston Globe.* Accessed 11th November 2016.

Geiß, Robin. “Asymmetric conflict structures.” *International Review of the Red Cross* (2006):88, 864.

Lamp, Nicolas. “Conceptions of War and Paradigms of Compliance: The ‘New War’ Challenge to International Humanitarian Law.” *Journal of Conflict and Security Law* (2011): 16, 2.

Mednicoff, David M. “Humane war? International law, Just War Theory and contemporary armed humanitarian intervention.” *Law, Culture and Humanities* (2006): 2, p. 373-398.
Parry, Jonathan. “Just War Theory, Legitimate Authority, and Irregular Belligerency.” *Philosophia* (2015):43.

Metz, Steven. “La guess asymetrique et l’avenir de l‘Occident.” *Politique Étranger* (2003): 1.

Michaels, Jim. “Afghanistan, U.S. sign long-delayed security pact.” *Official website of USA today.* http://www.usatoday.com/story/news/world/2014/09/30/afghan-us-security-pact/16467441/. Accessed Ist of November 2016.

Pictet, Jean. “Development and Principles of International Humanitarian Law.” *The American Journal of International Law* (1987): 81.

Rona, Gabor and Raha Wala. "No Thank You to a Radical Rewrite of the Jus ad Bellum." *The American Journal of International Law* (2013): 107, 2.

Websites

"Afghanistan: MSF Demands Explanations After Deadly Airstrikes Hit Hospital in Kunduz." Accessed 24th February 2016. http://www.doctorswithoutborders.org/article/afghanistan-msf-demands-explanations-after-deadly-airstrikes-hit-hospital-kunduz.

"Attack on Kunduz Trauma Centre, Afghanistan. Initial MSF internal review." Accessed 30th March 2016. http://kunduz.msf.org/pdf/20151030_kunduz_review_EN.pdf.
"Customary International Humanitarian Law." Accessed 25th November 2016. https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_cha_chapter4_rule14.

"Department of Defense Press Briefing by Army General Joseph Votel, commander, U.S. Central Command." Accessed 11th November 2016. http://www.defense.gov/News/Transcripts/Transcript-View/Article/746686/department-of-defense-press-briefing-by-army-general-joseph-votel-commander-us.

"Doctrine for the Armed Forces of the United States." Accessed 15th November 2016. http://www.dtic.mil/doctrine/new_pubs/jp1.pdf.

"Jus ad bellum and jus in bello." Accessed 4th November 2016. https://www.icrc.org/en/document/jus-ad-bellum-jus-in-bello.

"Rule 10, Civilians Objects' loss of Protection from Attack. Customary International Humanitarian Law."Accessed 26th November 2016. https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule10.

"Rule 110. Treatment and Care of the Wounded, Sick and Shipwrecked. Customary International Humnitarian Law." Accessed 26th November 2016. https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule110.

"Rule 35. Hospital and Safety Zones and Neutralized Zones." Accessed 26th November 2016. https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule35.